

AGREEMENT NO. _____

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES AND
SEASIDE TRANSPORTATION SERVICES, LLC**

This MEMORANDUM OF AGREEMENT ("MOA" or "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 SEASIDE TRANSPORTATION SERVICES, LLC, a Delaware limited liability company, 389 Terminal Way, Terminal Island, CA 90731 ("GRANTEE").

WITNESSETH

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") created a five-year, \$20 million Air Quality Mitigation Incentive Program (hereinafter referred to as "AQMIP") to provide financial incentives to assist in the implementation of air quality mitigation projects; and

WHEREAS, the City released a Request for Proposals in August 2006, seeking proposals for the 2006-2007 AQMIP; and

WHEREAS, in accordance with the China Shipping settlement, the Port Community Advisory Committee recommended GRANTEE'S proposal to retrofit fourteen (14) rubber tire gantry cranes (RTGs) with California Air Resources Board (CARB) Verified Level 3 diesel particulate filters (DPFs) for approval; and

WHEREAS, the Board approved \$875,000 for the PROJECT on December 20, 2007 as part of the 2006-2007 AQMIP; and

WHEREAS, the original project was not implemented because there is no verified Level 3 DPF approved for RTGs; and

WHEREAS, \$350,000 of the grant was reprogrammed for the GRANTEE to retrofit fourteen top picks and approved by the Board on June 16, 2011; and

WHEREAS, the remaining \$525,000 will be used by GRANTEE to retrofit eleven (11) RTGs with Level 2 DPFs and upgrade them to Level 3 or better when the technology is available (hereinafter referred to as "PROJECT"); and

WHEREAS, this modified project will result in better air quality mitigation benefits through emission reductions as originally proposed;

NOW, THEREFORE, in consideration of the forgoing recitals, the parties agree as follows:

I. AUTHORIZED REPRESENTATIVES TO RECEIVE NOTICES

- A. The representatives of the respective parties who are authorized to receive notices for this Agreement are:

Geoffrey O. Romano, M&R Manager
Seaside Transportation Services, LLC
389 Terminal Way
Terminal Island, CA 90731
Tel: (310) 241-1727
Fax: (310) 241-1800
geoffreyro@seasidets.com

Teresa Pisano
Environmental Mitigation Coordinator
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
Tel: (310) 732-3057
Fax: (310) 547-4643
tpisano@portla.org

- B. Formal notices, demands, requests and communications given by either party shall be made in writing to the authorized representatives set forth above.
- C. If the name or address designated above is changed, written notice shall be given to the other party within five (5) working days of said change.

II. SERVICES TO BE PERFORMED BY GRANTEE

- A. GRANTEE shall, to the satisfaction of the City, obtain those professional, expert and technical services, and materials necessary to complete the PROJECT as described in Exhibit A.
- B. To qualify for reimbursement by City, GRANTEE shall complete the Level 2 DPF retrofit portion of PROJECT within twelve (12) months from the date this Agreement becomes effective, unless the parties enter into a written amendment to the Agreement and the same is approved by the Board and City Council in accordance with the City of Los Angeles City Charter.
- C. Equipment, vehicle(s) and/or vessel(s) described in Exhibit A must operate within the Port Boundaries as shown in Exhibit B.
- D. After completion of the services described in Section II.A and for the remaining term of the Agreement, GRANTEE shall operate and maintain the PROJECT equipment, vehicle(s) and/or vessel(s) identified in Exhibit

A within the Port Boundaries for at least one-hundred percent (100%) of the remaining term of the Agreement.

- E. GRANTEE agrees that the PROJECT equipment, vehicle(s) and/or vessel(s) identified in Exhibit A may be equipped by City with a Global Positioning System (GPS) or equivalent tracking technology. In the event that the City exercises its option to install GPS equipment on the Project equipment, vehicle(s) and/or vessel(s), the City shall, through written notice to the GRANTEE, define the exact geofence perimeters of the Port Boundaries.
- F. During the term of this Agreement, GRANTEE shall submit a written request to, and obtain written approval from, the Executive Director or his or her designee to change, modify or substitute any of the equipment, vehicle(s) and/or vessel(s) described in Exhibit A. GRANTEE shall submit written verification to, and obtain written acceptance from, the Executive Director or his or her designee providing evidence that the replacement equipment, vehicle(s) and/or vessel(s) result in the same emission reduction benefits as provided by the equipment, vehicle(s) and/or vessel(s) that are being changed, modified or substituted. Changes, modifications or substitutions made to the equipment, vehicle(s) and/or vessel(s) described in Exhibit A that are not approved and accepted in writing by the Executive Director or his or her designee shall not be eligible for reimbursement and shall be considered a breach of this Agreement.
- G. At any time during the term of this Agreement, and upon written request from the City, GRANTEE shall provide to the City within ten (10) days from said written request, any and all operational information for the PROJECT equipment, vehicle(s) and/or vessel(s). Operational information may include, but shall not be limited to, operational logs, maintenance records, fueling logs, and GPS data (if available) for the purpose of determining miles accumulated, fuel consumption, hours of operation, operation locations, and other equipment, vehicle and/or vessel activity information, as appropriate to the PROJECT.
- H. At any time during the term of this Agreement, and upon ten (10) days written request from the City, GRANTEE shall allow the City to conduct site visits to the location(s) where the PROJECT equipment, vehicle(s) and/or vessel(s) are operated and/or stored. The site visits shall be for the purposes of, but not limited to, verifying that the PROJECT has been completed and that the PROJECT equipment, vehicle(s) and/or vessel(s) are being operated in accordance with the terms of this Agreement. Site visits may include the City reviewing and auditing operational information as defined in Paragraph G of this section.
- I. Grantee Reporting Requirements:

1. Quarterly Progress Reports

Quarterly Progress Reports shall be submitted by GRANTEE to the City by the 10th working day of each Quarter, starting with the first three months from the effective date of the agreement and every three months thereafter. Quarterly Progress Reports shall include a technical description of Work undertaken during the previous quarter, including a discussion of problems encountered and how they were resolved, cumulative dollar costs incurred each quarter and in total and anticipated Work for the next reporting period. A total of four Quarterly Progress Reports shall be submitted to the City for the first twelve (12) months of the Agreement in the format specified in Exhibit C.

2. Annual Progress Reports

Annual Progress Reports shall be submitted by GRANTEE to the City by the 15th working day of each year. Annual Progress Reports shall include a technical description of Work undertaken during the previous year, cumulative dollar costs incurred each quarter and in total and anticipated Work for the next reporting period. Once the PROJECT is completed, Annual Progress Reports shall provide the annual activity (i.e., gallons of fuel consumed, hours of operation, etc.), as well as an explanation for any time PROJECT equipment, vehicle(s) and/or vessel(s) are not operational. Annual Progress Reports shall be required for the term of the Agreement in the format specified in Exhibit D.

3. Final Report

A Final Report shall be submitted by GRANTEE ten (10) days after the Agreement expires or is terminated pursuant to either Section IV or Section VI. The Final Report shall be submitted using the format specified in Exhibit E.

III. SERVICES TO BE PERFORMED BY CITY

- A. City shall reimburse GRANTEE for the PROJECT in accordance with the terms of this Agreement.
- B. City, at its own cost, may elect to install Global Positioning System (GPS) or equivalent tracking technology on the PROJECT equipment, vehicle(s) and/or vessel(s) identified in Exhibit A. GPS data will be used to document the percentage of time the PROJECT equipment, vehicle(s) and/or vessel(s) is/are operated within the Port Boundaries during the term of this Agreement. In the event GPS data is not available or retrievable due to technical difficulties, missing GPS data must be

validated using Marine Exchange of Southern California data or Department of Fish and Game, California Commercial Passenger Fishing Vessel (CPFV) logbook data. GPS data and/or marine craft logs may be used to document the percentage of time the equipment, vehicle(s) and/or vessel(s) is/are operated within the Port Boundaries. City shall determine GPS unit and mapping specifications. GPS data downloads shall be funded by the City.

- C. At any time during the term of this Agreement, and upon ten (10) days written notice to GRANTEE, City shall have the right to review operational information or conduct site visits in accordance with the provisions set forth in Section II.G and Section II.H of this Agreement.
- D. Unless set forth herein, City shall not be obligated to provide assistance to GRANTEE to assure completion of PROJECT as required herein.

IV. TERM OF THE MOA

Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by the Executive Director upon authorization of the Board and shall remain in full force for three (3) years.

GRANTEE 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.

V. COMPENSATION

- A. The AQMIP grant award is calculated based upon the emission reduction benefits obtained during the term of the Agreement. For the satisfactory completion of the PROJECT, City shall reimburse GRANTEE an amount not-to-exceed Five Hundred Twenty Five Thousand Dollars (\$525,000) and in accordance with Exhibit A. Expenses incurred after the first twelve months of the Agreement shall be reimbursed upon written approval from the Director of Environmental Management.
- B. GRANTEE shall submit itemized invoice statements in quadruplicate form as specified in Exhibit F showing the total amount of any reimbursable cost or expense. Each such invoice shall be signed by GRANTEE and shall include the following certification:

"I certify under penalty of perjury that this statement is true and correct according to the terms of this MOA (Agreement No. _____) and that payment therefore has not been received.

Project Manager

- C. Each itemized invoice must include the GRANTEE's Los Angeles Business Tax Registration Certificate number, as required in Section XVII of this Agreement. No invoice will be processed for payment by City without this number shown thereon.
- D. 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. City shall use all reasonable efforts to pay said sums within sixty (60) days of receipt of each invoice.
- E. GRANTEE shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and GRANTEE shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. GRANTEE is not required to submit support for direct costs items of \$25 or less.
- F. Reimbursement is contingent upon i) GRANTEE complying with the Grantee Reporting Requirements set forth in Section II.I of this Agreement, and ii) the review and approval by the Executive Director, or his or her designee, of the documents submitted by GRANTEE in accordance with Section II.I of this Agreement.
- G. Reimbursable expenses for the Level 2 DPF retrofit portion of PROJECT must be incurred within the first twelve (12) months from the effective date of this Agreement. Expenses incurred after the first twelve (12) months for the Level 3 DPF retrofit portion of PROJECT will be reimbursed by the City upon written approval from the Director of Environmental Management.
- H. For payment and processing, all invoices should be mailed to the following address:

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

VI. TERMINATION

- A. City in its sole discretion may terminate and cancel all or any part of this Agreement for any reason upon giving to GRANTEE ten (10) days notice in writing of its election to cancel and terminate this Agreement. If such termination and cancellation occurs within the first twelve (12) months from the effective date of the Agreement, and after expiration of the ten (10) day notice period, GRANTEE shall cease the performance of the PROJECT. GRANTEE shall be entitled to reimbursement for expenses

incurred in accordance with Section V of this Agreement. The City shall determine the amount of services actually performed and shall allocate the portion of the total compensation due to GRANTEE.

- B. If the equipment, vehicle(s) and/or vessel(s) become inoperable through mechanical failure of components or systems related to this Agreement, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance, GRANTEE shall submit written documentation requesting early termination of the Agreement. Any request by GRANTEE for early termination of the Agreement shall be presented by Department staff to the Board for acceptance and approval.
- C. In the event that GRANTEE seeks early termination of this Agreement prior to the termination date for any reason, or no reason whatsoever, GRANTEE shall submit a written request to the City. Department staff shall submit GRANTEE's written request for early termination to the Board for acceptance and approval. In the event that City accepts GRANTEE's request for early termination, GRANTEE shall reimburse the City at the rates stipulated in Section VI.E.
- D. In the event that facts available to the Department indicate that GRANTEE has breached any term of this Agreement prior to the end of the Agreement term, the Executive Director shall submit the reasons for the breach to the Board for its determination and concurrence that GRANTEE has breached the Agreement. In the event that City determines that GRANTEE has breached the Agreement, GRANTEE shall reimburse the City at the rates stipulated in Section VI.E.
- E. In the event that either City or GRANTEE terminate this Agreement as described in Sections VI.C or VI.D, GRANTEE shall reimburse City for all monies paid to GRANTEE by City at the following rates:

- 100% if termination occurs within twelve (12) months from the effective date of the Agreement;
- 66% if termination occurs between years one (1) and two (2); and
- 33% if termination occurs between years two (2) and three (3).

The reimbursable amount shall be paid by GRANTEE to the City within sixty (60) days of the Board either 1) accepting GRANTEE's request for early termination under Section VI.C or 2) determining that GRANTEE breached the Agreement under Section VI.D.

VII. ACCEPTABILITY OF WORK

The City shall decide any and all questions that may arise as to the quality or acceptability of the work performed by GRANTEE under this Agreement, including errors and omissions, and as to the amount of reimbursement due to GRANTEE. Decisions shall be final, and the City shall have authority to enforce

and make effective such decisions and orders with respect to the performance of this Agreement.

GRANTEE understands that no board member, officer, agent or employee of City has the authority to require work outside this Agreement other than is allowed by this Agreement.

VIII. EMISSION REDUCTION CREDITS (ERCs)

All Emission Reduction Credits generated by the PROJECT belong to the City and cannot be used by GRANTEE for any purpose.

IX. ASSIGNMENT

GRANTEE shall not assign, sell, license or otherwise transfer the PROJECT equipment, vehicle(s) and/or vessel(s) or any of the rights granted by this Agreement without the prior written consent of the City. Any attempted transfer or assignment without the prior written consent of the Cities shall be void and confer no rights whatsoever upon a transferee or assignee. Any attempted transfer or assignment without the prior written consent of the Cities shall be considered a breach of this Agreement and the City may proceed with termination of the agreement under Section VI.

Any request for consent to an assignment shall be made in writing, accompanied by information relevant to the City's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to the intended use and/or required modifications to the PROJECT equipment, vehicle(s) and/or vessel(s), if any. GRANTEE agrees to provide to the City such other or additional information and/or documentation pertaining to the requested consent as may be reasonably requested by the City.

X. INDEMNIFICATION FOR LIABILITY

Except for the sole negligence or willful misconduct of City, GRANTEE shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of GRANTEE, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of City, its officers, agents, or employees contributed thereto provided that (1) if the City contributes to a loss, GRANTEE's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), GRANTEE shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

XI. COMPLIANCE WITH APPLICABLE LAWS

GRANTEE shall, at all times, in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, enacted and adopted by federal, state, regional, municipal or other governmental bodies, departments or offices thereof. In addition to the foregoing, GRANTEE shall comply immediately with any and all orders or directions issued by the City under authority of any such law, statute, ordinance, rule or regulation.

XII. INDEPENDENT CONTRACTOR

GRANTEE in the performance of the work required by this Agreement is an independent contractor and not an agent or employee of the City. GRANTEE 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.

XIII. 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 Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the City and Department. The parties 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.

XIV. TRADEMARKS, COPYRIGHTS AND PATENTS

GRANTEE agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, costs, 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 GRANTEE in the performance of this Agreement.

XV. OWNERSHIP OF DOCUMENTS

All data, documents, reports or other materials, copies of working papers which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement shall become the property of the City. The City reserves the right to use, duplicate, disclose in whole or in part in any manner for any purpose whatsoever all said data, documents, reports or other materials, and to authorize others to do so.

XVI. 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. GRANTEE declares that its authorized Taxpayer Identification Number (TIN) is 94-3398617. No payments will be made under this Agreement without a valid TIN.

XVII. 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 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 Los Angeles Harbor Department ("Department"). See Exhibit G.

XVIII. AFFIRMATIVE ACTION

GRANTEE, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, natural 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 the Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit H.

XIX. PROPRIETARY INFORMATION

GRANTEE may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Department.

XX. 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 3, 1999, agreeing to adopt the provisions of the 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. GRANTEE shall comply with the policy wherever applicable. Violation of this provision, where

applicable, shall entitle the City to terminate the Agreement and otherwise pursue legal remedies that may be available.

XXI. WAGE AND EARNING ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

GRANTEE and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for GRANTEE and/or subcontractor's employees.

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

XXII. 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 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. GRANTEE shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any Agreement with GRANTEE and pursue any and all other legal remedies that may be available. See Exhibit I.

XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tideland 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. GRANTEE agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXIV. GOVERNING LAW AND 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.

XXV. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

XXVI. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

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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

Date: _____, 2012 By _____ Executive Director

Attest _____ Board Secretary

SEASIDE TRANSPORTATION SERVICES, LLC

Date: MAY 23, 2012, 2012 By *Eric Wilson*

ERIC WILSON EXECUTIVE VICE PRESIDENT
Type/print Name and Title

Attest *Geoffrey Romano*
GEOFFREY ROMANO - A.V.P.
Type/print Name and Title

APPROVED AS TO FORM AND LEGALITY

May 30, 2012
CARMEN A. TRUTANICH, City Attorney
Thomas A. Russell, General Counsel

By *Heather M. McCloskey*
HEATHER M. McCLOSKEY, Deputy

Account#	<u>21951</u>	W.O. #	
Ctr/Div#	<u>7000</u>	Job Fac.#	
Proj/Prog#	<u>000</u>		
Budget FY:		Amount:	
	<u>12/13</u>		<u>393750</u>
	<u>13/14</u>		<u>0</u>
	<u>14/15</u>		<u>131,250</u>
	TOTAL		\$ 525,000
For Acct/Budget Div. Use Only			
Verified by:	<u><i>Julie Yano</i></u>		
Verified Funds Available:	<u><i>John C. Diaz</i></u>		
Date Approved:	<u><i>5/24/2012</i></u>		

Port of Los Angeles Air Quality Mitigation Program

**SEASIDE TRANSPORTATION SERVICES, LLC
ENGINE RETROFIT PROJECT**

Scope of Work and Rate Schedule

PROJECT:

SEASIDE TRANSPORTATION SERVICES, LLC (“GRANTEE”) shall obtain the necessary services and equipment to retrofit eleven (11) rubber tire gantry (RTG) cranes with California Air Resources Board (CARB) Verified Level 3 diesel particulate filters (DPFs) for a cost not to exceed \$525,000. This project will be implemented in a two-step process. Step one will be to install Level 2 DPFs on the RTGs for a cost not to exceed \$393,750. Step two is to modify the equipment to achieve CARB Verified Level 3 or better emission reductions, when the technology is available, for a cost not to exceed \$131,250. The specifications are as follows:

Equipment Type/Date	Baseline Engine Year/Model	Baseline Engine Horsepower	Retrofit Device	% in Port	Reimbursable Cost
Eleven (11) Mitsui-Paceco Rubber Tire Gantry Cranes, Vehicle Identification Numbers attached	2003 Cummins/NTA 855-G3	480	Engine Retrofit with CARB Verified DPF – Rypos Model # HIDPF/C R408-EL-C (CARB Verified Level 2)	100%	\$393,750
Same as above	Same as above	Same as above	Upgrade the existing DPFs or RTGs to achieve CARB Level 3 or better emissions reductions.	100%	\$131,250

Reimbursable project costs total: Not to exceed \$525,000

REPORTING REQUIREMENTS:

Quarterly Progress Reports

Quarterly Progress Reports shall be submitted by GRANTEE to the PORT by the 10th working day of each Quarter for the first 12 months of the MOA.

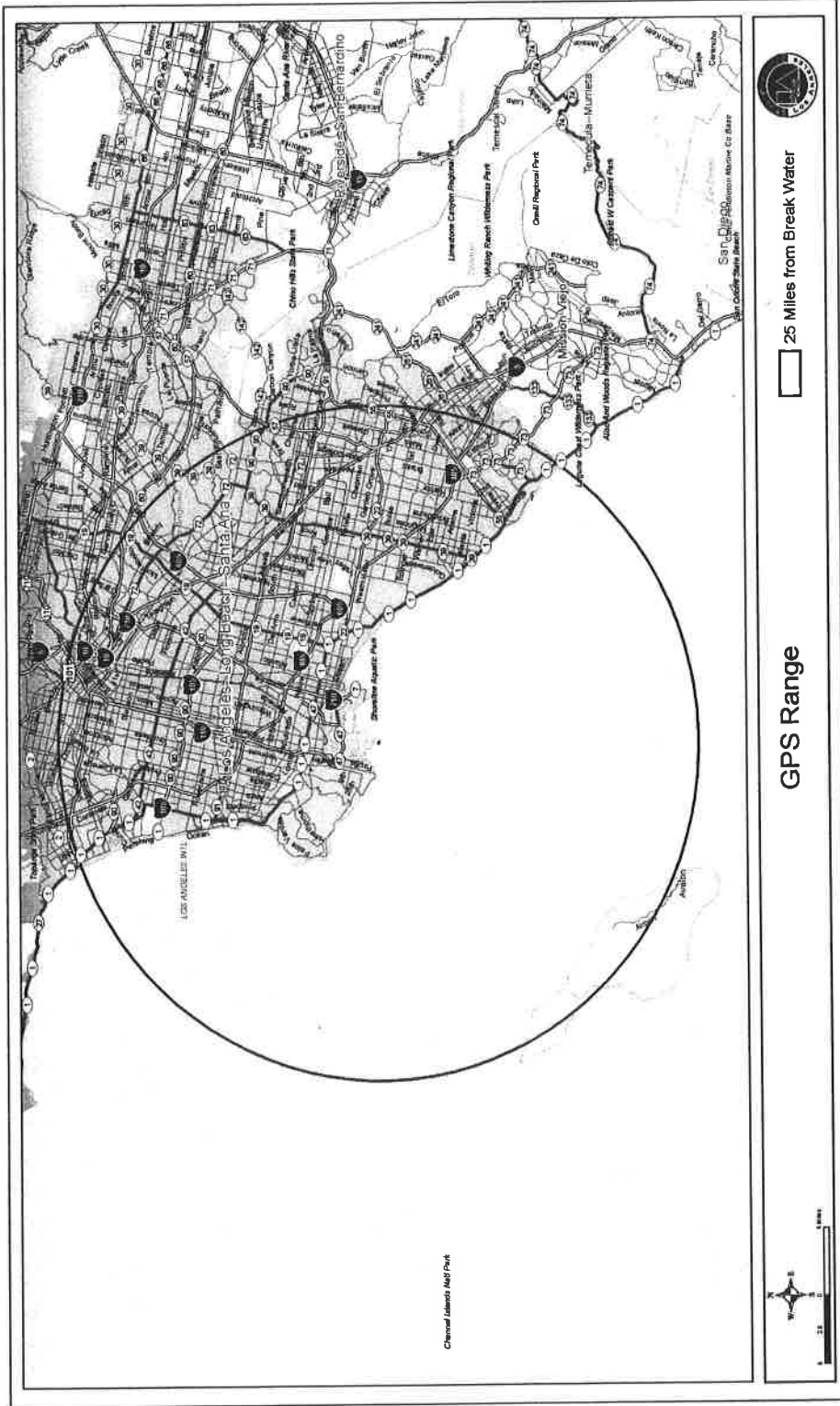
Annual Progress Reports

Annual Progress Reports shall be submitted by GRANTEE to the PORT by the 15th working day of each year for the term of the MOA.

Final Report

A Final Report shall be submitted by GRANTEE to the PORT ten (10) days after the MOA expires.

PORT OF LOS ANGELES BOUNDARIES



**Port of Los Angeles
Air Quality Mitigation Incentive Program
2006 – 2007**

Quarterly Progress Report

Agreement No.: _____

Progress Report No.: _____

Report Submitted By:

Reporting Period: _____

Name: _____

Submittal Date: _____

Company: _____

Address: _____

Budgetary Status:

Phone: _____

Cost to Date: _____

Email: _____

Port Grant Funds Available: _____

Description of Work Completed	% Work Complete	Date Completed	Hours of Service in Port	Total Hours in Service	Gallons of Fuel Used

Identify any problems encountered and how they were resolved: _____

Anticipated progress for next quarter: _____

I certify under penalty of perjury that this statement is true and correct according to the terms of Agreement No. _____

Signed by Project Manager

EXHIBIT C

**Port of Los Angeles
Air Quality Mitigation Incentive Program
2006 – 2007**

Annual Progress Report

Agreement No.: _____

Progress Report No.: _____

Report Submitted By:

Reporting Period: _____

Name: _____

Submittal Date: _____

Company: _____

Address: _____

Budgetary Status:

Phone: _____

Cost to Date: _____

Email: _____

Port Grant Funds Available: _____

Description of Work Completed	% Work Complete	Date Completed	Hours of Service in Port	Total Hours in Service	Gallons of Fuel Used

Identify any problems or equipment downtime: _____

I certify under penalty of perjury that this statement is true and correct according to the terms of Agreement No. _____

Signed by Project Manager

**Port of Los Angeles
Air Quality Mitigation Program
2006-2007**

Final Report

Project Name: _____

Agreement No. _____

Technology Background Description and Comparison

Provide a brief introduction describing the technology used in the Agreement.

Discuss how the operation of the technology used under this Agreement is different from other available technology, including a description of any advancements or improvements that exist over other available technologies.

Status

Describe the status of the Project. If the Project was completed, provide the completion date and note that the final report on file includes technical details of the Project. Describe major Project events, such as the development, testing, and/or delivery of equipment (if applicable).

Include a photo of the technology used under this Agreement. The picture, preferably a digital photograph, should clearly illustrate the technology. The size of the image should be approximately 3" x 3".

Emissions Reductions Results

Provide a summary of all available emissions results and key performance characteristics.

The term "performance characteristics" is to include (as applicable) operation and maintenance requirements, overall environmental impacts and performance tradeoffs. The primary emphasis of this section is for the presentation of project data. Performance results should be summarized with clear, graphical depictions whenever possible. Measured performance is to be compared with objectives/ goals set for the project. Comparisons should focus on targeted emissions reductions and/or other key performance goals.

Benefits

Describe the actual benefits that accrued during the Agreement in comparison with the benefits that were anticipated at the start of the Project. Be as detailed as possible, including discussion of the Project's overall environmental impacts and benefits.

Project Costs

Describe the actual costs of the Project (e.g. the Port’s funding contribution as well as any costs incurred by the Grantee) and how these costs compare with the originally projected costs of the Project as stated in the Agreement. Cost information can be presented graphically, in a table, or in paragraph form. This section does not need to address cost-effectiveness.

Signature Requirement

Please sign the Final Report with the certification line:

“I certify under penalty of perjury that the information provided in this Final Report is true and correct according to the terms of Agreement No. _____:

Project Manager

EXHIBIT E

PLEASE PRINT INVOICE ON COMPANY LETTERHEAD

**Port of Los Angeles Air Quality Mitigation Incentive Program
2006-2007
Itemized Invoice Statement**

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

Date: _____
Agreement No.: _____
BTRC No. _____
Billing Period: _____

FROM:

Project Description	Total POLA Budget	Current Expenditures	Expenditures to Date	Amount to be Paid in this Invoice	Percent of Task Completed to Date
	\$	\$	\$	\$	%
	\$	\$	\$	\$	%
	\$	\$	\$	\$	%
	\$	\$	\$	\$	%
TOTALS	\$	\$	\$	\$	

TOTAL DUE THIS INVOICE: \$ _____

I certify under penalty of perjury that this statement is true and correct according to the terms of this MOA (Agreement No. _____) and that payment therefore has not been received.

Project Manager

Date

NOTICE

THIS INVOICE SHALL NOT BE PAID UNLESS GRANTEE HAS ATTACHED TO THE INVOICE A CERTIFICATE OF DESTRUCTION PURSUANT TO SECTION V(F) OF THE AGREEMENT.

PORT OF LOS ANGELES APPROVAL

I certify that I have reviewed the progress report, verified the deliverables, and I approve the invoice for payment. I verify that the amount is consistent with the submissions.

POLA Project Representative

Date

EXHIBIT F

EXHIBIT G

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 to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

EXHIBIT H - 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.

EXHIBIT H - AFFIRMATIVE ACTION PROGRAM PROVISIONS

- 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

EXHIBIT H - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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;

EXHIBIT H - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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 I

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.