

AGREEMENT NO.

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
APM TERMINALS PACIFIC LLC

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 APM TERMINALS PACIFIC LLC, a Delaware Corporation, 2500 Navy Way, Terminal Island, California 90731 (hereinafter "Subrecipient").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") applied for and has been awarded a grant, in the amount of \$800,000 by the Environmental Protection Agency ("EPA") under its 2016 National Clean Diesel Funding Assistance Program; and

WHEREAS, to accept the grant, the Department has entered into with the EPA Cooperative Agreement Grant Number 99T42201, Assistance Amendment Grant Number 99T42201 Modification 1 and Assistance Amendment Grant Number 99T42201, Modification 2 (collectively "Grant Award"); and

WHEREAS, a portion of the Grant Award, in the amount of \$680,000, will fund the replacement of sixteen Tier 3 diesel yard tractors with Tier 4 diesel yard tractors operating at Subrecipient's terminal at the Port of Los Angeles ("Project"); and

WHEREAS, Subrecipient will be responsible for undertaking all aspects of the Project at its marine terminal pursuant to the terms of the Grant Award and this Agreement, including the contribution of matching funds in the amount of approximately \$2,040,000; and

WHEREAS, the Department will provide administrative oversight for the Project and act as fiduciary agent for the reimbursement to Subrecipient for Project expenditures in an amount not to exceed \$680,000.

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 the Project as set forth in the Grant Award and the Grant Application, both attached hereto as Exhibit A and hereby made a part of this Agreement. Subrecipient and City agree to follow the detailed Scope of Work, Reimbursement Amounts and Schedule attached hereto as Exhibit B and hereby made a part of this Agreement.

B. Subrecipient, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Project as set forth in the Grant Award, and as may be amended from time to time by the EPA and City.

C. As between City and Subrecipient, Subrecipient is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Project, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

D. Subrecipient acknowledges and agrees that it lacks authority to perform any services outside those set forth in the Grant Award. Subrecipient further acknowledges and agrees that any services it performs outside the Grant Award are performed as a volunteer and shall not be compensable under this Agreement.

E. Subrecipient shall be subject to, and perform the Project in accordance with, the terms and conditions set forth in this Agreement and the Grant Award. Obligations of the Grant Award, whether undertaken by Subrecipient or its subconsultants, are and shall be the responsibility of Subrecipient. Subrecipient acknowledges and agrees that this Agreement creates no rights in its subconsultants with respect to City and that obligations that may be owed to its subconsultants, including, but not limited to, the obligation to pay subconsultants for services performed, are those of Subrecipient alone. Upon Executive Director's written request, Subrecipient shall supply the Department with all agreements between it and its subconsultants.

## II. SERVICES TO BE PERFORMED BY CITY

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

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Subrecipient and the acceptable completion of this Agreement, the Grant Award and the amount of reimbursement due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article XI (Termination) hereof.

## III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Subrecipient is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no

event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Two (2) years have lapsed from the effective date of this Agreement; or
2. Funding under the Grant Award is for any reason no longer available. City shall provide written notice to Subrecipient and the amount of reimbursement available and due to Subrecipient shall be determined by the EPA and the terms of the Grant Award. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements; or
3. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Subrecipient ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and Grant Award as of the date the ten days notice period ends. The EPA shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements; or
4. Subrecipient, in its sole discretion, terminates and cancels all or any part of this Agreement for any reason upon giving to City ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and the Grant Award as of the date notice is given to City. The EPA shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

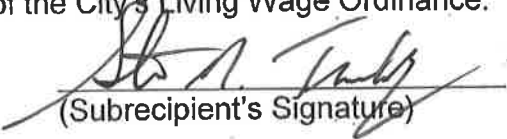
#### IV. REIMBURSEMENT AND PAYMENT

A. As reimbursement for the satisfactory performance of the Project as set forth in the Grant Award and as required by this Agreement, City shall reimburse Subrecipient in the amounts set forth in Exhibit A. The parties acknowledge and agree that Subrecipient shall be obligated to make expenditures for the Project prior to reimbursement by City. The parties also acknowledge and agree that the City shall not be obligated to reimburse Subrecipient for any expenditures made for the Project unless and until payment has been authorized, approved and all funds released by the EPA to the City pursuant to the Grant Award.

B. The maximum amount to be reimbursed to Subrecipient pursuant to this Agreement and the Grant Award shall be Six Hundred Eighty Thousand Dollars (\$680,000).

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

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

  
(Subrecipient's Signature)"

D. Subrecipient must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, 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 Subrecipient shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement or as may be requested by the EPA. All invoices are subject to audit.

E. For payment and processing, 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 Subrecipient for any purpose.

VI. RECORDKEEPING AND AUDIT RIGHTS

A. Subrecipient shall keep and maintain full, complete and accurate books of accounts and records of the work performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Subrecipient for a period of three (3) years after completion of services to be performed under this Agreement, as required by the Grant Award or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever period is longest.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Subrecipient and subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Subrecipient, subconsultants or any individual or entity acting for or on behalf of Subrecipient or a subconsultant, and (c) without regard to whether such writings have previously been provided to City. Subrecipient shall be responsible for obtaining access to and providing writings of subconsultants. Subrecipient shall provide City at Subrecipient's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Subrecipient's office or facilities which are engaged in the performance of the Scope of Work. Subrecipient shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Subrecipient's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

VII. INDEPENDENT CONTRACTOR

Subrecipient, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Subrecipient shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

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## VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. 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 Subrecipient's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Subrecipient or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

## X. INSURANCE

### A. Permit No. 827 Insurance

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section IX, Subrecipient acknowledges and agrees that for the purpose of insurance coverage under this Agreement, the insurance terms and conditions under Subrecipient's Permit No. 827 with the City, including any subsequent amendments and successive agreements or permits, shall in all cases apply to this Agreement.

### B. Accident Reports

Subrecipient shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence related to the Project and involving death of or injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Subrecipient's officers, agents or employees are involved in such an accident or

occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Subrecipient, its officers or managing agents.

#### XI. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Subrecipient ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional subrecipients or perform the services described in this Agreement either during or after the term of this Agreement.

#### XII. PERSONAL SERVICE AGREEMENT

Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Subrecipient may permit subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All subconsultants whom Subrecipient utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Subrecipient from its obligations under this Agreement or to impose any obligation on the City to such subconsultant(s) or give the subconsultant(s) any rights against the City.

#### XIII. AFFIRMATIVE ACTION

The Subrecipient, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

#### XIV. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Subrecipient shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present

themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit E.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Subrecipient shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Subrecipient and all subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

#### XV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

#### XVI. COMPLIANCE WITH APPLICABLE LAWS

Subrecipient shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

#### XVII. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

## XVIII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Subrecipient agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Subrecipient in the performance of this Agreement.

## XIX. PROPRIETARY INFORMATION

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Subrecipient, its officers, agents, employees, or subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Subrecipient, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Subrecipient, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

## XX. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Subrecipient relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Subrecipient or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Subrecipient is required to safeguard such information from access by unauthorized personnel.

## XXI. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Environmental Management, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Subrecipient shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXII. TAXPAYER IDENTIFICATION NUMBER (TIN)

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

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

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

XXIV. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

The Subrecipient and/or subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Subrecipient and/or subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Subrecipient or subconsultant will maintain such compliance throughout the term of this Agreement.

XXV. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Subrecipient shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Subrecipient and pursue any and all other legal remedies that may be available. See Exhibit F.

## XXVI. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Subrecipient, subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Subrecipient is required to provide and update certain information to the City as specified by law. Any Subrecipient subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

### Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Subrecipient names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Subrecipient within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Subrecipient, subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

## XXVII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Subrecipient agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

## XXVIII. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

## XXIX. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

## XXX. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

## XXXI. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXXII. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code,

XXXIII. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXIV. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XXXV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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

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


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

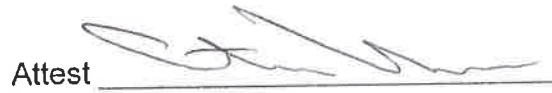
By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

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

APM TERMINALS PACIFIC LLC

Dated: Dec 5, 2016

By   
Steven M. Trombley - President/ CEO  
(Print/type name and title)

Attest   
Steen Larsen - Chief Financial Officer  
(Print/type name and title)


APPROVED AS TO FORM AND LEGALITY

December 7, 2016  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By   
HEATHER M. McCLOSKEY, Deputy

# Exhibit A

# **EPA Cooperative Agreement**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	GRANT NUMBER (FAIN): <b>99T42201</b>	DATE OF AWARD 09/22/2016
		MODIFICATION NUMBER: <b>0</b>	MAILING DATE 09/29/2016
		PROGRAM CODE: <b>DE</b>	ACH# 90569
		TYPE OF ACTION New	
RECIPIENT TYPE: Municipal	Send Payment Request to: Las Vegas Finance Center email: <a href="mailto:lvfc-grants@epa.gov">lvfc-grants@epa.gov</a>		
RECIPIENT: City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 EIN: 95-6000735	PAYEE: City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731		
PROJECT MANAGER Amber Coluso Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 E-Mail: <a href="mailto:acoluso@portla.org">acoluso@portla.org</a> Phone: 310-732-3950	EPA PROJECT OFFICER Gary Lance 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: <a href="mailto:Lance.Gary@epa.gov">Lance.Gary@epa.gov</a> Phone: 415-972-3992	EPA GRANT SPECIALIST Veronica Adams Grants Management Section, EMD-6-1 E-Mail: <a href="mailto:adams.veronica@epa.gov">adams.veronica@epa.gov</a> Phone: 415-972-3677	
<b>PROJECT TITLE AND DESCRIPTION</b> National Clean Diesel Program - Port of Los Angeles Terminal Equipment Project The Los Angeles Harbor Department (LAHD) is requesting co-funding to replace sixteen Tier 3 yard tractors with Tier 4 technology and to repower two Tier 3 heavy lift cargo handling equipment with Tier 4 technology.  This assistance agreement provides partial federal funding in the amount of \$800,000.00.			
BUDGET PERIOD 10/01/2016 - 10/01/2018	PROJECT PERIOD 10/01/2016 - 10/01/2018	TOTAL BUDGET PERIOD COST \$10,610,908.00	TOTAL PROJECT PERIOD COST \$10,610,908.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 04/22/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$800,000. EPA agrees to cost-share % of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b>		<b>ORGANIZATION / ADDRESS</b>	
U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official Craig A. Wills - Grants Management Officer			DATE 09/22/2016

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 800,000	\$ 800,000
EPA In-Kind Amount	\$	\$ 0	\$ 0
Unexpended Prior Year Balance	\$	\$ 0	\$ 0
Other Federal Funds	\$	\$ 0	\$ 0
Recipient Contribution	\$	\$ 7,504,595	\$ 7,504,595
State Contribution	\$	\$ 0	\$ 0
Local Contribution	\$	\$ 0	\$ 0
Other Contribution	\$	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 8,304,595	\$ 8,304,595

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Diesel Emissions Reduction Act of 2010 codified at 42 U.S.C. 16131 et seq	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
POLB 16	1609M6S113	16	E4	09M2	102AH4	4122			800,000
									800,000

Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$25,000
<b>2. Fringe Benefits</b>	\$0
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$9,789,908
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$0
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$796,000
<b>9. Total Direct Charges</b>	\$10,610,908
<b>10. Indirect Costs: % Base</b>	\$0
<b>11. Total (Share: Recipient % Federal %.)</b>	\$10,610,908
<b>12. Total Approved Assistance Amount</b>	\$800,000
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$800,000
<b>15. Total EPA Amount Awarded To Date</b>	\$800,000

## Administrative Conditions

### **EPA General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at:  
<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

#### **A. Annual Federal Financial Report (FFR) - SF 425**

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to September 30 of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to [lvfc-grants@epa.gov](mailto:lvfc-grants@epa.gov) no later than December 30 of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

#### **B. Procurement**

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

#### **C. Six Good Faith Efforts 40 CFR Part 33, Subpart C**

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit,

in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **D. Utilization of Disadvantaged Business Enterprises**

##### **General Compliance, 40 CFR Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

##### **Fair Share Objectives, 40 CFR Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the California State Water Resources Control Board (CSWRCB), as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as CSWRCB.

#### **Negotiating Fair Share Objectives/Goals, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at [Ochab.Joe@epa.gov](mailto:Ochab.Joe@epa.gov), within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **Contract Administration Provisions, 40 CFR Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

#### **Bidders List, 40 CFR Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

### **E. MBE/WBE Reporting**

#### **General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition**

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting

requirements. Conversely, the recipient must submit to the [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due by October 30<sup>th</sup> or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov). The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm).

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

#### **F. Indirect Costs**

The Cost Principles under 2 CFR Part 200, Subpart E apply to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

### **Programmatic Conditions**

**Refer to Attachment A for the FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions. In addition, the following terms and conditions apply.**

**FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and**

## Conditions.

The recipient agrees to comply with the **FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions** available at: FY2016 National Clean Diesel (Diesel Emissions Reduction Act) Programmatic Terms and Conditions. These terms and conditions are in addition to any award specific programmatic terms and conditions outlined directly on the award document.

PDF  
2

DE99T422010\_BAAQMD\_Attachment A\_91216.pdf

### **N. Voluntary Cost-Share or Overmatch:**

This award and the resulting federal funding of \$800,000 is based on estimated costs requested in the recipient's final approved workplan. Included in these costs is a voluntary cost-share contribution of \$0.00. What is the final voluntary cost share amount?) by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its final approved workplan. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its final approved workplan, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

The eligible acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

### **O. Cybersecurity:**

a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this

agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.


**P. Subawards:**

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

-- End of Document --

**EPA**  
**Assistance Amendment No. 1**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>	<b>GRANT NUMBER (FAIN):</b> 99T42201 <b>MODIFICATION NUMBER:</b> 1 <b>PROGRAM CODE:</b> DE	<b>DATE OF AWARD</b> 09/30/2016
		<b>TYPE OF ACTION</b> No Cost Amendment	<b>MAILING DATE</b> 09/30/2016
		<b>PAYMENT METHOD:</b> Advance	<b>ACH#</b> 90569
		<b>RECIPIENT TYPE:</b> Municipal	
<b>RECIPIENT:</b> City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 EIN: 95-6000735		<b>PAYEE:</b> City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731	
<b>PROJECT MANAGER</b> Amber Coluso Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 E-Mail: <a href="mailto:acoluso@portla.org">acoluso@portla.org</a> Phone: 310-732-3950		<b>EPA PROJECT OFFICER</b> Gary Lance 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: <a href="mailto:Lance.Gary@epa.gov">Lance.Gary@epa.gov</a> Phone: 415-972-3992	
<b>EPA GRANT SPECIALIST</b> Veronica Adams Grants Management Section, EMD-6-1 E-Mail: <a href="mailto:adams.veronica@epa.gov">adams.veronica@epa.gov</a> Phone: 415-972-3677			
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> National Clean Diesel Program - Port of Los Angeles Terminal Equipment Project The Los Angeles Harbor Department (LAHD) is requesting co-funding to replace sixteen Tier 3 yard tractors with Tier 4 technology and to repower two Tier 3 heavy lift cargo handling equipment with Tier 4 technology.  This amendment revises the total project cost from \$10,610,908 to \$3,014,000 which includes the federal funding amount of \$800,000 and the required cost share contribution of \$2,214,000. The budget and project period remains the same.			
<b>BUDGET PERIOD</b> 10/01/2016 - 10/01/2018	<b>PROJECT PERIOD</b> 10/01/2016 - 10/01/2018	<b>TOTAL BUDGET PERIOD COST</b> \$3,014,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$3,014,000.00
<b>NOTICE OF AWARD</b>			
<p>Based on your Application dated 04/22/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0. EPA agrees to cost-share 7.54% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official for Craig A. Wills - Grants Management Officer Veronica Adams - Award Official delegate			<b>DATE</b> 09/30/2016



## Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$4,000
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$3,010,000
9. Total Direct Charges	\$3,014,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>92.46</u> % Federal <u>7.54</u> %.)	\$3,014,000
12. Total Approved Assistance Amount	\$800,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$0
15. Total EPA Amount Awarded To Date	\$800,000

**Administrative Conditions**


The administrative terms and conditions included in the initial agreement remain in full force and effect.

**Programmatic Conditions**

The programmatic terms and conditions included in the initial agreement remain in full force and effect.

-- End of Document --

**EPA  
Assistance Amendment No. 2**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>	<b>GRANT NUMBER (FAIN):</b> 99T42201 <b>MODIFICATION NUMBER:</b> 2 <b>PROGRAM CODE:</b> DE	<b>DATE OF AWARD</b> 11/03/2016
		<b>TYPE OF ACTION</b> No Cost Amendment	<b>MAILING DATE</b> 11/03/2016
		<b>PAYMENT METHOD:</b> Advance	<b>ACH#</b> 90569
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Las Vegas Finance Center email: <a href="mailto:lvfc-grants@epa.gov">lvfc-grants@epa.gov</a>	
<b>RECIPIENT:</b> City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 EIN: 95-6000735		<b>PAYEE:</b> City of Los Angeles - Harbor Dept Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731	
<b>PROJECT MANAGER</b> Amber Coluso Environmental Management Division 425 S Palos Verdes Street San Pedro, CA 90731 E-Mail: <a href="mailto:acoluso@portla.org">acoluso@portla.org</a> Phone: 310-732-3950		<b>EPA PROJECT OFFICER</b> Gary Lance 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: <a href="mailto:Lance.Gary@epa.gov">Lance.Gary@epa.gov</a> Phone: 415-972-3992	<b>EPA GRANT SPECIALIST</b> Veronica Adams Grants Management Section, EMD-6-1 E-Mail: <a href="mailto:adams.veronica@epa.gov">adams.veronica@epa.gov</a> Phone: 415-972-3677
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> National Clean Diesel Program - Port of Los Angeles Terminal Equipment Project The Los Angeles Harbor Department (LAHD) is requesting co-funding to replace sixteen Tier 3 yard tractors with Tier 4 technology and to repower two Tier 3 heavy lift cargo handling equipment with Tier 4 technology.  This amendment revises the programmatic terms and condition "N". The total project cost of \$3,014,000 which includes the federal funding amount of \$800,000 and the required cost share contribution of \$2,214,000 remains the same. The budget and project period remains the same.			
<b>BUDGET PERIOD</b> 10/01/2016 - 10/01/2018	<b>PROJECT PERIOD</b> 10/01/2016 - 10/01/2018	<b>TOTAL BUDGET PERIOD COST</b> \$3,014,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$3,014,000.00
<b>NOTICE OF AWARD</b>			
<p>Based on your Application dated 04/22/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$. EPA agrees to cost-share 7.54% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date: If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official for</b> Craig A. Wills - Grants Management Officer Veronica Adams - Award Official delegate			<b>DATE</b> 11/03/2016



## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$4,000
<b>2. Fringe Benefits</b>	\$0
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$0
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$0
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$3,010,000
<b>9. Total Direct Charges</b>	\$3,014,000
<b>10. Indirect Costs: % Base</b>	\$0
<b>11. Total (Share: Recipient <u>92.46</u> % Federal <u>7.54</u> %.)</b>	\$3,014,000
<b>12. Total Approved Assistance Amount</b>	\$800,000
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$0
<b>15. Total EPA Amount Awarded To Date</b>	\$800,000

### **Administrative Conditions**

The EPA general terms and conditions have been revised. All other administrative terms and conditions remain the same.

#### **EPA General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-3-2016-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

### **Programmatic Conditions**

The programmatic term and condition "N" has been revised. All other programmatic terms and conditions remain in full force and effect.

#### **N. Voluntary Cost-Share or Overmatch:**

This award and the resulting federal funding of \$800,000 is based on estimated costs requested in the recipient's final approved workplan. Included in these costs is a voluntary cost-share contribution of \$0.00 by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its final approved workplan. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

-- End of Document --

**EPA**  
**General Terms and Conditions**  
**Effective October 3, 2016**

# EPA General Terms and Conditions

## Effective October 3, 2016

### 1. Introduction

The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.338 and 200.339.

### 2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.1, Adoption of 2 CFR 200, states Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

**2.1. Implementing Procurement Standards.** Per 2 CFR 200.110, there is a two-year grace period available to non-Federal entities for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation will need to specify in their documented policies and procedures that they continue to comply with 40 CFR Part 30 or 31, as applicable, for two additional fiscal years which begins after December 26, 2014.

**2.2. Effective Date and Incremental or Supplemental Funding.** Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 200.98) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 200 and 1500).

## Financial Information

### 3. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.8

### 4. Payment Methods

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

- 4.1. **Automated Standard Application for Payments (ASAP).** The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If the recipient uses multiple bank accounts for EPA grants/cooperative agreements, the recipient must enroll in ASAP. To enroll in ASAP, please complete the ASAP Initiate Enrollment form located at: <http://www2.epa.gov/financial/forms> and email it to LVFC-grants@epa.gov or mail it to:  
USEPA LVFC  
4220 S. Maryland Pkwy  
Bldg C, Suite 503  
Las Vegas, NV 89119

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved funds are credited to the account at the financial institution of the recipient organization identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at 702-798-2485, or by visiting: [www.fms.treas.gov/asap](http://www.fms.treas.gov/asap).

4.2. **Electronic Funds Transfer (EFT).**

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain the recipient's banking information from the System for Award Management (SAM). Once the agreement is awarded and no restrictions are identified by the awarding office, a Las Vegas Finance Center Representative will send the recipient an email message with the EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at 702-798-2485, or by visiting: <http://www2.epa.gov/financial/grants>.

NOTE: If the banking information is not correct or changes at any time prior to the end of this agreement, the recipient must update the organization's SAM registration and notify the EPA Las Vegas Finance Center as soon as possible. This is vital to ensure proper and timely deposit of funds.

5. **Payment Drawdown**

The recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked or financing method changed to a reimbursable basis.

## Selected Items of Cost

6. **Consultant Cap**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9.

## 7. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://epa.gov/grants/epa-subaward-policy>.

As a pass-through entity, the recipient agrees to:

7.1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.330 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

a. For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

b. Stipends and travel assistance for trainees (including interns) and similar individuals who are not employees of the pass-through entity must be classified as participant support costs rather than subawards as required by 2 CFR 200.75 and 2 CFR 200.92.

7.2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.331(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

7.3. Prior to making subawards, ensure that each subrecipient has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.331(a)(1). The unique entity identifier currently is the subrecipient's Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's agreement with EPA entitled "**Central Contractor Registration/System for Award Management and Universal Identifier Requirements**" T&C of the pass-through entity's agreement with the EPA.

7.4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.331(a)(2). These requirements include, among others:

a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"

c. Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"

d. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"

e. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants). EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at [www.epa.gov/grants](http://www.epa.gov/grants). Many Federal requirements are agreement or program specific and EPA

encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

7.5. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.331(b) and document the evaluation. Risk factors may include:

- a. Prior experience with same or similar subawards;
- b. Results of previous audits;
- c. Whether new or substantially changed personnel or systems, and;
- d. Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7.6. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.331(c). Examples of additional requirements authorized by 2 CFR 200.207 include:

- a. Requiring payments as reimbursements rather than advance payments;
- b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- c. Requiring additional, more detailed financial reports;
- d. Requiring additional project monitoring;
- e. Requiring the non-Federal entity to obtain technical or management assistance, and
- f. Establishing additional prior approvals.

7.7. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

7.8. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.68 on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.

7.9. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

7.10. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR Part 200.308.

7.11. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

7.12. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

7.13. Establish and maintain a system under 2 CFR 200.331(d)(3) and 2 CFR 200.521(c) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

7.14. As provided in 2 CFR 200.332, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are

authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 7.1 through 7.14 above or will refrain from making subawards until the systems are designed and implemented.

### **8. Management Fees**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## **Reporting and Additional Post-Award Requirements**

### **9. Central Contractor Registration/System for Award Management and Universal Identifier Requirements**

**9.1. Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

**9.2. Requirement for Data Universal Numbering System (DUNS) numbers.** If the recipient is authorized to make subawards under this award, the recipient:

**9.2.1.** Must notify potential subrecipients that no entity (definition paragraph 9.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.

**9.2.2.** May not make a subaward to an entity unless the entity has provided its DUNS number.

**9.3. Definitions.** For the purposes of this award term:

**9.3.1. System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site: <https://www.sam.gov>.

**9.3.2. Data Universal Numbering System (DUNS) number** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

**9.3.3. Entity**, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

**9.3.3.1.** A Governmental organization, which is a State, local government, or Indian tribe;

**9.3.3.2.** A foreign public entity;

**9.3.3.3.** A domestic or foreign nonprofit organization;

**9.3.3.4.** A domestic or foreign for-profit organization; and

**9.3.3.5.** A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

**9.3.4. Subaward:**

- 9.3.4.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
- 9.3.4.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
- 9.3.4.3. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.
- 9.3.5. **Subrecipient** means an entity that:
  - 9.3.5.1. Receives a subaward from the recipient under this award; and
  - 9.3.5.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

## 10. Reporting Subawards and Executive Compensation

### 10.1. Reporting of first-tier subawards.

**10.1.1. Applicability.** Unless the recipient is exempt as provided in paragraph 10.4. of this award term, the recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 10.5 of this award term).

**10.1.2. Where and when to report.** (1) The recipient must report each obligating action described in paragraph 10.1.1 of this award term to [www.frs.gov](http://www.frs.gov). (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

**10.1.3. What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.frs.gov>.

### 10.2. Reporting Total Compensation of Recipient Executives.

**10.2.1. Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:

**10.2.1.1.** the total Federal funding authorized to date under this award is \$25,000 or more;

**10.2.1.2.** in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

**10.2.1.3.** The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/excomp.htm>.)

**10.2.2. Where and when to report.** The recipient must report executive total compensation described in paragraph 10.2.1 of this award term: (i.) As part of the registration Central System for Award Management profile available at [www.sam.gov](http://www.sam.gov). (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

### 10.3. Reporting of Total Compensation of Subrecipient Executives.

**10.3.1. Applicability and what to report.** Unless exempt as provided in paragraph 10.4. of this award term, for each first-tier subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

10.3.1.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

10.3.1.2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/excomp.htm>.)

10.3.2. **Where and when to report.** The recipient must report subrecipient executive total compensation described in paragraph 10.3.1. of this award term:

10.3.2.1. To the recipient.

10.3.2.2. By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

#### 10.4. Exemptions

10.4.1. If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

10.4.1.1. subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

#### 10.5. Definitions. For purposes of this award term:

10.5.1. **Entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

10.5.2. **Executive** means officers, managing partners, or any other employees in management positions.

#### 10.5.3. Subaward:

10.5.3.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that the recipient award to an eligible subrecipient.

10.5.3.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).

10.5.3.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

#### 10.5.4. Subrecipient means an entity that:

10.5.4.1. Receives a subaward from the recipient under this award; and

10.5.4.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

10.5.5. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

10.5.5.1. Salary and bonus.

10.5.5.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- 10.5.5.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- 10.5.5.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- 10.5.5.5. Above-market earnings on deferred compensation which is not tax-qualified.
- 10.5.5.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **11. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance**

### **11.1. General Reporting Requirement**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### **11.2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

**11.2.1.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

**11.2.2.** Reached its final disposition during the most recent five year period; and

**11.2.3.** Is one of the following:

**11.2.3.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

**11.2.3.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

**11.2.3.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

**11.2.3.4.** Any other criminal, civil, or administrative proceeding if:

**11.2.3.4.1.** It could have led to an outcome described in paragraph 11.2.3.1, 11.2.3.2, or

11.2.3.3 of this award term and condition;

**11.2.3.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

**11.2.3.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### **11.3. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a

second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

#### **11.4. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 11.1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

#### **11.5. Definitions**

For purposes of this award term and condition:

**11.5.1.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

**11.5.2.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

**11.5.3.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—

**11.5.3.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

**11.5.3.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## **12. Federal Financial Reporting (FFR)**

Pursuant to 2 CFR 200.327 and 200.343, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The FFR form is available on the internet at:

<http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or mail it to:

USEPA LVFC  
4220 S. Maryland  
Pkwy Bldg C, Suite  
503  
Las Vegas, NV 89119

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

## **13. Indirect Cost Rate Agreements**

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current Federally-approved indirect cost rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval and a final rate has been determined by the cognizant agency. Recipients are responsible for

maintaining an approved indirect cost rate for the life of the award. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without prior approval from EPA.

#### **14. Audit Requirements**

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at:

[https://harvester.census.gov/facides/\(S\(3waucz2yufokbe3engv0dtek\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(3waucz2yufokbe3engv0dtek))/account/login.aspx).

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://harvester.census.gov/facweb/Default.aspx>.

#### **15. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at:

<http://www2.epa.gov/grants/frequently-asked-questions-about-closeout-information>.

#### **16. Suspension and Debarment**

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

#### **17. Disclosing Conflict of Interests**

##### **17.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the

COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

**17.2. For awards to states including state universities that are state agencies or instrumentalities** As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at:

<http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding

from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.74. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

## **Programmatic General Terms and Conditions**

### **18. Sufficient Progress**

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

### **19. Copyrighted Material and Data**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the

- copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

## **20. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <http://iEdison.gov>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property "developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories."

## **21. Acknowledgement Requirements for Non-ORD Assistance Agreements**

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <http://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

## **22. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such

technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).

### **23. Human Subjects**

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

### **24. Light Refreshments and/or Meals (Updated 10/3/16)**

#### **FOR NON-STATE RECIPIENTS:**

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and,
- (3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

#### **FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:**

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

#### **25. Tangible Personal Property**

**25.1 Reporting** Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

#### **25.2 Disposition**

**25.2.1 Most Recipients.** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document or this award term, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal

funds.

**25.2.2 State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

**25.2.3 Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

## Public Policy Requirements

### 26. Civil Rights Obligations (Modified 10/12/16)

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preamble Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

#### a. Statutory Requirements

- i. In carrying out this agreement, the recipient must comply with:
  1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
  3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
  1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

#### b. Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  1. For Title IX obligations, 40 C.F.R. Part 5; and
  2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
  3. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

#### c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

#### **27. Drug-Free Workplace**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at [www.ecfr.gov/](http://www.ecfr.gov/).

#### **28. Hotel-Motel Fire Safety**

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

#### **29. Lobbying and Litigation**

##### **a. All Recipients.**

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who

- makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
  - v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

### **30. Recycled Paper**

When directed to provide paper documents, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

### **31. Resource Conservation and Recovery Act**

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

### **32. Trafficking in Persons**

#### **a. Provisions applicable to a recipient that is a private entity.**

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
  1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  2. Procure a commercial sex act during the period of time that the award is in effect; or
  3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
  1. Is determined to have violated a prohibition in paragraph a of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
    - a. Associated with performance under this award; or

- b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.
- b. **Provision applicable to a recipient other than a private entity.** EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—
    - 1. Associated with performance under this award; or
    - 2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by EPA at 2 CFR 1532
- c. **Provisions applicable to any recipient.**
  - i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
  - ii. Our right to terminate unilaterally that is described in paragraph a and b:
    - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
  - iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.
- d. **Definitions.** For purposes of this award term:
  - i. “Employee” means either:
    - 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - 2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - iii. “Private entity”:
    - 1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
    - 2. Includes:
      - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      - b. A for-profit organization.
  - iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**FY2016 Clean Diesel  
Funding Assistance**

**Programmatic Terms and  
Conditions**

## FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions

### A. Substantial Federal Involvement for Cooperative Agreements

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the recipient's project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

### B. Emissions Control Technologies

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. A list of eligible, EPA verified exhaust control technologies and engine upgrade technologies is available at: [www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel](http://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel) and a list of eligible, California Air Resources Board (CARB) verified exhaust control technologies is available at: [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm). A list of eligible, EPA verified idle reduction technologies is available at: [www.epa.gov/smartway/forpartners/technology.htm#tabs-4](http://www.epa.gov/smartway/forpartners/technology.htm#tabs-4). A list of eligible, EPA verified aerodynamic technologies is available at: [www.epa.gov/smartway/forpartners/technology.htm#tabs-2](http://www.epa.gov/smartway/forpartners/technology.htm#tabs-2). A list of EPA verified low rolling resistance tires is available at: [www.epa.gov/smartway/forpartners/technology.htm#tabs-3](http://www.epa.gov/smartway/forpartners/technology.htm#tabs-3). Lists of EPA certified engines and certified remanufacture systems for locomotives and marine engines are available at: [www.epa.gov/otaq/certdata.htm](http://www.epa.gov/otaq/certdata.htm).

Any question as to the eligibility or preference of a retrofit technology, including vehicle/equipment replacement and repowers, should be directed to the EPA Project Officer. Technology changes may not be allowed after a final workplan has been approved. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time unobligated assistance funds must be returned to EPA.

### C. Quarterly Reporting and Environmental Results

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at [www.epa.gov/cleandiesel/clean-diesel-national-grants#reporting](http://www.epa.gov/cleandiesel/clean-diesel-national-grants#reporting).

Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 – June 30 Reporting Period: report due date July 30  
July 1 – September 30 Reporting Period: report due date October 30  
October 1 – December 31 Reporting Period: report due date January 30  
January 1 – March 31 Reporting Period: report due date April 30

If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

**D. Final Report:**

The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, project results (outputs and outcomes) including final emissions benefit calculations, and the successes and lessons learned for the entire project. To the extent possible, final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an “early replacement,” and would not have occurred through normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner’s budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage (see E.3.5 and E.3.6 below); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report is available at [www.epa.gov/cleandiesel/clean-diesel-national-grants#reporting](http://www.epa.gov/cleandiesel/clean-diesel-national-grants#reporting).

**E. Use of Funds Restriction:**

E.1. Mandated Measures: Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered “mandated”, regardless of whether the reductions are included in the State Implementation Plan of a State.

- E.2. Normal Attrition: Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover within three years of the project start date. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- E.3. Fleet Expansion: Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. The recipient agrees that:
- E.3.1. The repowered or replacement vehicle, engine, or equipment must be of similar size and/or horsepower, and will perform the same function and operation as the vehicle, engine, or equipment that is being repowered or replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);
  - E.3.2. *For Engine Repowers*: Horsepower increases of more than 25 percent will require specific approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower engine.
  - E.3.3. *For Nonroad Replacements*: Horsepower increases of more than 25 percent will require written approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower equipment.
  - E.3.4. *For Highway Replacements*: The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). The engine's primary intended service class must match the replacement vehicle's weight class (i.e. a LHD diesel engine is used in a vehicle with GVWR 16,001 – 19,500 pounds, a MHD diesel engine is used in a vehicle with a GVWR of 19,501 – 33,000 pounds, and an HHD diesel engine is used in a vehicle with a GVWR greater than 33,000 pounds.) Exceptions may be granted for vocational purposes, however the GVWR must stay within 10 percent of the engine's intended service class and any exceptions will require written approval by the EPA Project Officer prior to purchase.
  - E.3.5. *For Engine Repowers*: The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Cutting a three inch by three inch hole in the engine block is the preferred scrapping method. Other methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year) and the destroyed engine block. If scrapped or salvaged engines are to be sold, program income requirements apply.
  - E.3.6. *For Nonroad and Highway Replacements*: The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Disabling the engine may be completed as described in E.3.5 above. Disabling the chassis may be completed by cutting completely through the frame/frame rails on each side of the vehicle/equipment at a point

located between the front and rear axles. Other acceptable scrappage methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.

- E.3.7. *For Tire Replacements*: The original tires should be scrapped according to local or state requirements, or the tires can be salvaged for reuse or retreading. If salvaged tires are sold, program income requirements apply.
- E.4. **Federal Matching Funds**: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants unless expressly authorized by statute. Likewise, recipient may not use federal funds as cost-share funds for the Clean Diesel Funding Assistance Program, including funds received under EPA's State Clean Diesel Grant Program and federal Supplemental Environmental Project (SEP) funds.
- E.5. **Expenses Incurred Prior to the Project Period**: Recipient agrees that, except for eligible pre-award costs as defined in 2 CFR §200.458, and as authorized by 2 CFR §200.309 and 2 CFR §1500.8, funds under this award cannot be used to cover expenses incurred prior to the project period and that expenses incurred prior to the project period cannot be used as a cost-share for projects funded under this award.
- E.6. **Formerly Verified Technologies**: No funds awarded under the Program shall be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists. EPA's formerly verified list can be found at: [www.epa.gov/verified-diesel-tech/list-formerly-verified-technologies-clean-diesel](http://www.epa.gov/verified-diesel-tech/list-formerly-verified-technologies-clean-diesel), and CARB's formerly verified lists can be found at: [www.arb.ca.gov/diesel/verdev/vt/fv1.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv1.htm), [www.arb.ca.gov/diesel/verdev/vt/fv2.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv2.htm), and [www.arb.ca.gov/diesel/verdev/vt/fv3.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv3.htm).
- E.7. **Emissions Testing**: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
- E.8. **Fueling Infrastructure**: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
- E.9. **Single-Wide Wheels**: Recipient agrees that funds under this award cannot be used for the purchase of single-wide wheels except where a fleet is retrofitting from standard dual tires to SmartWay-verified single-wide low rolling resistance tires. In this case, the cost of single-wide wheels would be acceptable as additional equipment necessary to use the SmartWay verified technology.
- E.10. **Tires and Aerodynamics**: Recipient agrees that funds under this award cannot be used to purchase aerodynamic technologies or low rolling resistance tires, unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this award. In addition, recipient agrees that funds under this award

cannot be used for the purchase of low rolling resistance tires or advanced aerodynamic technologies if similar technologies have previously been installed on the truck or trailer.

- E.11. Auxiliary Power Units: Recipient agrees that funds under this award cannot be used for the purchase of APUs or generators for vehicles with model year 2007 or newer certified engine configurations on long haul Class 8 vehicles.
- E.12. Idle Reduction Technologies: Recipient agrees that funds under this award cannot be used for the purchase of idle reduction technologies unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this award, except for use on locomotives and previously retrofitted school buses, and for shore connection systems or truck stop electrification technologies.
- E.13. Highway Model Year: Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a bus or Class 5 – Class 8 heavy-duty highway vehicle with engine model year 1993 or older or 2011 or newer, or to retrofit engine model year 2007 or newer with DOCs or DPFs, or retrofit engine model year 2011 or newer with SCR, or to replace or repower engine model 2007-2010 with anything other than an all-electric (zero-emission).
- E.14. Nonroad Useful Life and Operating Hours: Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a nonroad engine or equipment that is 50 HP less and engine model year 2003 or older, or between 51-300 HP and engine model year 1993 or older, or 301 HP or greater and engine model year 1983 or older. In addition, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace nonroad engines and equipment that operate less than 500 hours per year.
- E.15. Nonroad Repower/Replacement: Recipient agrees that funds under this award cannot be used to repower or replace nonroad Tier 0 (unregulated), Tier 1, Tier 2 or Tier 3 engines to a nonroad Tier 3 or lower nonroad engine standard, or to retrofit, repower, replace or upgrade nonroad Tier 4 engines.
- E.16. Marine Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to repower, replace or upgrade Tier 3 or Tier 4 marine engines, or to repower or replace marine engines from a Tier 0 (unregulated), Tier 1 or Tier 2 marine engine standard to a Tier 2 or lower marine engine standard.
- E.17. Locomotive Retrofit/Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to retrofit unregulated or Tier 0 locomotives with SCR, or to upgrade, repower or replace locomotives from Tier 0/0+/1/1+/2/2+ to Tier 2+ or lower. In addition, recipient agrees that funds under this award cannot be used upgrade, repower or replace line-haul locomotives from Tier 2 to Tier 4, or to upgrade, repower or replace line-haul locomotives from Tier 2+ to Tiers 3 and 4, or to install Automatic Engine Start-Stop technologies on locomotives currently certified to Tier 0+ or higher.
- E.18. Locomotive Shore Connection: Recipient agrees that funds under this award cannot be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours/year.
- E.19. Locomotive and Marine Operating Hours: Recipient agrees that funds awarded under this award cannot be used to retrofit, repower, replace, upgrade or install idle reduction technologies on eligible locomotives or marine engines that operate less than 1000 hours per year.

E.20. Engine Upgrade: In the case of an engine upgrade with a certified remanufacture system applied at the time of rebuild (not manufacturer upgrades that are retrofits verified by EPA or CARB), recipient agrees that funds under this award cannot be used for the entire cost of the engine rebuild, but only for the incremental cost of the certified remanufacture system and associated labor costs for installation. Any question as to eligibility of engine upgrade costs should be directed to the EPA Project Officer.

**F. Drayage Vehicle Replacement Project Requirements:**

- F.1. In addition to the applicable requirements for highway vehicles described in E above, recipients replacing drayage vehicles are required to establish and document guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck.
- F.2. The recipient must establish and document guidelines to ensure that all drayage trucks receiving grant funds are operated in a manner consistent with the definition of a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

**G. Delays or Favorable Developments:**

The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

**H. Employee and/or Contractor Selection:**

EPA will not help select employees or contractors hired by the recipient.

**I. Program Income:**

Program income as defined at 2 CFR §200.80 means gross income received by the grantee or subrecipient that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. Under DERA grants, program income is generally limited to the sale of scrapped or remanufactured engines/chassis or salvaged engine/vehicle/equipment components and does not include revenue generated by recipients or subrecipients through the commercial use of vehicles and equipment purchased with grant funds. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award. Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR §200.307 recipient is authorized to use program income as follows:

- I.1. Program income may be added to the Federal award by EPA and recipient and used to further eligible project or program objectives. The program income shall be used for the purposes and under the conditions of the grant agreement.

- I.2. Program income may be used to meet the cost-sharing or matching requirement of the Federal award, including any mandatory or voluntary cost-share. The amount of the Federal award remains the same.
- I.3. Deducted from the total allowable costs to determine the net allowable costs on which the federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

**J. Equipment Use, Management, and Disposition**

These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired a Federal award by the state in accordance with state laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 2 CFR §200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see 2 CFR §200.12 Capital assets). Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

**K. Procurement Procedures:**

The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 2 CFR §§200.317 – .326. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes.

**L. For-Profit Sub-recipients**

In addition to the EPA General Term and Condition #7 "Establishing and Managing Subawards", the recipient (i.e. "pass-through entity") agrees to require that for-profit subrecipients comply with Subparts A through F of the Uniform Grant Guidance (2 CFR Part 200) and the Federal cost principles applicable to for-profit entities located at 48 CFR Part 31, with the exception of the method of payment to for-profit subrecipients must be "reimbursement" rather than "advance". Pass-through entities must obtain documentation that the for-profit subrecipient has incurred eligible and allowable costs prior to releasing EPA funds to the subrecipient.

#### **M. Mandatory Cost-Share Requirement**

This award and the resulting federal funding share of (as shown under "Notice of Award" in the award document, above) is based on estimated costs requested in the recipient's final approved workplan. While actual total costs may differ than those estimates, the recipient is required to provide no less than the cost-share percentages outlined below, as applicable, of the final equipment costs. EPA's participation shall not exceed the total amount of federal funds awarded or the maximum federal cost-share percentages outlined below, as applicable, of the final equipment costs. Recipients must satisfy any applicable cost share requirements with allowable costs as set forth in 2 CFR §200.306. The cost share requirements are as follows:

- M.1. Engine Upgrades: EPA will fund up to 40% of the cost (labor and equipment) of an eligible engine upgrade; recipient is responsible for cost-sharing at least 60% of the cost of an eligible engine upgrade.
- M.2. Idle Reduction Technologies on Locomotives: EPA will fund up to 40% of the cost (labor and equipment) of an eligible idle reduction technology on a locomotive; recipient is responsible for cost-sharing at least 60% of the cost of an eligible idle reduction technology on a locomotive.
- M.3. Marine Shore Power Connection Systems and Truck Stop Electrification: EPA will fund up to 25% of the cost (labor and equipment) of an eligible shore connection system or truck stop electrification technology; recipient is responsible for cost-sharing at least 75% of the cost of an eligible shore connection system or truck stop electrification technology.
- M.4. Certified Engine Repower: EPA will fund up to 40% of the cost (labor and equipment) of an eligible engine repower with a 2015 model year or newer engine certified to EPA emission standards; recipient is responsible for cost-sharing at least 60% of the cost. EPA will fund up to 50% of the cost (labor and equipment) of an eligible repower with a 2015 model year or newer engine certified to CARB's Optional Low-NOx Standard; recipient is responsible for cost sharing at least 50% of the cost. EPA will fund up to 60% of the cost (labor and equipment) of an eligible all-electric repower; recipient is responsible for cost sharing at least 40% of the cost.
- M.5. Certified Vehicle/Equipment Replacement:
  - M.5.1. Locomotive and Nonroad Diesel Vehicles and Equipment: EPA will fund up to 25% of the cost of an eligible vehicle or piece of equipment powered by a 2015 model year or newer engine certified to EPA emission standards; recipient is responsible for cost-sharing at least 75% of the cost. EPA will fund up to 45% of the cost of an eligible all-electric vehicle or piece of equipment; recipient is responsible for cost-sharing at least 55% of the cost.

M.5.2. *Highway Diesel Vehicles*: EPA will fund up to 25% of the cost of an eligible vehicle powered by a 2015 model year or newer engine certified to EPA emission standards; recipient is responsible for cost-sharing at least 75% of the cost. EPA will fund up to 35% of an eligible vehicle with a 2015 model year or newer engine certified to meet CARB's Optional Low-NOx Standard; recipient is responsible for cost-sharing at least 65% of the cost. EPA will fund up to 45% of the cost of an eligible all-electric vehicle; recipient is responsible for cost-sharing at least 55% of the cost.

M.5.3. *Drayage Vehicle Replacement*: EPA will fund up to 50% of the cost of an eligible drayage truck powered by a 2011 model year or newer certified engine; recipient is responsible for cost-sharing at least 50% of the cost.

The eligible acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance and freight may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

**Harbor Department  
EPA Grant Application**

**Clean Diesel Funding Assistance  
Program FY2016**

**ENVIRONMENTAL PROTECTION AGENCY (EPA)  
Clean Diesel Funding Assistance Program FY 2016  
Request for Revised Work Plan  
EPA-OAR-OTAQ-16-02**

**EPA Region:** Equipment will exclusively be used at the Port of Los Angeles located within Region 9.

**Project Title:** Port of Los Angeles Terminal Equipment Project

**Applicant Information:**

City of Los Angeles, Harbor Department  
425 South Palos Verdes Street,  
San Pedro, CA 90731

**Contact Person:**

Amber Coluso  
Office Phone: 310-732-3950  
Fax: 310-547-4643  
[acoluso@portla.org](mailto:acoluso@portla.org)  
[www.portoflosangeles.org](http://www.portoflosangeles.org)

**DUNS number:** 1383325690000

**Eligible Entity:** The City of Los Angeles, Harbor Department (LAHD) is a local government agency that is the Port Authority with jurisdiction over transportation and environmental issues.

**Total Project Cost:** \$3,014,000  
**EPA Funds Awarded:** \$800,000  
**Mandatory Match:** \$2,214,000  
**Voluntary Cost Share:** \$0

**Target fleet:** Port, Fleet One = 16 terminal yard tractor replacement; Fleet Two = 2 heavy lift cargo handling equipment repower

**Technology:**

- Engine Repower
- Vehicle Replacement

**Short Project Description:** LAHD is requesting co-funding to replace sixteen Tier 3 yard tractors with Tier 4, and to repower two Tier 3 heavy lift cargo handling equipment with Tier 4.

## Section 1. Project Summary and Overall Approach

### A. VEHICLES AND TECHNOLOGIES:

The Port of Los Angeles is one of the nation's largest ports located in an area with poor air quality. LAHD is requesting co-funding to replace sixteen Tier 3 yard tractors, and to repower two Tier 3 heavy lift cargo handling equipment. All replaced and repowered equipment will have 2015 model year or newer diesel engines as part of the FY 2016 National Clean Diesel Funding Assistance Program. LAHD is submitting this application on behalf of project partners: APM Terminals, and TraPac, LLC. All of the project partners with LAHD are tenants of the Port of Los Angeles that own and operate the diesel equipment.

**Table 1: Project Summary**

Equipment Type	Application	Equipment Count	Engine Model Year	Average HP	Annual Average Hours
Yard Tractor	Replace	16	2005	245	2800
Heavy Lift	Repower	2	2005 & 2007	200	1000
<b>Total</b>		<b>18</b>			

For more detailed information on the fleets see Section 10.

### B. ROLES AND RESPONSIBILITIES:

LAHD will manage the grant within the timeline provided and will be responsible for submitting all required reports on time. Each sub-recipient (APM Terminals and TraPac) will be responsible for obtaining cost estimates, selecting the winning bid, and replacing/repowering their equipment. APM Terminals and TraPac will adhere to the required procurement standards for sub-grantees and will ensure the old engines and/or equipment are disabled once new replacements arrive and are placed into operation.

### C. TIMELINE AND MILESTONES:

**Table 2: Project Timeline**

Milestone Task Description	Responsible Party	Milestone	Task	Schedule
Task 1: Approve EPA award	LAHD Board	Upon notice of award		
Task 2: Prepare sub-awards	LAHD staff	August 2016 - September 2016		
Task 3: Project partner coordination	LAHD staff	October 2016 - November 2016		
Task 4: Obtain competitive bids	Project Partner	December 2016 - March 2017		
Task 5: Equipment procurement	Project Partner	April 2017 - March 2018		
Task 6: Place in service	Project Partner	April 2018 - October 2018		

Task 7: Quarterly progress reports	LAHD staff	Quarterly
Task 8: Submit Final Report	LAHD staff	Within 90 days of project completion

## Section 2. Project Location

### A. PROJECT LOCATION:

All equipment will operate 100% within the Port of Los Angeles during the project life. The Port of Los Angeles is located in the Southern California Air Basin (SoCAB).

### B. NONATTAINMENT AREAS:

Currently the SoCAB is designated by the U.S. EPA as being in extreme nonattainment of the National Ambient Air Quality Standards for ozone and serious nonattainment for particulate matter less than 2.5 microns (PM<sub>2.5</sub>).

### C. AIR TOXICS ASSESSMENT AREAS:

The SoCAB includes all or part of four counties in Southern California (Los Angeles, Orange, San Bernardino, and Riverside) covering an area of 6,745 square miles with a population of over 16.5 million people. This air basin has some of the worst air quality in the nation, which represents a serious health risk for its residents. Much of this air quality problem can be attributed to the fact that the SoCAB is the second largest urban area in the nation, and topographical and meteorological conditions exist in the area that enhance the formation of air pollution.

The proposed project addresses and promotes Environmental Justice (EJ) concerns by reducing emissions from sources affecting the port community. Studies show that tens of thousands of people living in communities around ports face an increased risk of cancer, asthma, birth defects, and decreased lung function<sup>1</sup>. These EJ communities are also heavily populated by immigrants, minorities, and economically disadvantaged people. Historically, these groups are politically underrepresented. In its recent Cap-and-Trade Auction Proceeds document, CARB designated LAHD's surrounding communities of San Pedro and Wilmington as disadvantaged communities.

<sup>1</sup> <http://www.aqmd.gov/home/library/air-quality-data-studies/health-studies>

## Section 3. Project Sector

### A. PROJECT SECTOR:

City of Los Angeles, Harbor Department administers the Port of Los Angeles, which is comprised of 43 miles of waterfront and 7,500 acres of land and water. LAHD includes diverse land uses. Major activities include commercial shipping and transfer

of containerized cargo, petroleum/petrochemical liquid bulk cargo, non-petroleum liquid bulk cargo (such as vegetable oils), and dry bulk cargo (such as scrap metals and petroleum coke); commercial fishing; recreation; and tourism. There are approximately 300 commercial berths within the Port of Los Angeles. For recreational activities, the Port of Los Angeles provides slips for 5,000 pleasure craft, sport fishing boats, and charter vessels. Community facilities include a waterfront youth center, a boat launch ramp, and a public swimming beach. Educational facilities within the Port of Los Angeles include the College of Ocean Engineering, Cabrillo Aquarium, and the Maritime Museum.

#### B. GOODS MOVEMENT:

APM Terminal and TraPac are containerized cargo terminal operators at the Port of Los Angeles. All equipment repowered and replaced through this grant funding will be used exclusively at a port terminal.

#### Section 4. Benefits to the Community

The residents of EJ communities surrounding the Port of Los Angeles are the closest to the docks and to the pollution emitted by diesel equipment that supports goods movement. By reducing emissions from these pieces of diesel equipment, this project will improve air quality and directly benefit minority and low-income communities that surround the Port of Los Angeles. Using the Diesel Emission Quantifier, the annual health benefits from this project are estimated at \$11,225,000 per year for Los Angeles County. By reducing PM<sub>2.5</sub> emissions from the port area, the adverse health effects that impact the neighboring communities, including children and the elderly, are avoided. These health effects include premature mortality, chronic bronchitis, asthma attacks, and non-fatal heart attacks, among other health issues.

#### Section 5. Community Engagement and Partnerships

LAHD communicates with the community on an on-going basis through various methods including but not limited to presentations at Neighborhood Council meetings, Board of Harbor Commissioner meetings, the Port of Los Angeles website, and social media. The Port of Los Angeles also holds regular Environmental Summits, either at the Port of Los Angeles Board Room in San Pedro or at Banning's Landing Community Center in Wilmington, to provide information on various environmental programs and solicit community input.

The LAHD, along with the Port of Long Beach, has established a Clean Air Action Plan (CAAP) website with information about air quality strategies, the Technology Advancement Program, news, and emission inventory results. This site contains a link to real time data for the Port's air monitoring program, which can also be accessed from the LAHD's website. In addition, there is a page on the website that allows the public ask questions or provide comments.

Recently, LAHD, along with the Port of Long Beach, has started the process for the latest update to the CAAP. LAHD has encouraged dialog from the various stakeholders and the community for input on what strategies should be included in the latest update. LAHD has held many one-on-one meetings with small groups of community leaders, and a CAAP workshop to provide the community and stakeholders an opportunity to learn more about air quality in the San Pedro Bay Port areas and a forum for suggestions to be made on the CAAP update.

For this specific project, LAHD will communicate with the community through the Harbor Commissioners Board meetings, press releases, social media, and the annual Inventory of Air Emissions, including an Emission Inventory Highlights document specifically designed to communicate technical information to the general public. This project will be included in presentations given to the community, when applicable.

### **Section 6. Project Sustainability**

APM Terminals and TraPac will own and operate their equipment. As the owners and operators, the project partners will properly maintain and operate the equipment throughout the equipment's life. After the project implementation is completed, LAHD will continue to track the operation of this project's equipment through the annual updates of the Inventory of Air Emissions, facilitating long-term monitoring of the project equipment and associated emission reductions well beyond the cooperative agreement term.

### **Section 7. Environmental Results—Outputs, Outcomes and Performance Measures**

#### **A. OUTPUTS AND OUTCOMES:**

This project will repower 2 engines and replace 16 pieces of equipment. These projects are in alignment with EPA's strategic plan to reduce emissions from diesel fleets thereby reducing the local air pollution. The baseline emissions, emission reductions, and cost-effectiveness were estimated using U.S. EPA's Diesel Emissions Quantifier (DEQ). The overall project cost-effectiveness by pollutant is:

- 322 tons of NO<sub>x</sub> at the total cost of \$ 9,348 per ton
- 75 tons of PM at the total cost of \$ 39,954 per ton
- 14 tons of HC at the total cost of \$ 215,965 per ton
- 237 tons of CO at the total cost of \$ 12,679 per ton

Table 3 summarizes the project's outputs and outcomes anticipated from successful project implementation, including an estimate of total project emission reductions through the remaining useful life of the equipment.

Table 3: Outputs and Outcomes

Anticipated Outputs and Outcomes		
Activities	Outputs	Outcomes
Replace Yard Tractor	16 Tier 3 engines	Lifetime Emission Reductions = 310 tons NO <sub>x</sub> , 74 tons PM, 10 tons HC, 231 tons CO
Repower Heavy Lift	2 Tier 3 engines	Lifetime Emission Reductions = 12 tons NO <sub>x</sub> , 1 ton PM, 4 tons HC, 7 tons CO

**B. PERFORMANCE MEASURES:**

The City of Los Angeles Harbor Department is committed to completing the project by the deadline of October 31, 2018.

As a short term goal, the project manager will work with the subrecipients to start and complete the project on time. The Harbor Department will coordinate an initial/kick-off meeting with each subrecipient to discuss grant program requirements, project status, budget and schedule. To check on progress, the project manager will communicate with the subrecipients on a quarterly basis to discuss project status and reimbursement requests. The project manager will track all expenses that are charged to the program, reviewing invoice charges prior to final approval.

As a long term goal, the project manager will track all new purchases and repowers to ensure smooth operations.

**Section 8. Programmatic Capability and Past Performance**

**A. PAST PERFORMANCE:**

In 2012, LAHD was awarded \$23.5 million by CARB as part of Proposition 1B: Goods Movement Emission Reduction Program. The \$23.5 million grant was used to install shore power at 10 berths and will reduce diesel emissions from vessels while at port. Shore power was installed, with all required SCAQMD inspections of successful ship plug-ins completed at all 10 berths by November 2014.

LAHD was awarded \$469,000 by U.S. EPA in conjunction with the 2013 DERA grants to improve air quality at ports (Grant# 83561601; CFDA# 66.039). The project was for fourteen engine retrofits. The project is scheduled to be completed before the end of 2016 with eleven engines retrofits (three of the 14 engines could not find compatible retrofits).

LAHD is currently administering \$1,323,266 awarded by U.S. EPA with the 2014 DERA grant to improve air quality around Ports (Grant#83581601; CFDA# 66.039). The project is for replacement of a diesel crane with a hybrid crane that would run

almost exclusively in electric mode. The project is scheduled to be completed by January 2017.

LAHD was awarded a \$15,000 grant by the U.S. EPA in conjunction with the International Financial Assistance Projects Sponsored by the Office of International and Tribal Affairs (Grant#83594601, CFDA# 66.931) to support international outreach to China in 2015. The project was successfully completed and closed out by the U.S. EPA in April 2016.

LAHD was recently awarded \$14,510,400 by CARB for the Multi-Source Facility Demonstration Project grant using Cap-and-Trade Auction Proceeds for a Green Omni-Terminal project. The Green Omni-Terminal project will be used to demonstrate different non-commercialized zero emission cargo handling equipment (CHE). The project is expected to begin in 2016 once all the contracts have been finalized.

In addition, LAHD was awarded four grants from U.S. Department of Homeland Security and one grant from California Transportation Commission since 2013. The combined total amount of these five grants is over \$6 million.

#### B. REPORTING REQUIREMENTS:

LAHD has been consistent in its quarterly reporting in past DERA grant funded projects. Also LAHD has successfully completed cooperative agreements in the past with approved final reports that were submitted on time. LAHD has a long history of implementing successful government grant partnerships at the state and federal agency level.

#### C. ORGANIZATIONAL EXPERIENCE:

LAHD has successfully implemented a number of programs. These include:

- The Air Quality Mitigation Incentive Program (AQMIP) was a \$29 million program that provided grant funding to port operators to reduce emissions that are surplus to existing regulations or other mandates. A wide range of projects have been implemented under the AQMIP, including marine vessel and CHE repowers, truck and non-road equipment replacements, diesel emission reduction retrofits, and a number of innovative research and development projects.
- LAHD has successfully managed the Vessel Main Engine Fuel Incentive Program which provided monetary incentive for use of low-sulfur marine fuel in vessel main engines prior to state regulation. This incentive program significantly reduced emissions from ocean going vessels prior to regulation.
- In July 2012, the LAHD launched the Environmental Ship Index Program to provide financial incentives to ships that obtain certain clean ship scores

using an international rating system developed through the International Association of Ports and Harbors (IAPH) and World Ports Climate Initiative (WPCI).

- LAHD has managed the Vessel Speed Reduction (VSR) Program, an incentive program for vessels to reduce speeds in designated VSR zones.
- As part of the CAAP, LAHD oversaw the Clean Truck Program which called for drayage truck owners to replace about 16,000 polluting trucks working at the Port of Los Angeles, with the assistance of a port-sponsored grant or loan subsidy. LAHD has contributed over \$80 million in funding to the Clean Truck Program, including grants.

These programs represent a voluntary, collaborative effort between LAHD and equipment owners that spans many years and went beyond the current regulatory requirements. Additionally, these programs demonstrate that the Port has the ability to successfully implement cooperative agreements, manage resources, meet reporting requirements, evaluate project/initiatives, and document progress.

#### D. STAFF AND RESOURCES:

The Port possesses the staff and contractor resources necessary to effectively implement this project. LAHD staff has extensive history implementing similar programs. The CAAP is a long-term commitment to reduce emissions associated with port activities. LAHD also has a team of on-call technical consultants that can provide back-up support if needed. LAHD staff resumes are attached to the application as Appendix C.

### **Section 9. Budget Narrative and Detail**

#### A. EXPENDITURE OF AWARDED GRANT FUNDS:

LAHD will be in regular contact (via email, teleconference, or in person meetings) with APM Terminals and TraPac to ensure that the project is proceeding according to the project schedule. Regular meetings will be held and additional meetings scheduled as needed to ensure critical milestones are being met and to collect reporting data for quarterly reports.

#### B. BUDGET NARRATIVE:

This revised work plan is requesting U.S. EPA to fund a total of \$800,000 repower 2 engines (40% funding) and to replace 16 pieces of equipment (25% funding). Any costs not specifically covered by the grant program will be the responsibility of the project partners, APM Terminals and TraPac. Each project partner has included the mandatory costs in their budgets and is committed to paying their share of the costs, per their commitment letters attached.

BUDGET TABLE:

Table 4 summarizes the project costs.

**Table 4: Budget Table**

	EPA Funding	Cost-Share
Personnel	\$4,000	\$0
<b>TOTAL PERSONNEL</b>	<b>\$4,000</b>	<b>\$0</b>
Fringe Benefits	\$0	\$0
<b>TOTAL FRINGE BENEFITS</b>	<b>\$0</b>	<b>\$0</b>
Travel	\$0	\$0
<b>TOTAL TRAVEL</b>	<b>\$0</b>	<b>\$0</b>
Equipment	\$0	\$0
<b>TOTAL EQUIPMENT</b>	<b>\$0</b>	<b>\$0</b>
Supplies	\$0	\$0
<b>TOTAL SUPPLIES</b>	<b>\$0</b>	<b>\$0</b>
Contractual	\$0	\$0
<b>TOTAL CONTRACTUAL</b>	<b>\$0</b>	<b>\$0</b>
Other – Subaward to APMT - Replace 16 yard tractors (\$170,000 per equipment)	\$680,000	\$2,040,000
Other – Subaward to TraPac LLC - Repower 2 heavy lifts (\$145,000 per equipment)	\$116,000	\$174,000
<b>TOTAL OTHER</b>	<b>\$796,000</b>	<b>\$2,214,000</b>
Indirect Charges	\$0	\$0
<b>TOTAL INDIRECT</b>	<b>\$0</b>	<b>\$0</b>
<b>TOTAL FUNDING</b>	<b>\$800,000</b>	<b>\$2,214,000</b>
<b>TOTAL PROJECT COST</b>	<b>\$3,014,000</b>	

The total cost includes \$4,000 for project administration costs which is less than 0.2% percent of the total cost of the project. The administration cost will cover part of the salary for one LAHD staff member assigned to manage the project for the duration of the project and LAHD supervisor review. Table 5 shows a breakdown for the cost for Environmental Specialist II and Environmental Supervisor based on hourly rates. The hourly rates are \$79.77/hour for Amber Coluso, Environmental Specialist, and \$99.09/hour for Tim DeMoss Environmental Supervisor

**Table 5: LAHD Staff Detail**

<b>Task</b>	<b>ES II Hours</b>	<b>ES II Rate</b>	<b>Total \$</b>
Entering into agreements with awardees	16	\$79.77	\$1,276.32
Regular meetings with awardees and U.S.EPA	10	\$79.77	\$797.70
Preparation of 6 quarterly reports and final report	12	\$79.77	\$957.24
<b>Task</b>	<b>ES Supervisor Hours</b>	<b>ES Supervisor Rate</b>	<b>Total \$</b>
Review of quarterly reports and final report	10	\$99.09	999.90
<b>Total</b>	<b>45</b>		<b>\$4,031.16*</b>

\*The total was rounded to \$4,000 in the budget detail.

**Section 10. Applicant Fleet Description**

Attached is the equipment fleet description table as Attachment A.

**Attachments:**

**Attachment A:** Fleet Description Table

**Attachment B:** Cost-share commitment letters

- APM Terminals
- TraPac, LLC.

**Attachment C:** Resumes for LAHD staff, Amber Coluso, Tim DeMoss.

ATTACHMENT A:  
FLEET DESCRIPTION



ATTACHMENT B:  
COST-SHARE LETTERS OF COMMITMENT



Amber Coluso  
Port Of Los Angeles  
425 S Palos Verdes St.  
San Pedro, CA. 90731

Re: Letter of Commitment for DERA Grant participation

Amber, thank you for the opportunity to participate in the Port of Los Angeles and the EPA's DERA Grant for 2016. APM Terminals is an extremely environmentally conscious company, and always looking for ways to reduce our carbon footprint.

As such, we have submitted a project request on behalf of the company to replace our oldest diesel cargo handling equipment with new, cleaner running, and more environmentally friendly units that take advantage of the latest technology in emission control.

We have already received authorization for the upgrades, and are committed to meet the requirements of the grants offered.

Sincerely,



Steen Larsen  
Chief Financial Officer  
APM Terminals Pacific, LLC  
310-221-4252

**APM Terminals Pacific Ltd.**  
2500 Navy Way, Terminal Island CA 90731-7554  
Telephone: 310-221-4000 Fax: 310-221-4434  
[www.apmterminals.com](http://www.apmterminals.com)



March 22, 2016

Amber Coluso  
Air Quality Environmental Specialist  
Port of Los Angeles  
425 S. Palos Verdes St.  
San Pedro, CA 90731

**Re: Letter of Commitment to Participate in Diesel Emission Reduction Act (DERA) EPA Grant**

We would like to thank the Port of Los Angeles and the U.S. EPA Region 9 for the opportunity to participate in the Diesel Emission Reduction Act (DERA) program. We believe our participation in the DERA program will help accelerate the reduction of diesel emissions port wide and improve overall public health.

We are submitting a proposal to repower 4 pieces of cargo handling equipment with certified Tier 4 Final engines.

TraPac LLC, located in the Port of Los Angeles, is committed to meeting the requirements of the grant. Kevin Salvatore will be handling all aspects of this grant on behalf of TraPac LLC. His contact information is (310) 513-7432 – [Kevin.salvatore@trapac.com](mailto:Kevin.salvatore@trapac.com).

We would like to thank you for your assistance with this project and look forward to working together.

Best Regards,

A handwritten signature in cursive script that reads "Frank N. Pisano".

Frank N. Pisano  
President  
TraPac LLC  
630 W. Harry Bridges Blvd.  
Wilmington, CA 90744

ATTACHMENT C:  
LAHD STAFF RESUMES

# Amber Coluso

425 S. Palos Verdes Street, San Pedro, CA 90731

[AColuso@portla.org](mailto:AColuso@portla.org)

(310) 732-3950

## Education:

University of California, Irvine; Bachelor of Science in Chemistry, with Honors, 2006

## Work History:

### **Marine Environmental Specialist II**

City of Los Angeles, Harbor Department, Environmental Management Division

December 2014 - Present

- Ensuring Port operations are complying with all local, state, and federal air regulations
- Gathering data, preparing, and submitting quarterly and annual Regional Clean Air Incentive Market program reports for South Coast Air Quality Management District (SCAQMD)
- Conduct walkthrough inspections with regulatory agency inspectors
- Preparing all air compliance reports for SCAQMD and California Air Resources Board (CARB) including SCAQMD Annual Emissions Report, CARB Harbor Craft Fleet Update, and CARB Off-Road Diesel Reporting
- Preparing permit applications for local and state air quality permits
- Ensuring the continued operation of the Port's air monitoring network and real-time air monitoring website
- Prepared various Division Memos, Board Reports, and Letters

### **Environmental Compliance Inspector**

City of Los Angeles, Department of Sanitation, Industrial Waste Management Division

July 2008 – December 2014

- Inspection of industrial wastewater generating facilities
- Evaluated facilities' for compliance with wastewater discharge permit
- Wrote narrative reports of inspection findings
- Issued notices of violation for non-compliance to wastewater discharge permit
- Helped write the permit packages for new and renewing industrial wastewater generating facilities

## TIM De MOSS

425 S. Palos Verdes Street, San Pedro CA 90275  
Phone: (310) 221-4782 E-mail: tdemoss@portla.org

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### WORK EXPERIENCE

#### MARINE ENVIRONMENTAL SUPERVISOR

*Port of Los Angeles, Environmental Management Division*

June 2014 - Present

- Supervises the Air Quality Section with the major focus of reducing air pollutant emissions from the 5 major sources (Ocean Going Vessels, Heavy Duty Vehicles, Cargo Handling Equipment, Locomotives and Harbor Craft) that move freight in and out of the Port of Los Angeles.
- Zero Emissions Project Manager since June of 2013. Duties involve studying, recommending, implementing, and demonstrating near zero and zero emission equipment in and around the Port complex.
- Project Manager for the preparation of the Port of Los Angeles Zero Emission White Paper
- Assists in the development of Port policy for major air quality programs with the regulatory agencies including the California Air Resources Board's (ARB) Sustainable Freight Strategy Program, ARB's reduction of greenhouse gases Cap and Trade Program, and the South Coast Air Quality Management District (SCAQMD) Air Quality Management Plan

#### ENVIRONMENTAL SPECIALIST III

*Port of Los Angeles (POLA), Environmental Management Division*

May 2007 – June 2014

- Clean Truck Program Manager since October of 2010. Duties involved managing the implementation, monitoring and enforcement of the program.
- Managed POLA's private consultants in order to complete various air quality projects.
- Maintained a professional link of communication with members of the ARB, SCAQMD, private consultants, business contractors, environmental advocacy groups, and Port of Long Beach staff.
- Prepared various Division Memos, Board Reports, and Letters.

#### ENVIRONMENTAL SPECIALIST II

*Los Angeles World Airports (LAWA), Environmental Management Division*

January 2005 – May 2007

- Project Manager for Air Quality projects. Duties involved researching air quality and environmental compliance regulations, coordinating regulatory compliance projects for all 4 LAWA Airports, and representing LAWA on annual and periodic SCAQMD audits of LAWA facilities.

#### SANITARY ENGINEERING ASSOCIATE II

*City of Los Angeles, Bureau of Sanitation, Various Divisions*

June 1991 - January 2005

- Worked in the Wastewater Capital Improvement group managing funding for Capital Improvement projects.
- Worked in the Regulatory Affairs Division's Permits group managing various Water Quality projects.
- Worked in the Human Resources Development Division's Safety group managing various Hazardous Waste/Materials projects.
- Worked in the Recycling and Waste Reduction Division managing various Recycling projects.

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### EDUCATION

LOYOLA MARYMOUNT UNIVERSITY, LOS ANGELES, CA

August 2000

- Master of Science in Civil Engineering with emphasis on Environmental Science  
Course work: Air Pollution Analysis, Environmental Engineering and Science Laboratory, Aquatic Chemistry, Principals of Water Quality Management

LOYOLA MARYMOUNT UNIVERSITY, LOS ANGELES, CA

May 1991

- Bachelor of Science in Civil Engineering  
Course work: Analytical Methods in Civil Engineering, Introduction to Environmental Engineering, Water Resources Planning and Design, Water and Wastewater Treatment

## Exhibit B

### Scope of Work, Reimbursement Amounts and Schedule

Subrecipient will replace sixteen Tier 3 diesel yard tractors with sixteen Tier 4 diesel yard tractors as part of the 2016 National Clean Diesel Funding Assistance Program as specified in the table below. Subrecipient will be responsible for obtaining cost estimates, obtaining bids, and purchasing equipment in accordance with the Grant Award procurement requirements. Subrecipient is required to scrap the Tier 3 diesel yard tractors per the Grant Award conditions. Any modifications to the scope of work, compensation, or schedule shall be in accordance with the Grant Award and the Agreement, and subject to written amendment to either the EPA Grant Award, the Agreement or both, as may be required by the terms of each agreement.

Equipment Identification	Engine Year, Manufacturer, and Model	Baseline Engine Horsepower	Grant Not to Exceed Amount
313579	2005, Cummins, ISB6.7	245	\$42,500
313580	2005, Cummins, ISB6.7	245	\$42,500
313581	2005, Cummins, ISB6.7	245	\$42,500
313583	2005, Cummins, ISB6.7	245	\$42,500
313584	2005, Cummins, ISB6.7	245	\$42,500
313585	2005, Cummins, ISB6.7	245	\$42,500
313586	2005, Cummins, ISB6.7	245	\$42,500
313587	2005, Cummins, ISB6.7	245	\$42,500
313588	2005, Cummins, ISB6.7	245	\$42,500
313589	2005, Cummins, ISB6.7	245	\$42,500
313590	2005, Cummins, ISB6.7	245	\$42,500
313591	2005, Cummins, ISB6.7	245	\$42,500
313592	2005, Cummins, ISB6.7	245	\$42,500
313593	2005, Cummins, ISB6.7	245	\$42,500
313594	2005, Cummins, ISB6.7	245	\$42,500
313595	2005, Cummins, ISB6.7	245	\$42,500

Subrecipient shall pay the remaining costs and expenses for procuring and purchasing the equipment, currently in an amount estimated to be \$2,040,000. Payment by subrecipient shall be made in accordance with the terms of the Grant Award and the Agreement.

#### EPA Quarterly Reporting

Subrecipient shall submit all information necessary for Harbor Department to complete quarterly project status reports required by the Grant Award and the EPA. The reports will

address the progress made toward the work plan goals. In general, quarterly reports will include summary information on technical progress, planned activities for the next quarter, and expenditures.

**EPA Final Report**

Subrecipient shall submit all information necessary for the Harbor Department to complete final report as required by the Grant Award. The final project report will include a summary of the Project, actual results (outputs and outcomes) and costs, the successes and lessons learned for the entire Project as well as the categories of information required for quarterly reporting.

**Schedule**

The Project will begin upon execution of the Agreement by the Executive Director and shall be completed according to the following schedule;

<b>Milestone Task Description</b>	<b>Milestone Task Schedule</b>
Project partner coordination	October 2016 – November 2016
Obtain competitive bids	December 2016 – March 2017
Equipment procurement	April 2017 – March 2018
Place in service	April 2018 – October 2018

## 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 [www.lacity.org/finance](http://www.lacity.org/finance) 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

### SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

#### (1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles 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 subcontractors.**

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](http://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 0%.**

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.

#### (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.

The Harbor Department defines a LBE as:

- (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.

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 Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

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 Contractor Description Form is true and correct and include all material information necessary to identify and explain the operations of

A.P.M. Terminals Pacific, LLC.

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents 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.



## Contractor Description Form

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Business Name: \_\_\_\_\_ 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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Contractor Description Form

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
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: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## EXHIBIT F

### 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.