

A-15-110  
3

RECOMMENDATION APPROVED;  
RESOLUTION NO. 16-8031 ADOPTED AND;  
AGREEMENT NO'S. 16-3446 THRU 16-3448 & \*17-3462 APPROVED  
BY THE BOARD OF HARBOR COMMISSIONERS  
(\*Note: Agreement 17-3462 "number" was assigned in 2017)



Executive Director's  
Report to the  
Board of Harbor Commissioners

DECEMBER 15, 2016

AMBER M. KLESGES  
Board Secretary

**DATE:** DECEMBER 15, 2016

**FROM:** ENVIRONMENTAL MANAGEMENT AND GOODS MOVEMENT

**SUBJECT:** RESOLUTION NO. 16-8031 - APPROVAL OF 1) A GRANT AGREEMENT WITH THE CALIFORNIA ENERGY COMMISSION FOR THE FREIGHT TRANSPORTATION PROJECTS AT CALIFORNIA SEAPORTS, 2) A SUB-RECIPIENT AGREEMENT WITH EVERPORT TERMINAL SERVICES, 3) A SUB-RECIPIENT AGREEMENT WITH PRODUCTIVITY APEX, INC. AND 4) A FUNDING AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

**SUMMARY:**

Staff requests that the Board of Harbor Commissioners (Board) accept and approve the California Energy Commission (CEC) Grant Agreement in the amount of \$5,833,000 to fund the Advanced Yard Tractor Deployment and *Eco-FRATIS* Drayage Truck Efficiency Project (Project), approve Funding Agreement with the Los Angeles County Metropolitan Transportation Authority (METRO), approve a Sub-Recipient Agreement (in the amount of \$4,863,000) with Everport Terminal Services (Everport) for the Yard Tractor component, approve a Sub-Recipient Agreement with Productivity Apex, Inc. (PAI) (in the amount of \$1,210,000) for the *Eco-FRATIS* component.

The CEC awarded the City of Los Angeles Harbor Department (Harbor Department) a grant in the amount of \$5,833,000 to fund the Project. The first component of the CEC grant is for the Advanced Yard Tractor Deployment (Yard Tractor component) that will fund the purchase and demonstration of five zero emission yard tractors and 20 liquefied natural gas (near-zero-emission) yard tractors, in the amount of \$4,863,000. All 25 yard tractors will be deployed at the Port of Los Angeles (Port) Everport container terminal. The second component of the CEC grant is for the *Eco-FRATIS* Drayage Truck Efficiency Project (*Eco-FRATIS* component), in the amount of \$970,000. This component will fund Intelligent Transportation Systems (ITS) technology for drayage trucks, which improves mobility and reduces emissions. METRO is also contributing \$240,000 for the *Eco-FRATIS* component. The Harbor Department's financial responsibility is limited to staff time to manage the grant which is expected to be minimal.

DATE: DECEMBER 15, 2016

PAGE 2 OF 8

SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III, Class 6 of the Los Angeles City CEQA Guidelines;
2. Accept and approve the Grant Agreement between the City of Los Angeles Harbor Department and the California Energy Commission, in the amount of \$5,833,000, for the Advanced Yard Tractor Deployment and *Eco-FRATIS* Drayage Truck Efficiency Project, including the replacement pages in Transmittal 3;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said Grant Agreement with the California Energy Commission for and on behalf of the Board;
4. Approve the Sub-Recipient Agreement between the City of Los Angeles Harbor Department and Everport Terminal Services to implement the Advanced Yard Tractor Deployment, in the amount not-to-exceed of \$4,863,000 and a term of three years;
5. Authorize the Executive Director to execute and the Board Secretary to attest to said Sub-Recipient Agreement with Everport Terminal Services for and on behalf of the Board;
6. Approve the Sub-Recipient Agreement with Productivity Apex, Inc. to develop, integrate, and manage the *Eco-FRATIS* Truck Drayage Efficiency Project, in the amount of \$1,210,000 and a term of three years;
7. Authorize the Executive Director to execute and the Board Secretary to attest to said Sub-Recipient Agreement with Productivity Apex, Inc. for and on behalf of the Board;
8. Approve the Funding Agreement with the Los Angeles County Metropolitan Transportation Authority to develop and integrate the *Eco-FRATIS* Truck Drayage Efficiency Project, in the amount of \$240,000 and a term of three years;
9. Authorize the Executive Director to execute and the Board Secretary to attest to said Funding Agreement with the Los Angeles County Metropolitan Transportation Authority for and on behalf of the Board;

DATE: DECEMBER 15, 2016

PAGE 3 OF 8

**SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS**

10. Approve the budgetary transfer of \$5,093,000 from the Unappropriated Balance to the "State Pass Through Non-Operating Expenses" Account 89097 in Center 6000 and Program 000 for the grant funding associated with this CEC request;
11. Direct the Board Secretary to transmit the Resolution to the Mayor for approval pursuant to Section 343(b) of the City Charter;
12. Direct the Board Secretary to notify the City Clerk of such transfer pursuant to Section 343(d) of the City Charter at the time such transfer is made; and
13. Adopt Resolution No. 116-8031.

**DISCUSSION:**

Background/Context - On January 7, 2016, the CEC released a grant solicitation to implement and administer Alternative and Renewable Fuel and Vehicle Technology for Freight Transportation Projects at California Seaports (GFO-15-604). Nearly \$17 million was made available for this solicitation to deploy prototypes, construction, infrastructure, emission testing, and practical demonstration of near-zero and zero emission technologies with a high potential to be commercialized. The grant was to be awarded in or near disadvantaged communities. There was also a twenty-five percent funding match requirement that could be fulfilled through in-kind services, cash, equipment purchases, electrical services, and fueling infrastructure.

A memo was submitted to the Board, on March 21, 2016, containing information on the grant solicitation and the Harbor Department's planned application. On March 24, 2016, the Harbor Department submitted a grant application to the CEC on behalf of Everport and PAI, who developed the project concepts. On May 19, 2016, the CEC notified the Harbor Department that the application was selected and received a preliminary grant award offer in the amount of \$5,833,000 (Transmittal 1). On June 14, 2016, CEC Commissioners approved the funding of the Project and instructed their staff to enter into agreement negotiations with the Harbor Department. The Harbor Department received the grant package on August 14, 2016 (Transmittal 2). The minor CEC agreement alterations as requested by Harbor Department staff, approved by CEC staff, and specifically contained in Transmittal 3, are incorporated accordingly into the final agreement.

The two projects associated with the grant award are described below.

Yard Tractor Component - The Yard Tractor component will demonstrate two types of cutting edge, low-emitting, greenhouse gas (GHG) reducing terminal yard tractors

**DATE: DECEMBER 15, 2016**

**PAGE 4 OF 8**

**SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS**

together at Everport under the same duty cycle. In addition, this demonstration will show the performance of near-zero and zero emission yard tractors compared to their conventional diesel-fueled counterparts, including range and maintenance intervals. This project will demonstrate five yard tractors that will be equipped with BYD Motors' zero emission propulsion technology. Four of the yard tractors will be newly built and one will be a retrofit of an existing Balqon yard tractor. In addition, twenty yard tractors from Capacity will be equipped with the Cummins Westport near-zero emission engines (0.02 grams of nitrogen oxides/brake horsepower-hour). In order to further reduce GHGs, the near-zero emission yard tractors will be fueled with renewable natural gas provided by Clean Energy via a temporary fueling system.

Data loggers designed to capture information will be installed on each of the yard tractors. A comprehensive final report will be prepared at the end of the demonstration to assess the various elements of this project component, including operational efficiency and viability of the near-zero and zero emission yard tractors.

Everport Yard Tractor Component Partnership – The Harbor Department and Everport agreed to work together to apply for this Project. Everport is an ideal partner for this Project because they utilize different types of cargo handling equipment. The yard tractors at Everport comprise fifty-seven percent of the total cargo-handling GHG emissions. A quarter of Everport's diesel yard tractor fleet will be replaced with near-zero and zero emission yard tractors. Everport will demonstrate how near-zero and zero emission cargo handling equipment can be introduced and utilized in conventional container terminals.

Everport met with various manufacturers and technology vendors to support this Project:

- BYD Motors – to provide five battery electric yard tractors.
- Capacity Trucks – to provide twenty near-zero emission yard tractors.
- Harbor Diesel and Equipment, Inc. - authorized Capacity Trucks dealer.
- Clean Energy – to provide the renewable natural gas to fuel the twenty Capacity Trucks yard tractors utilizing mobile fueling equipment.

Finally, the proximity of the Port of Angeles to disadvantaged communities helps Everport meet CEC's criteria as a disadvantaged community and therefore satisfies the requirements of the grant opportunity.

Everport Yard Tractor Component Sub-Recipient Grant Agreement - The Sub-Recipient Grant Agreement between the Harbor Department and Everport (Transmittal 4) to demonstrate the near-zero and zero emission yard tractors includes the same terms

DATE: DECEMBER 15, 2016

PAGE 5 OF 8

**SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS**

and conditions detailed in the CEC Grant Agreement. The Harbor Department and Everport will work collaboratively to ensure that all conditions and schedules are met in accordance with the CEC Grant Agreement.

Eco-FRATIS Component - The *Eco-FRATIS* component entails demonstrating ITS technology with 100 drayage trucks in order to enhance drayage operations to/from the Ports of Los Angeles and Long Beach (POLA/POLB). The Harbor Department has partnered with the following entities: PAI (primary technology developer/integrator); University of California, Riverside - Center for Environmental Research and Technology (UCR); InfoMagnus; and Harbor Trucking Association, as well as METRO METRO which added support to *Eco-FRATIS* component by committing a hard match funding amount of \$240,000. The expected data will document project benefits including GHG, criteria pollutant emission, and fuel use reductions.

The technologies that will be integrated for the *Eco-FRATIS* component include:

- Freight Advanced Traveler Information System (FRATIS) deployment, which includes a suite of applications developed and currently being demonstrated in POLA/POLB by PAI on behalf of the United States Department of Transportation (USDOT).
- Harbor Trucking Association (HTA)/InfoMagnus *Geostamp* application, which entails the provision of real-time truck travel and terminal turn times via an automated mobile smart device application.
- University of California Riverside's *Eco-Drive* application, which entails using traffic signal timing information to optimize acceleration/deceleration of trucks.

Eco-FRATIS Component Selection – This CEC project complements and expands the USDOT FRATIS that is currently being demonstrated in POLA/POLB. The FRATIS system was initially developed and demonstrated in 2014 at the POLA Yusen Container Terminal with 50 trucks. A second phase with 200 more trucks serving POLA/POLB is currently being developed, and will be demonstrated in 2017. For both of these phases, USDOT retained PAI via a competitively solicited grant. PAI approached the Harbor Department about submitting an application for the CEC grant. The HTA selected InfoMagnus via a competitive request for proposals to develop and deploy the *Geostamp* system. The UCR *ECO-Drive* system was developed and tested via a United States Department of Energy competitively solicited grant. Therefore, the Harbor Department deemed it prudent, appropriate, and cost-effective to submit an application with PAI, InfoMagnus, and UCR. The Harbor Department seeks approval of a Sub-Recipient Agreement with PAI, in the amount of \$1,210,000 (Transmittal 5), which will be fully reimbursed with CEC grant and METRO funds.

**DATE: DECEMBER 15, 2016**

**PAGE 6 OF 8**

**SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS**

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of agreements for testing and demonstration of near-zero and zero emission yard tractors and ITS technology for drayage trucks to improve mobility and reduce emissions. As an activity involving data collection, research and resource evaluation which does not result in a serious major disturbance to an environmental resource, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article III, Class 6 of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Staff requests that the Board accept and approve the CEC Grant Agreement in the amount of \$5,833,000 to fund the Project, approve a Funding Agreement with METRO, approve a Sub-Recipient Agreement with Everport for the implementation of the Yard Tractor component, and approve the Sub-Recipient Agreement with PAI for the Eco-FRATIS component. The table below summarizes the costs and funds for the overall project.

<b>Component</b>	<b>Subcontractor</b>	<b>CEC Funds</b>	<b>Match By Subcontractor</b>	<b>METRO Funding</b>	<b>TOTAL</b>
Yard Tractor	Capacity Trucks	\$3,363,000	\$1,999,000		\$5,362,000
	BYD Motors, Inc.	\$1,500,000	\$375,000		\$1,875,000
Eco-FRATIS	PAI	\$513,998	\$114,781	\$205,000	\$833,779
	UCR	\$359,855	\$90,138		\$449,993
	InfoMagnus	\$96,147	\$37,628	\$35,000	\$168,775
		<b>\$5,833,000</b>	<b>\$2,616,547</b>	<b>\$240,000</b>	<b>\$8,689,547</b>

The Harbor Department applied for the grant on behalf of Everport and PAI. As such, the Harbor Department will function as the grant administrator and will pass the funds to these sub-recipients. The CEC grant does not allow for in-house administration costs associated with the Project. The Harbor Department's financial responsibility is limited to staff time to manage the grant which is expected to be minimal.

Everport will provide \$1,875,000 (through BYD Motors and Capacity Trucks) as cash and in-kind support. Clean Energy will provide \$499,000 (through Capacity Trucks) for the use of Liquefied Natural Gas (LNG) mobile fueling equipment (Transmittal 6). The remaining \$482,547 of matching funds will be provided in the form of in-kind labor for

DATE: DECEMBER 15, 2016

PAGE 7 OF 8

SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS

PAI (\$114,781), UCR (\$90,138), InfoMagnus (\$37,628), and a grant from METRO (\$240,000) (Transmittal 7).

Board approval of the METRO funding agreement (Transmittal 8) is also requested. The METRO Planning and Programming Committee will be approving the funding agreement at their meeting on November 17, followed by their full Board in December 2016. The METRO funds will be disbursed to the Harbor Department, on a reimbursement basis, similar to other Harbor Department transportation projects funded by METRO.

	<b>CEC Environmental</b>	<b>CEC Goods Movement</b>	<b>METRO Cash</b>
FY 16/17	\$4,763,000	\$270,000	\$60,000
FY 17/18	\$50,000	\$650,000	\$160,000
FY 18/19	\$50,000	\$50,000	\$20,000
<b>TOTAL</b>	<b>\$4,863,000</b>	<b>\$970,000</b>	<b>\$240,000</b>

The transfer of funds from the Unappropriated Balance to the Adopted Non-Operating Expense Budget will increase the FY 16/17 Adopted Non-Operating Expense Budget by \$5,093,000 however an equal amount of funding will be received by the Port as state pass-through grant revenue in Account 76084, State Pass Through Revenue.

DATE: DECEMBER 15, 2016

PAGE 8 OF 8

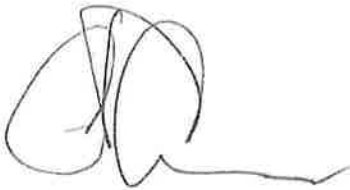
SUBJECT: CALIFORNIA ENERGY COMMISSION GRANT ACCEPTANCE, METRO FUNDING GRANT ACCEPTANCE AND SUB-AGREEMENTS

**CITY ATTORNEY:**

The Office of City Attorney has reviewed and approved the subject Agreements as to form and legality.

**TRANSMITTALS:**

1. Notice of Award
2. Grant Agreement with the California Energy Commission
3. Grant Agreement - Replacement Pages
4. Sub-Recipient Agreement with Everport Terminal Services
5. Sub-Recipient Agreement with Productivity Apex, Inc.
6. Letters of Commitment for the Advanced Yard Tractor Deployment
7. Letters of Commitment for the *Eco-FRATIS* Drayage Truck Efficiency Project
8. Funding Agreement with the Los Angeles County Metropolitan Transportation Authority

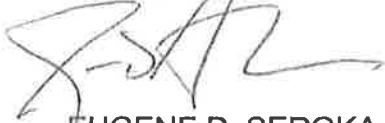


CHRISTOPHER CANNON  
Director of Environmental Management



KERRY CARTWRIGHT, P.E.  
Director of Goods Movement

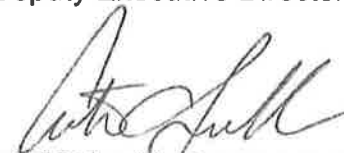
APPROVED:



EUGENE D. SEROKA  
Executive Director

FIS Approval:  (initials)  
CA Approval:  (initials)

  
for MICHAEL DIBERNARDO  
Deputy Executive Director

  
ANTONIO V. GIOIELLO, P.E.  
Deputy Executive Director

AGREEMENT NO. 16-3448

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
PRODUCTIVITY APEX, INC.

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 PRODUCTIVITY APEX, INC., a Florida corporation, 11301 Corporate Blvd., Suite 303, Orlando, Florida 32817 (hereinafter "PAI" or "Subrecipient").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") in August 2016 was awarded a grant, in the amount of \$5,833,000 by the California Energy Commission ("CEC") through its Alternative and Renewable Fuel and Vehicle Technology Program Freight Transportation Projects at California Seaports; and

WHEREAS; to accept the grant award, the Department will enter into a Project Grant Agreement with the CEC; and

WHEREAS, a portion of the Grant Agreement, in the amount of \$970,000, will fund an ECO-FRATIS Drayage Truck Efficiency Project ("Project") to implement various technology systems on drayage trucks serving the Port of Los Angeles and the Port of Long Beach which will decrease traffic congestion, fuel consumption and truck emissions by improving the efficiency of logistics, cargo movement and driver behavior; and

WHEREAS, the Los Angeles County Metropolitan Transportation Authority ("Metro") will award, and the City will accept, a Measure R Funding Agreement in the amount of \$240,000 for the Project ("Metro Agreement"), which will be considered matching funds under the CEC Grant Agreement; and

WHEREAS, PAI will be responsible for managing and implementing all aspects of the Project pursuant to the terms of this Agreement, including the contribution of matching funds in the amount of approximately \$115,000 from PAI, as well as obtaining matching funds and in-kind contributions from other Project participants as described in the Project Grant Agreement; and

WHEREAS, the Department will provide administrative oversight for the Project and act as fiduciary agent for reimbursement of funds for Project expenditures in amounts from the CEC not to exceed \$970,000 and from Metro not to exceed \$240,000, for a total reimbursement amount of \$1,210,000;

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:

- (i) Grant Agreement, ARV-15-069, entered into between the CEC and City ("Grant Agreement"), attached hereto as Exhibit A and hereby made a part of this Agreement; and
- (ii) Metro Agreement, FA# MR30640, entered into between METRO and City ("Metro Agreement"), attached hereto as Exhibit B and hereby made a part of this Agreement.
- (iii) A Scope of Work specific to Subrecipient's Project is set forth in Exhibit C and hereby made a part of this Agreement. The parties agree that in the event of a conflict regarding the Project between Exhibit C and either Exhibit A or B, then Exhibit A or B shall prevail, as applicable.

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 Agreement, and as may be amended from time to time by CEC and City. In completing the Project, Subrecipient shall utilize the cooperative efforts, matching funds and in-kind contributions from the Metro Agreement and from those entities submitting Letters of Commitment in support of the Project (hereinafter referred to collectively as "subconsultants"), attached hereto as Exhibit D.

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 Agreement and the Metro Agreement. Subrecipient further acknowledges and agrees that any services it performs outside these two agreements 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, the Grant Agreement and the Metro Agreement. Obligations of either the Grant Agreement or the Metro Agreement, 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 Agreement.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Subrecipient and the acceptable completion of this Agreement, the Grant Agreement, the Metro Agreement 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. Three (3) years have lapsed from the effective date of this Agreement; or
2. Funding under the Grant Agreement or the Metro Agreement is no longer available for any reason. City shall provide written notice to Subrecipient and the amount of reimbursement available and due to Subrecipient shall be determined by the CEC and the terms of the Grant Agreement or Metro and the terms of the Metro Agreement, as applicable. 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, the Grant Agreement and the Metro Agreement as of the date the ten days notice period ends. City shall determine the amount of reimbursement due to Subrecipient, which shall be determined in accordance with the Grant Agreement and the Metro

Agreement. 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 the Grant Agreement and the Metro Agreement, which amount shall be determined by the respective granting agency. 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 Agreement, the Metro Agreement and as required by this Agreement, City shall reimburse Subrecipient in the amounts set forth in Exhibit A and Exhibit B. 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 either the CEC or Metro to the City pursuant to the Grant Agreement or the Metro Agreement, respectively.

B. The maximum amount to be reimbursed to Subrecipient pursuant to this Agreement and as stated in the Grant Agreement (\$970,000) and the Metro Agreement (\$240,000) shall be One Million Two Hundred Ten Thousand Dollars (\$1,210,000).

C. Subrecipient shall submit documentation, progress reports and invoices to City on a deliverable basis or as otherwise required by either the Grant Agreement or the Metro Agreement, as applicable, following the effective date of this Agreement for Project activities performed. Subrecipient may invoice on a monthly basis for the percentage of progress made on deliverables. 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 CEC or Metro. 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 emission's 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 services 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 reimbursement for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Subrecipient for a period of three (3) years after completion of services to be performed under this Agreement, as required by the Grant Agreement or the Metro Agreement, or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever period is longest.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Subrecipient and subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Subrecipient, subconsultants or any individual or entity acting for or on behalf of Subrecipient or a subconsultant, and (c) without regard to whether such writings have previously been provided to City. Subrecipient shall be responsible for obtaining access to and providing writings of subconsultants. Subrecipient shall provide

City at Subrecipient's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Subrecipient's office or facilities which are engaged in the performance of the Scope of Work. Subrecipient shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Subrecipient's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

#### VII. INDEPENDENT CONTRACTOR

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

#### VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit E.

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

(1) Commercial General Liability Insurance

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

(2) Professional Liability Insurance

Subrecipient is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Subrecipient certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

B. Insurance Procured by Subrecipient on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section IX, and where Subrecipient is required to name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Subrecipient shall cause City to be named as an additional insured on all policies it procures in

connection with this Section X. Subrecipient shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

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

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

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

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

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

C. Required Features of Coverages

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

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Subrecipient's insurance documents. Subrecipient's insurance broker or agent shall register with the City's online insurance compliance system Track4LA™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Subrecipient's behalf.

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

(2) Carrier Requirements

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

(3) Notice of Cancellation

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

(4) Modification of Coverage

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

(5) Renewal of Policies

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

(6) Limits of Coverage

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

D. Right to Self-Insure

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

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

E. Accident Reports

Subrecipient shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Subrecipient's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Subrecipient, its officers or managing agents.

## XI. TERMINATION PROVISION

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

## XII. PERSONAL SERVICE AGREEMENT

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

B. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Subrecipient may permit subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All subconsultants whom 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

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 F.

## 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 G.

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 Goods Movement, 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. Subrecipient declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

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

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

## XXIV. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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 H.

## 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.

////

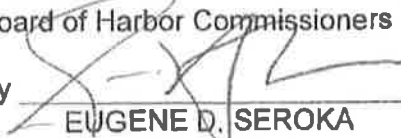
////

////

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

Dated: 1/20/17


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


By   
EUGENE D. SEROKA  
Executive Director

Attest:   
AMBER M. KLESGES  
Board Secretary

Dated: 1/4/17

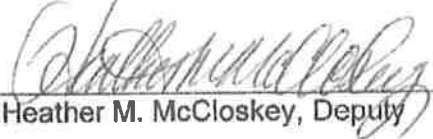
PRODUCTIVITY APEX, INC.

By   
Mansoorah Mollashasemi  
(Print/type name and title)

Attest   
Sam Fayed  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

January 19, 2017  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By   
Heather M. McCloskey, Deputy