

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
EVERPORT TERMINAL SERVICES INC.
BYD MOTORS INC.
TAYLOR MACHINE WORKS, 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:

EVERPORT TERMINAL SERVICES INC., a Delaware corporation, 389 Terminal Way, Terminal Island, California 90731 (hereinafter "Everport");

BYD MOTORS INC., a Wyoming corporation, 1800 S. Figueroa Street, Los Angeles, California 90015 (hereinafter "BYD Motors"); and

TAYLOR MACHINE WORKS, INC., a Mississippi corporation, 3690 North Church Ave., Louisville, Mississippi, 39339 (hereinafter "Taylor Machine Works").

Hereinafter, each firm may be referred to separately and generally as "Subrecipient" while all three firms may be referred to collectively as "Subrecipients".

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") in February 2017 was awarded a grant, in the amount of \$4,524,000 by the California Energy Commission ("CEC") through its Alternative and Renewable Fuel and Vehicle Technology Program for Sustainable Freight Transportation Projects (GFO016-604); and

WHEREAS, to accept the grant award, the Department entered into a Project Grant Agreement with the CEC (CEC Agreement No. ARV-16-026); and

WHEREAS, the grant award will fund the Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project ("Project"), to demonstrate at a Everport's marine terminal three electric yard tractors and two electric top handlers, which will reduce greenhouse gas and diesel particulate matter emissions from the operation of this equipment; and

WHEREAS, Subrecipients will be responsible for undertaking all aspects of the Project pursuant to the terms of this Agreement wherein each Subrecipient will be responsible for a portion of the Project as set forth in this Agreement; and

WHEREAS, the Department will provide administrative oversight and pay a match share amount of \$1,071,428 for electrical infrastructure and act as fiduciary agent

for reimbursement to Subrecipients for Project expenditures as set forth in this Agreement in an amount not to exceed \$4,524,000;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SUBRECIPIENTS

A. Each Subrecipient shall, to the satisfaction of City and in accordance with all local, state and federal rules and requirements, perform their respective portion of the Project as set forth in Grant Agreement, ARV-16-026, entered into between the CEC and City ("Grant Agreement"), attached hereto as Exhibit A and hereby made a part of this Agreement. Subrecipients and City agree to follow the detailed Schedule of Project Milestones and Disbursement Schedule attached hereto as Exhibit B and hereby made a part of this Agreement.

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

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

D. Each Subrecipient shall be subject to, and perform the Project in accordance with, the terms and conditions set forth in the Grant Agreement (including but not limited to the following sections in Exhibit C; Section 9, *Contracting and Procurement Procedures*; Section 23, *Certifications and Compliance*; and Section 27 *Payment of Prevailing Wages*) and with the terms and conditions set forth in this Agreement. Obligations under this Agreement, whether undertaken by a Subrecipient or its subconsultants, are and shall be the responsibility of that Subrecipient. Each 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 each respective Subrecipient alone. Upon Executive Director's written request, a Subrecipient shall supply the Department with all agreements between it and its subconsultants.

II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish any Subrecipient, upon its request, all documents and papers in possession of City which may lawfully be supplied to Subrecipients and which are necessary for a Subrecipient to perform its respective 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 each Subrecipient and the acceptable completion of this Agreement, the Grant 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. Subrecipients are 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 is no longer available for any reason. City shall provide written notice to Subrecipients and the amount of reimbursement available and due to each Subrecipient shall be determined by the CEC and the terms of the Grant Agreement. Each Subrecipient shall remain responsible for complying with their respective 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 Subrecipients ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Each Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and the Grant Agreement as of the date the ten days notice period ends. City shall determine the amount of reimbursement due to each Subrecipient, which shall be determined in accordance with the Grant Agreement. Each Subrecipient shall remain responsible for complying with their respective reporting and recordkeeping requirements; or
4. In the event that any Subrecipient, in its sole discretion, terminates and cancels all or any part of this Agreement for any reason upon giving to City and the other Subrecipients ten (10) days' notice in writing of its election to cancel and terminate this Agreement, the Agreement shall be terminated with respect to that Subrecipient. City and remaining Subrecipients shall meet and confer on whether and to what extent the Project may continue without the terminating Subrecipient's participation. The terminating Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with the Grant

Agreement, which amount shall be determined by the CEC. Each Subrecipient shall remain responsible for complying with their respective reporting and recordkeeping requirements.

IV. REIMBURSEMENT AND PAYMENT

A. As reimbursement for the Project as set forth in the Grant Agreement and as required by this Agreement, City shall reimburse Subrecipients in the amounts set forth in Exhibit B. Subrecipients agree that timing requirements of the Project may obligate some Subrecipients to make expenditures for the Project prior to reimbursement by City. The parties also acknowledge and agree that the City shall not be obligated to reimburse any Subrecipient for expenditures made for the Project unless and until payment has been authorized, approved and all funds (minus retention amounts held by the CEC) are released by the CEC to the City pursuant to the Grant Agreement. The parties agree that CEC shall be authorized to withhold a certain amount from the full payment amount in retention pursuant to the terms of the Grant Agreement.

B. The maximum amount to be reimbursed to all Subrecipients pursuant to this Agreement and the Grant Agreement shall be Four Million Five Hundred Twenty Four Thousand Dollars (\$4,524,000), which payments shall be made in a maximum payable amount to BYD Motors for Eight Hundred Seventy Thousand Dollars (\$870,000) and to Taylor Machine Works for Three Million Six Hundred Fifty Four Thousand Dollars (\$3,654,000).

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

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

(Subrecipient's Signature)

D. Subrecipients 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.

Subrecipients shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and a Subrecipient shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement or as may be requested by the CEC. All invoices are subject to audit.

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

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

V. EMISSION REDUCTION CREDITS

Any emissions reduction credits generated by the work performed pursuant to this Agreement cannot be used or claimed by any Subrecipient for any purpose.

VI. RECORDKEEPING AND AUDIT RIGHTS

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

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

reasonable facilities and assistance for such review and audit. A 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

Subrecipients, in the performance of the work required by this Agreement, are independent contractors and not agents or employees of City. No Subrecipient shall represent itself as an agent or employee of the City and no Subrecipient shall have power to bind the City in contract or otherwise.

VIII. BUSINESS TAX REGISTRATION CERTIFICATE

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

IX. INDEMNIFICATION

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

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section IX, Everport acknowledges and agrees that for the

purpose of its insurance coverage under this Agreement, the insurance terms and conditions under Everport's Permit No. 888 with the Department, including any subsequent amendments and successive agreements or permits, shall in all cases apply to this Agreement.

B. BYD Motors and Taylor Machine Works Insurance Coverage

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article IX, BYD Motors and Taylor Machine Works shall each 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 each Subrecipient's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of a Subrecipient. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of the Subrecipient's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(2) Automobile Liability Insurance

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

(3) Workers' Compensation

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

C. Insurance Procured by Subrecipients on Behalf of City

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

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

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

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

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

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

D. Required Features of Coverages

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

(1) Acceptable Evidence and Approval of Insurance

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

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

(2) Carrier Requirements

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

(3) Notice of Cancellation

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

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or

decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Subrecipients.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, each 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 a Subrecipient neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due to the Subrecipient.

(6) Limits of Coverage

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

E. Right to Self-Insure

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

1. Subrecipient has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Subrecipient must have a formal resolution of its board of directors authorizing self-insurance.
2. Subrecipient agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Subrecipient agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Subrecipient agrees that any insurance carried by Department is excess of Subrecipient's self-insurance and will not contribute to it.

5. Subrecipient provides the name and address of its claims administrator.
6. Subrecipient submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Subrecipient agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Subrecipient has complied with all laws pertaining to self-insurance.

F. Accident Reports

Each 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 Everport's premises, or elsewhere within the Port of Los Angeles if a Subrecipient's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to the reporting Subrecipient, its officers or managing agents.

XI. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the each 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, each Subrecipient agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the Project, this Agreement or the CEC Agreement.

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

XIII. AFFIRMATIVE ACTION

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

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

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Each Subrecipient shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit E.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Each 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, each Subrecipient and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

XV. CONFLICT OF INTEREST

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

During the term of this Agreement, each Subrecipient shall inform the Department in writing when said Subrecipient, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by a Subrecipient to the Department within thirty (30) days of the employment or hiring of the individual.

XVI. COMPLIANCE WITH APPLICABLE LAWS

Each 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

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

XIX. PROPRIETARY INFORMATION

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

XX. CONFIDENTIALITY

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

XXI. NOTICES

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

XXII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Each 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. Each 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

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

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

XXV. EQUAL BENEFITS POLICY

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

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

Each Subrecipient, all subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, each 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.

Each Subrecipient, their respective subconsultants, and their respective 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. Each 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, together with the exhibits hereto, contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. In the event of a conflict or inconsistency between the terms in this Agreement and the Grant Agreement, the terms in the Grant Agreement shall control.

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.

XXXVI. COUNTERPARTS

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

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

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

EVERPORT TERMINAL SERVICES INC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

BYD MOTORS INC.

Dated: September 19, 2017

By  _____

Rebecca Schenker, Director of Strategy
(Print/type name and title)

Attest  _____

Dianne Lee, Executive Assistant
(Print/type name and title)

Signatures continue on next page.

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

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

EVERPORT TERMINAL SERVICES INC.

Dated: 9/20/17

By _____
George Long
George Long, President
(Print/type name and title)

Attest _____
Ron Neal VP/Gen
Ron Neal VP/Gen
(Print/type name and title)

BYD MOTORS INC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

Signatures continue on next page.

TAYLOR MACHINE WORKS, INC.

Dated: 9-20-17

By Pete Reynolds
Pete Reynolds CFO
(Print/type name and title)

Attest Richard P. Ballard
Richard P. Ballard Secretary
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

October 3, 2017
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By Heather M. McCloskey
Heather M. McCloskey, Deputy

Account #	21982	W.O. #	78220
Ctr/Div #	7000	Job Fac. #	637-00
Proj/Prog #	000		
Budget FY:		Amount:	
	2017/18		\$0
	2018/19		\$4,071,600
	2019/20		\$0
	2020/21		\$452,400
	TOTAL		\$4,524,000

For Acct/Budget Div. Use Only: 9/26/17

Verified by: Julie Yano

Verified Funds Available: Funds

Date Approved: 9/26/17

Exhibit A

CEC GRANT AGREEMENT



RECIPIENT City of Los Angeles Harbor Department	AGREEMENT NUMBER ARV-16-026
ADDRESS 425 S. Palos Verdes Street San Pedro, CA 90731	AGREEMENT TERM 6/15/2017 to 12/31/2020 The effective date of this Agreement is either the start date or the approval date by the California Energy Commission, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION:
 The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Scope of Work	Page(s): <u>15</u>
Exhibit A – Attachments	Page(s): <u>2</u>
Exhibit B – Budget	Page(s): <u>32</u>
Exhibit B – Attachments	Page(s): <u>0</u>
Exhibit C – General Terms and Conditions	Page(s): <u>25</u>
Exhibit C – Attachments	Page(s): <u>0</u>
Exhibit D - Contacts	Page(s): <u>1</u>

REIMBURSABLE AMOUNT \$ 4,524,000
MATCH SHARE \$ 2,238,331
TOTAL \$ 6,762,331

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
NAME Rachel L. Grant Kiley		NAME	
TITLE Contracts, Grants and Loans Office Manager		TITLE	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 18, Sacramento, CA 95814			

EXHIBIT A Scope of Work

TECHNICAL TASK LIST

Task #	CPR	Task Name
1		Administration
2	X	Plan, Design, Build and Demonstrate Five Advanced Cargo Handling Equipment, Including Zero-Emission Top Handlers and Yard Tractors
3	X	Plan, Design and Construct Charging Infrastructure
4		Data Collection and Analysis

KEY NAME LIST

Task #	Key Personnel	Key Subcontractor(s)	Key Partner(s)
1	Carter Atkins (POLA)		
2	Carter Atkins (POLA) Ron Neal (Everport)	Everport Terminal Services Taylor Machine Works, Inc. BYD Motors, Inc.	
3	Carter Atkins (POLA) Vahik Haddadian (POLA)	TBD	
4	Carter Atkins (POLA)	Everport Terminal Services	

GLOSSARY

Specific terms and acronyms used throughout this scope of work are defined as follows:

Term/ Acronym	Definition
ARFVTP	Alternative and Renewable Fuel and Vehicle Technology Program
ASCS	Automatic SmartCharging System
BOM	Bill of Materials
CAM	Commission Agreement Manager
CHE	Cargo handling equipment
CO2	Carbon Dioxide

CPR	Critical Project Review
DAC	Disadvantaged Communities
EV	Electric Vehicle
FTD	Fuels and Transportation Division
GGRF	Greenhouse Gas Reduction Fund
GHG	Greenhouse Gases
MHD	Medium- and Heavy-Duty
NOx	Oxides of Nitrogen
PM10	Particulate Matter less than 10 microns
POLA	Port of Los Angeles
POLA Project	The Port of Los Angeles Everport Advanced Cargo Handling Demonstration Project
Recipient	City of Los Angeles Harbor Department or Port of Los Angeles or the Port

BACKGROUND

Assembly Bill (AB) 118 (Núñez, Chapter 750, Statutes of 2007), created the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). The statute authorizes the California Energy Commission (Energy Commission) to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change, clean air, and alternative energy policies. AB 8 (Perea, Chapter 401, Statutes of 2013) re-authorizes the ARFVTP through January 1, 2024. The ARFVTP has an annual budget of approximately \$100 million and provides financial support for projects that:

- Reduce California's use and dependence on petroleum transportation fuels and increase the use of alternative and renewable fuels and advanced vehicle technologies.
- Produce sustainable alternative and renewable low-carbon fuels in California.
- Expand alternative fueling infrastructure and fueling stations.
- Improve the efficiency, performance and market viability of alternative light-, medium-, and heavy-duty vehicle technologies.
- Retrofit medium- and heavy-duty on-road and non-road vehicle fleets to alternative technologies or fuel use.

- Expand the alternative fueling infrastructure available to existing fleets, public transit, and transportation corridors.
- Establish workforce training programs and conduct public outreach on the benefits of alternative transportation fuels and vehicle technologies.

The Energy Commission issued Solicitation GFO-16-604 entitled "Sustainable Freight Transportation Projects" under the ARFVTP on November 29, 2016. This competitive grant solicitation was an offer to cost share the development of medium-and heavy-duty (MHD) advanced technology vehicle demonstrations. To be eligible for funding under GFO-16-604, the projects must also be consistent with the Energy Commission's ARFVTP Investment Plan as updated annually. In response to GFO-16-604, the Recipient submitted Application #06 which was proposed for funding in the Energy Commission's Notice of Proposed Awards on February 22, 2017. GFO-16-604 and Recipient's Application are hereby incorporated by reference into this Agreement in their entirety.

In the event of any conflict or inconsistency between the terms of the Solicitation and the terms of the Recipient's Application, the Solicitation shall control. In the event of any conflict or inconsistency between the Recipient's Application and the terms of the Energy Commission's Award, the Energy Commission's Award shall control. Similarly, in the event of any conflict or inconsistency between the terms of this Agreement and the Recipient's Application, the terms of this Agreement shall control.

Problem Statement:

The Port of Los Angeles (POLA) experiences high greenhouse gas (GHG) and criteria pollutant emissions from on- and off-road vehicles that operate in and around the port. In addition to the use of conventional diesel-fueled internal combustion engines in medium and heavy-duty (MHD) vehicles and equipment that move goods, the increasing volume of goods moving through the Port, the emergence of larger ships, and the evolving supply chain management practices of end-customers have increased the demands and pressure placed on the port complex. Local communities are negatively impacted by air quality impacts of conventional propulsion systems. The Port equipment and vehicles operate adjacent to disadvantaged communities that experience a majority of the adverse environmental impacts from port operations. A secondary problem addressed by this project is the large amount of petroleum fuel consumption required to operate port equipment.

The proposed Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project addresses these problems by applying advanced battery-electric technology in MHD equipment to eliminate petroleum consumption and exhaust emissions. Specifically, the project will demonstrate 2 battery-electric top handlers and 3 next generation electric yard tractors and associated charging infrastructure. As an additional component of the project, the Port of Los Angeles will demonstrate a SmartCharging system which is an automatic vehicle charging system that would automatically connect to, and disconnect from, electric battery-powered yard tractors, eliminating the need for manual connections. The proposed demonstration of zero-emission cargo handling

equipment (CHE) will provide a critical link in a zero emissions goods movement pathway that does not rely on automated transport vehicles (i.e., driverless equipment), preserving important port jobs while maximizing air quality improvement.

Goal of the Agreement

The goal of this project is to enhance market acceptance of advanced vehicle technology in top handler and yard tractor cargo handling equipment applications by means of the successful demonstration of advanced battery-electric technology in 2 top handlers and 3 next generation yard tractors using the Port's Automated SmartCharging System concept. These technologies will be used in equipment that transports freight in the Port of Los Angeles at the Everport Terminal. A comprehensive 12-month demonstration will be conducted to collect and analyze real-world operating data to assess effectiveness and lifecycle cost of the technologies in freight transportation applications. This data will document operation costs as well as project benefits including GHG and criteria pollutant emission reductions and reduced petroleum use. These improvements are expected to provide a direct benefit to the local disadvantaged communities surrounding the Port.

Objectives of the Agreement

The objectives of this Agreement are to support accelerated market acceptance of zero emission technology while achieving measurable reductions in port cargo handling equipment petroleum consumption and emissions in accordance with the broader objectives of reducing port impacts on local disadvantaged communities (DACs) and the Alternative and Renewable Fuels and Vehicle Technology Program. Specific measurable objectives are:

- Design and build 5 zero-emission cargo handling equipment (2 top handlers and 3 yard tractors) for field demonstration in order to verify operational performance and to collect in-use performance data.
- Design and build charging infrastructure to support the zero-emission top handler daily power requirements.
- Design and build an Automatic SmartCharger System, which is an automatic vehicle charging system that would automatically connect to, and disconnect from, electric battery-powered yard tractors, eliminating the need for manual connections.
- Document significant reduction in GHG and criteria pollutant emissions compared with conventional diesel cargo handling equipment performing similar work at the terminal.
- Document energy cost savings and the reduction in petroleum fuel consumption, compared to cost and fuel used in comparable diesel powered equipment in operation at the terminal.

TASK 1 ADMINISTRATION

Task 1.1 Attend Kick-off Meeting

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement. The Commission Agreement Manager (CAM) shall designate the date and location of this meeting and provide an agenda to the Recipient prior to the meeting.

The Recipient shall:

- Attend a "Kick-Off" meeting with the CAM, the Commission Agreement Officer (CAO), and a representative of the Energy Commission Accounting Office. The Recipient shall bring their Project Manager, Agreement Administrator, Accounting Officer, and any others determined necessary by the Recipient or specifically requested by the CAM to this meeting.
- Discuss the following administrative and technical aspects of this Agreement:
 - Agreement Terms and Conditions
 - Critical Project Review (Task 1.2)
 - Match fund documentation (Task 1.6) No reimbursable work may be done until this documentation is in place.
 - Permit documentation (Task 1.7)
 - Subcontracts needed to carry out project (Task 1.8)
 - The CAM's expectations for accomplishing tasks described in the Scope of Work
 - An updated Schedule of Products and Due Dates
 - Monthly Progress Reports (Task 1.4)
 - Technical Products (Product Guidelines located in Section 5 of the Terms and Conditions)
 - Final Report (Task 1.5)

Recipient Products:

- Updated Schedule of Products
- Updated List of Match Funds
- Updated List of Permits

Commission Agreement Manager Product:

- Kick-Off Meeting Agenda

Task 1.2 Critical Project Review (CPR) Meetings

CPRs provide the opportunity for frank discussions between the Energy Commission and the Recipient. The goal of this task is to determine if the project should continue to receive Energy Commission funding to complete this Agreement and to identify any needed modifications to the tasks, products, schedule or budget.

The CAM may schedule CPR meetings as necessary, and meeting costs will be borne by the Recipient.

Meeting participants include the CAM and the Recipient and may include the Commission Agreement Officer, the Fuels and Transportation Division (FTD) program lead, other Energy Commission staff and Management as well as other individuals selected by the CAM to provide support to the Energy Commission.

The CAM shall:

- Determine the location, date, and time of each CPR meeting with the Recipient. These meetings generally take place at the Energy Commission, but they may take place at another location.
- Send the Recipient the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.
- Conduct and make a record of each CPR meeting. Prepare a schedule for providing the written determination described below.
- Determine whether to continue the project, and if continuing, whether or not modifications are needed to the tasks, schedule, products, and/or budget for the remainder of the Agreement. Modifications to the Agreement may require a formal amendment (please see section 8 of the Terms and Conditions). If the CAM concludes that satisfactory progress is not being made, this conclusion will be referred to the Lead Commissioner for Transportation for his or her concurrence.
- Provide the Recipient with a written determination in accordance with the schedule. The written response may include a requirement for the Recipient to revise one or more product(s) that were included in the CPR.

The Recipient shall:

- Prepare a CPR Report for each CPR that discusses the progress of the Agreement toward achieving its goals and objectives. This report shall include recommendations and conclusions regarding continued work of the projects. This report shall be submitted along with any other products identified in this scope of work. The Recipient shall submit these documents to the CAM and any other designated reviewers at least 15 working days in advance of each CPR meeting.
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

CAM Products:

- Agenda and a list of expected participants
- Schedule for written determination
- Written determination

Recipient Product:

- CPR Report(s)

Task 1.3 Final Meeting

The goal of this task is to closeout this Agreement.

The Recipient shall:

- Meet with Energy Commission staff to present the findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement.

This meeting will be attended by, at a minimum, the Recipient, the Commission Agreement Officer, and the Commission Agreement Manager. The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be 2 separate meetings at the discretion of the Commission Agreement Manager.

The technical portion of the meeting shall present an assessment of the degree to which project and task goals and objectives were achieved, findings, conclusions, recommended next steps (if any) for the Agreement, and recommendations for improvements. The Commission Agreement Manager will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the Commission Agreement Manager and the Commission Agreement Officer about the following Agreement closeout items:

- What to do with any equipment purchased with Energy Commission funds (Options)
- Energy Commission's request for specific "generated" data (not already provided in Agreement products)
- Need to document Recipient's disclosure of "subject inventions" developed under the Agreement
- "Surviving" Agreement provisions
- Final invoicing and release of retention
- Prepare a schedule for completing the closeout activities for this Agreement.

Products:

- Written documentation of meeting agreements
- Schedule for completing closeout activities

Task 1.4 Monthly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget.

The objectives of this task are to summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, and to form the basis for determining whether invoices are consistent with work performed.

The Recipient shall:

- Prepare a Monthly Progress Report which summarizes all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Agreement Manager within 10 days of the end of the reporting period. The recommended specifications for each progress report are contained in Section 6 of the Terms and Conditions of this Agreement.
- In the first Monthly Progress Report and first invoice, document and verify match expenditures and provide a synopsis of project progress, if match funds have been expended or if work funded with match share has occurred after the notice of proposed award but before execution of the grant agreement. If no match funds have been expended or if no work funded with match share has occurred before execution, then state this in the report. All pre-execution match expenditures must conform to the requirements in the Terms and Conditions of this Agreement.

Product:

- Monthly Progress Reports

Task 1.5 Final Report

The goal of the Final Report is to assess the project's success in achieving the Agreement's goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

The objectives of the Final Report are to clearly and completely describe the project's purpose, approach, activities performed, results, and advancements in science and technology; to present a public assessment of the success of the project as measured by the degree to which goals and objectives were achieved; to make insightful observations based on results obtained; to draw conclusions; and to make recommendations for further projects and improvements to the FTD project management processes.

The Final Report shall be a public document. If the Recipient has obtained confidential status from the Energy Commission and will be preparing a confidential version of the Final Report as well, the Recipient shall perform the following activities for both the public and confidential versions of the Final Report.

The Recipient shall:

- Prepare an Outline of the Final Report, if requested by the CAM.
- Prepare a Final Report following the latest version of the Final Report guidelines which will be provided by the CAM. The CAM shall provide written comments on the Draft Final Report within fifteen (15) working days of receipt. The Final Report must be completed at least 60 days before the end of the Agreement Term.
- Submit one bound copy of the Final Report with the final invoice.

Products:

- Outline of the Final Report, if requested
- Draft Final Report
- Final Report

Task 1.6 Identify and Obtain Matching Funds

The goal of this task is to ensure that the match funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

The costs to obtain and document match fund commitments are not reimbursable through this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient may utilize match funds for this task. Match funds shall be spent concurrently or in advance of Energy Commission funds for each task during the term of this Agreement. Match funds must be identified in writing and the associated commitments obtained before the Recipient can incur any costs for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a letter documenting the match funding committed to this Agreement and submit it to the Commission Agreement Manager at least 2 working days prior to the kick-off meeting. If no match funds were part of the proposal that led to the Energy Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state such in the letter. If match funds were a part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter a list of the match funds that identifies the:
 - Amount of each cash match fund, its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied.
 - Amount of each in-kind contribution, a description, documented market or book value, and its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.
- Provide a copy of the letter of commitment from an authorized representative of each source of cash match funding or in-kind contributions that these funds or contributions have been secured. For match funds provided by a grant a copy of the executed grant shall be submitted in place of a letter of commitment.
- Discuss match funds and the implications to the Agreement if they are reduced or not obtained as committed, at the kick-off meeting. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide the appropriate information to the Commission Agreement Manager if during the course of the Agreement additional match funds are received.
- Notify the Commission Agreement Manager within 10 days if during the course of the Agreement existing match funds are reduced. Reduction in match funds must be approved through a formal amendment to the Agreement and may trigger an additional CPR meeting.

Products:

- A letter regarding match funds or stating that no match funds are provided
- Copy(ies) of each match fund commitment letter(s) (if applicable)
- Letter(s) for new match funds (if applicable)

- Letter that match funds were reduced (if applicable)

Task 1.7 Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient shall budget match funds for any expected expenditures associated with obtaining permits. Permits must be identified in writing and obtained before the Recipient can make any expenditure for which a permit is required.

The Recipient shall:

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the Commission Agreement Manager at least 2 working days prior to the kick-off meeting. If there are no permits required at the start of this Agreement, then state such in the letter. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
 - A list of the permits that identifies the:
 - Type of permit
 - Name, address and telephone number of the permitting jurisdictions or lead agencies
 - The schedule the Recipient will follow in applying for and obtaining these permits.
- Discuss the list of permits and the schedule for obtaining them at the kick-off meeting and develop a timetable for submitting the updated list, schedule and the copies of the permits. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the Progress Reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, provide the appropriate information on each permit and an updated schedule to the Commission Agreement Manager.
- As permits are obtained, send a copy of each approved permit to the Commission Agreement Manager.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the Commission Agreement Manager within 5 working days. Either of these events may trigger an additional CPR.

Products:

- Letter documenting the permits or stating that no permits are required

- A copy of each approved permit (if applicable)
- Updated list of permits as they change during the term of the Agreement (if applicable)
- Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)
- A copy of each final approved permit (if applicable)

Task 1.8 Obtain and Execute Subcontracts

The goal of this task is to ensure quality products and to procure subcontractors required to carry out the tasks under this Agreement consistent with the Agreement Terms and Conditions and the Recipient's own procurement policies and procedures. It will also provide the Energy Commission an opportunity to review the subcontracts to ensure that the tasks are consistent with this Agreement, and that the budgeted expenditures are reasonable and consistent with applicable cost principles.

The Recipient shall:

- Manage and coordinate subcontractor activities.
- Submit a draft of each subcontract required to conduct the work under this Agreement to the Commission Agreement Manager for review.
- Submit a final copy of the executed subcontract.
- If Recipient decides to add new subcontractors, then the Recipient shall notify the CAM.

Products:

- Letter describing the subcontracts needed, or stating that no subcontracts are required
- Draft subcontracts
- Final subcontracts

TECHNICAL TASKS

TASK 2 PLAN, DESIGN, BUILD AND DEMONSTRATE FIVE ADVANCED CARGO HANDLING EQUIPMENT, INCLUDING ZERO-EMISSION TOP HANDLERS AND YARD TRACTORS

The goal of this task is to plan, design, build and demonstrate 2 zero-emission top handlers and 3 zero-emission yard tractors for demonstration at Port of Los Angeles' Evergreen Terminal.

The Recipient shall:

- Review vehicle build specifications and functional requirements.
- Finalize engineering bill of materials (BOM) and order components for

each vehicle.

- Design, fabricate, and build vehicle, components, systems, and subsystems.
- Conduct tests, certifications, quality checks, and validations for vehicle components, systems, subsystems, and safety elements.
- Conduct drivability testing, visual quality assurance, final road or operational test, and pre-delivery test.
- Obtain sign-off authorization to release truck, commission the demonstration vehicles, and deliver vehicles to the demonstrator.
- Prepare and submit to CAM an Equipment Summary Report with photographs as well as a summary of data, information and analysis from the items listed above for each demonstration vehicle.
- Commission the vehicles and conduct in-use technology demonstration activities, for a minimum of 12 months. The length of demonstration can be changed with prior CAM written approval.

Products:

- Equipment Summary Report

[CPR WILL BE HELD IN TASK 2. See Task 1.2 for details]

TASK 3 PLAN, DESIGN AND CONSTRUCT CHARGING INFRASTRUCTURE

The goal of this task is to plan, design and construct charging infrastructure and an Automatic SmartCharger System to power the 2 zero-emission top handlers and 3 zero-emission yard tractors for demonstration at Port of Los Angeles' Everport Terminal.

The Recipient shall:

- Review equipment power requirements and charging specifications for both the top handlers and yard tractors.
- Prepare and provide design calculations, drawings, plans and specifications to advertise the project for procurement of materials, equipment and required labor to install, test and commission the charging systems as per the bid drawings and specifications.
- Complete installation of the charging equipment.
- Conduct safety and operational testing of the charging equipment for final commissioning.
- Prepare and submit to CAM a Construction Summary Report with photographs as well as a summary of data, information and analysis from the items listed above.

Products:

- Construction Summary Report

[CPR WILL BE HELD IN TASK 3. See Task 1.2 for details]

TASK 4 DATA COLLECTION AND ANALYSIS

The goal of this task is to collect operational data from the project, to analyze that data for economic and environmental impacts, and to include the data and analysis in the Final Report.

The Recipient shall:

- Develop data collection test plan.
- Troubleshoot any issues identified.
- Collect 12 months of throughput, usage, and operations data from the project including, but not limited to:
 - Maximum capacity of the new fueling system
 - Gallons of gasoline and/or diesel fuel displaced (with associated mileage information)
 - Expected air emissions reduction, for example:
 - Non-methane hydrocarbons
 - Oxides of nitrogen
 - Non-methane hydrocarbons plus oxides of nitrogen
 - Particulate Matter
 - Formaldehyde
 - Duty cycle of the current fleet and the expected duty cycle of future vehicle acquisitions
 - Specific jobs and economic development resulting from this project
 - Energy cost savings compared to diesel powered equipment in operation at the Port
- Identify any current and planned use of renewable energy at the facility.
- Identify the source of the alternative fuel.
- Describe any energy efficiency measures used in the facility that may exceed Title 24 standards in Part 6 of the California Code Regulations.
- Provide data on potential job creation, economic development, and increased state revenue as a result of expected future expansion.

- Provide a quantified estimate of the project's carbon intensity values for life-cycle greenhouse gas emissions.
- Compare any project performance and expectations provided in the proposal to Energy Commission with actual project performance and accomplishments.
- Collect data, information, and analysis described above and include in the Final Report.

Products:

- Data collection information and analysis will be included in the Final Report

EXHIBIT A-1

Schedule of Products and Due Dates

Task Number	Task Name	Product(s)	Due Date
1.1	Attend Kick-off Meeting	Updated Schedule of Products	6/15/2017
		Updated List of Match Funds	6/15/2017
		Updated List of Permits	6/15/2017
		Kick-Off Meeting Agenda (CEC)	6/15/2017
1.2	Critical Project Review Meetings	1st CPR Meeting CPR Report	12/15/2017
		Written determination (CEC)	12/15/2017
		2nd CPR Meeting CPR Report	1/8/2019
		Written determination (CEC)	1/8/2019
1.3	Final Meeting	Written documentation of meeting agreements	11/15/2019
		Schedule for completing closeout activities	11/15/2019
1.4	Monthly Progress Reports	Monthly Progress Reports	The 10th calendar day of each month during the approved term of this Agreement
1.5	Final Report	Final Outline of the Final Report	2/3/2020
		Draft Final Report (no less than 60 days before the end term of the agreement)	3/10/2020
		Final Report	6/15/2020
1.6	Identify and Obtain Match Funds	A letter regarding match funds or stating that no match funds are provided	7/14/2017
		Copy(ies) of each match fund commitment letter(s) (if applicable)	7/14/2017
		Letter(s) for new match funds (if applicable)	Within 10 days of identifying new match funds
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying reduced funds
1.7	Identify and Obtain Required Permits	Letter documenting the permits or stating that no permits are required	9/15/2017
		A copy of each approved permit (if applicable)	Within 10 days of receiving each permit
		Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
		Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in schedule for obtaining permits

EXHIBIT A-1

1.8	Obtain and Execute Subcontracts Letter describing the subcontracts needed, or stating that no subcontracts are required	9/15/2017
	Draft subcontracts	15 days prior to the scheduled execution date
	Final subcontracts	Within 10 days of execution
2	PLAN, DESIGN, BUILD AND DEMONSTRATE FIVE ADVANCED CARGO HANDLING EQUIPMENT, INCLUDING ZERO-EMISION TOP HANDLERS AND YARD TRACTORS Equipment Summary Report	2/15/2019
3	PLAN, DESIGN AND CONSTRUCT CHARGING INFRASTRUCTURE Construction Summary Report	4/1/2019
4	DATA COLLECTION AND ANALYSIS Data collection information and analysis will be provided in the final report (Task 1.5)	6/15/2020

EXHIBIT B

Category Budget

Name of Organization

BYD Motors, Inc.

Contractor/Recipient

Subcontractor

Small Business

Micro Business

Disabled Veteran Business Enterprise (DVBE)

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ -	\$ 145,896	\$ 145,896
Fringe Benefits	\$ -	\$ 17,508	\$ 17,508
Total Labor	\$ -	\$ 163,403	\$ 163,403
Travel	\$ -	\$ 26,000	\$ 26,000
Equipment	\$ 870,000	\$ -	\$ 870,000
Materials/Miscellaneous	\$ -	\$ -	\$ -
Subcontractors	\$ -	\$ -	\$ -
Total Other Direct Costs	\$ 870,000	\$ 26,000	\$ 896,000
Indirect Costs	\$ -	\$ -	\$ -
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ -	\$ -	\$ -
Grand Totals	\$ 870,000	\$ 189,403	\$ 1,059,403

EXHIBIT B

Direct Labor (Unloaded)

BYD Motors, Inc.

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
Hourly Direct Labor Totals				\$ -	\$ -	\$ -

Monthly Salary Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
Brian Rippie	Director of Sales Forklift Division	\$ 10,833	1	\$ -	\$ 9,750	\$ 9,750
Kris Dong	Project Manager	\$ 4,583	14	\$ -	\$ 61,875	\$ 61,875
Yi Rong Hui	Testing Team Manager	\$ 5,833	2		\$ 11,667	\$ 11,667
TBD	Validation Engineer #1	\$ 4,583	2		\$ 9,167	\$ 9,167
TBD	Validation Engineer #2	\$ 4,583	2		\$ 9,167	\$ 9,167
TBD	Validation Engineer #3	\$ 4,583	2		\$ 9,167	\$ 9,167
Andy Swanton	VP of Truck Sales	\$ 10,833	1	\$ -	\$ 9,750	\$ 9,750
Priyankar Balekai	Director of Product Development	\$ 12,500	0	\$ -	\$ 3,750	\$ 3,750
Luke Zheng	Project Manager	\$ 6,667	2	\$ -	\$ 12,000	\$ 12,000
Jacob Panachaveettill	Testing & Validation Engineer	\$ 8,333	1	\$ -	\$ 5,000	\$ 5,000
Larry Goemann	Customer Support Manager	\$ 7,083	1		\$ 4,604	\$ 4,604
Monthly Direct Labor Totals				\$ -	\$ 145,896	\$ 145,896
				Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals				\$ -	\$ 145,896	\$ 145,896

EXHIBIT B

Fringe Benefits

BYD Motors, Inc.

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
Brian Rippie, Director of Forklift Sales	12.00%	\$ 1,170	\$ -	\$ 1,170	\$ 1,170
Kris Dong, Project Manager	12.00%	\$ 7,425	\$ -	\$ 7,425	\$ 7,425
Yi Rong Hui, Prod. Testing Team Manager	12.00%	\$ 1,400		\$ 1,400	\$ 1,400
TBD , Validation Engineer #1	12.00%	\$ 1,100		\$ 1,100	\$ 1,100
TBD , Validation Engineer #2	12.00%	\$ 1,100		\$ 1,100	\$ 1,100
TBD Validation Enginner #3	12.00%	\$ 1,100		\$ 1,100	\$ 1,100
Andy Swanton, VP of Truck Sales	12.00%	\$ 1,170	\$ -	\$ 1,170	\$ 1,170
Priyankar Balekai, Director of Product Development	12.00%	\$ 450	\$ -	\$ 450	\$ 450
Luke Zheng, Project Manager	12.00%	\$ 1,440	\$ -	\$ 1,440	\$ 1,440
Jacob Panachaveettil, Testing & Validation Engineer	12.00%	\$ 600	\$ -	\$ 600	\$ 600
Larry Goemann, Customer Support Manager	12.00%	\$ 553	\$ -	\$ 553	\$ 553
Fringe Benefit Totals		\$ 17,508	\$ -	\$ 17,508	\$ 17,508

EXHIBIT B

Travel

BYD Motors, Inc.

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
	Brian Rippie, Director of Forklift Sales	Los Angeles - Louisville, MS	Business / Project Discussions	\$ -	\$ 2,000	\$ 2,000
	Kris Dong, Project Manager	Los Angeles - Louisville, MS	Ongoing PM activities and validation prep	\$ -	\$ 2,000	\$ 2,000
	Yi Rong Hui, Prod. Testing Manager	Shenzhen - Louisville - Los Angeles	Site testing at factory and customer location	\$ -	\$ 5,500	\$ 5,500
	TBD , Validation Engineer #1	Shenzhen - Louisville - Los Angeles	Site testing at factory and customer location	\$ -	\$ 5,500	\$ 5,500
	TBD , Validation Engineer #2	Shenzhen - Louisville - Los Angeles	Site testing at factory and customer location	\$ -	\$ 5,500	\$ 5,500
	TBD Validation Enginner #3	Shenzhen - Louisville - Los Angeles	Site testing at factory and customer location	\$ -	\$ 5,500	\$ 5,500
Total:				\$ -	\$ 26,000	\$ 26,000

EXHIBIT B

Equipment

BYD Motors, Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
2	Miscellaneous vehicle development components for drivetrain, powertrain, chassis and battery packs	Equipment needed for development of the zero-emission vehicles being demonstrated at the Port of LA Everport Terminal	Various	Varies	\$ 870,000	\$ -	\$ 870,000
Total:					\$ 870,000	\$ -	\$ 870,000

EXHIBIT B

Materials & Miscellaneous

BYD Motors, Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

EXHIBIT B

Subcontracts

BYD Motors, Inc.

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

EXHIBIT B

Indirect Costs and Profit

BYD Motors, Inc.

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

EXHIBIT B

Category Budget

Name of Organization

Everport Terminal Services

Contractor/Recipient

Subcontractor

Small Business

Micro Business

Disabled Veteran Business Enterprise (DVBE)

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ -	\$ 856,000	\$ 856,000
Fringe Benefits	\$ -	\$ -	\$ -
Total Labor	\$ -	\$ 856,000	\$ 856,000
Travel	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ -	\$ -	\$ -
Subcontractors	\$ -	\$ -	\$ -
Total Other Direct Costs	\$ -	\$ -	\$ -
Indirect Costs	\$ -	\$ -	\$ -
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ -	\$ -	\$ -
Grand Totals	\$ -	\$ 856,000	\$ 856,000

EXHIBIT B

Direct Labor (Unloaded)

Everport Terminal Services

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
Hourly Direct Labor Totals				\$ -	\$ -	\$ -

Monthly Salary Rates

Employee Name	Job Classification / Title	Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
Top Handler Driver #1 (TBD)	Day Top Handler	\$ 20,317.50	4	\$ -	\$ 76,850	\$ 76,850
Top Handler Driver #2 (TBD)	Day Top Handler	\$ 20,317.50	4	\$ -	\$ 76,850	\$ 76,850
Top Handler Driver #3 (TBD)	Night Top Handler	\$ 23,370.50	4	\$ -	\$ 88,397	\$ 88,397
Top Handler Driver #4 (TBD)	Night Top Handler	\$ 23,370.50	4	\$ -	\$ 88,397	\$ 88,397
Top Handler Driver #5 (TBD)	Weekend Top Handler	\$ 9,958.80	4	\$ -	\$ 37,669	\$ 37,669
Top Handler Driver #6 (TBD)	Weekend Top Handler	\$ 9,958.80	4	\$ -	\$ 37,669	\$ 37,669
Yard Tractor Operator #1 (TBD)	Day Yard Tractor Operator	\$ 14,641.50	4	\$ -	\$ 55,381	\$ 55,381
Yard Tractor Operator #2 (TBD)	Day Yard Tractor Operator	\$ 14,641.50	4	\$ -	\$ 55,381	\$ 55,381
Yard Tractor Operator #3 (TBD)	Day Yard Tractor Operator	\$ 14,641.50	4	\$ -	\$ 55,381	\$ 55,381
Yard Tractor Operator #4 (TBD)	Night Yard Tractor Operator	\$ 17,479.50	4	\$ -	\$ 66,115	\$ 66,115
Yard Tractor Operator #5 (TBD)	Night Yard Tractor Operator	\$ 17,479.50	4	\$ -	\$ 66,115	\$ 66,115
Yard Tractor Operator #6 (TBD)	Night Yard Tractor Operator	\$ 17,479.50	4	\$ -	\$ 66,115	\$ 66,115
Yard Tractor Operator #7 (TBD)	Weekend Yard Tractor Operator	\$ 7,550.80	4	\$ -	\$ 28,560	\$ 28,560
Yard Tractor Operator #8 (TBD)	Weekend Yard Tractor Operator	\$ 7,550.80	4	\$ -	\$ 28,560	\$ 28,560
Yard Tractor Operator #9 (TBD)	Weekend Yard Tractor Operator	\$ 7,550.80	4	\$ -	\$ 28,560	\$ 28,560
Monthly Direct Labor Totals				\$ -	\$ 856,000	\$ 856,000
				Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals				\$ -	\$ 856,000	\$ 856,000

EXHIBIT B

Fringe Benefits

Everport Terminal Services

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ -	\$ -	\$ -	\$ -

EXHIBIT B

Equipment

Everport Terminal Services

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				Total:	\$ -	\$ -	\$ -

EXHIBIT B

Materials & Miscellaneous

Everport Terminal Services

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

EXHIBIT B

Subcontracts

Everport Terminal Services

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
				\$	\$	\$
Total:				\$	\$	\$

EXHIBIT B

Indirect Costs and Profit

Everport Terminal Services

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -		\$ -
Total:			\$ -	\$ -	\$ -

EXHIBIT B

Category Budget

Name of Organization

City of Los Angeles Harbor Department

Contractor/Recipient

Subcontractor

Small Business

Micro Business

Disabled Veteran Business Enterprise (DVBE)

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ -	\$ -	\$ -
Fringe Benefits	\$ -	\$ -	\$ -
Total Labor	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ -	\$ -	\$ -
Subcontractors	\$ 4,524,000	\$ 2,238,331	\$ 6,762,331
Total Other Direct Costs	\$ 4,524,000	\$ 2,238,331	\$ 6,762,331
Indirect Costs	\$ -	\$ -	\$ -
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ -	\$ -	\$ -
Grand Totals	\$ 4,524,000	\$ 2,238,331	\$ 6,762,331

EXHIBIT B

Direct Labor (Unloaded)

City of Los Angeles Harbor Department

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
Hourly Direct Labor Totals				\$ -	\$ -	\$ -

Monthly Salary Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
Monthly Direct Labor Totals				\$ -	\$ -	\$ -

	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals	\$ -	\$ -	\$ -

EXHIBIT B

Fringe Benefits

City of Los Angeles Harbor Department

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ -	\$ -	\$ -	\$ -

EXHIBIT B

Travel

City of Los Angeles Harbor Department

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

EXHIBIT B

Equipment

City of Los Angeles Harbor Department

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
					\$		\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
Total:					\$	\$	\$

EXHIBIT B

Materials & Miscellaneous

City of Los Angeles Harbor Department

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				\$	\$	\$	\$
				Total:	\$	\$	\$

EXHIBIT B

Subcontracts

City of Los Angeles Harbor Department

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
1, 2	Taylor Machine Works, Inc.	Plan, Design and Build two (2) zero-emission Taylor Top Handlers and Administration		\$ 3,654,000	\$ 121,500	\$ 3,775,500
1, 2	BYD Motors, Inc.	Plan, Design and Build three (3) zero-emission Yard Tractors and Administration		\$ 870,000	\$ 189,403	\$ 1,059,403
3	TBD	Plan, Design and Construct Charging Infrastructure		\$ -	\$ 1,071,428	\$ 1,071,428
4	Everport Terminal Services	Equipment Demonstration Data Collection and Analysis		\$ -	\$ 856,000	\$ 856,000
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total:				\$ 4,524,000	\$ 2,238,331	\$ 6,762,331

EXHIBIT B

Indirect Costs and Profit

City of Los Angeles Harbor Department

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

EXHIBIT B

Category Budget

Name of Organization

Taylor Machine Works, Inc.

Contractor/Recipient

Subcontractor

Small Business

Micro Business

Disabled Veteran Business Enterprise (DVBE)

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ -	\$ 76,000	\$ 76,000
Fringe Benefits	\$ -	\$ -	\$ -
Total Labor	\$ -	\$ 76,000	\$ 76,000
Travel	\$ -	\$ 45,500	\$ 45,500
Equipment	\$ 3,654,000	\$ -	\$ 3,654,000
Materials/Miscellaneous	\$ -	\$ -	\$ -
Subcontractors	\$ -	\$ -	\$ -
Total Other Direct Costs	\$ 3,654,000	\$ 45,500	\$ 3,699,500
Indirect Costs	\$ -	\$ -	\$ -
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ -	\$ -	\$ -
Grand Totals	\$ 3,654,000	\$ 121,500	\$ 3,775,500

EXHIBIT B

Direct Labor (Unloaded)

Taylor Machine Works, Inc.

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
Hal Nowell	General Sales Manager	\$ 60.00	120	\$ -	\$ 7,200	\$ 7,200
David Gully	Regional Sales Manager	\$ 40.00	200	\$ -	\$ 8,000	\$ 8,000
Matt Hillyer	Director of Engineering	\$ 60.00	200	\$ -	\$ 12,000	\$ 12,000
Ricky Patterson	Chief Engineer	\$ 60.00	200	\$ -	\$ 12,000	\$ 12,000
Rob Fulton	Engineering Group Leader	\$ 40.00	360	\$ -	\$ 14,400	\$ 14,400
Zach Duncan	Project Engineer	\$ 40.00	360	\$ -	\$ 14,400	\$ 14,400
Service Technician	Service Technician	\$ 40.00	200	\$ -	\$ 8,000	\$ 8,000
Hourly Direct Labor Totals				\$ -	\$ 76,000	\$ 76,000

Monthly Salary Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
Monthly Direct Labor Totals				\$ -	\$ -	\$ -

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals				\$ -	\$ 76,000	\$ 76,000

EXHIBIT B

Fringe Benefits

Taylor Machine Works, Inc.

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ -	\$ -	\$ -	\$ -

EXHIBIT B

Travel

Taylor Machine Works, Inc.

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
1	Hal Nowell	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 3,500	\$ 3,500
1	David Gully	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 7,000	\$ 7,000
2	David Gully	Louisville, MS to Los Angeles, CA	Re-Visit, Customer Assurance, Monitoring and Modifications	\$ -	\$ 1,750	\$ 1,750
1	Matt Hillyer	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 3,500	\$ 3,500
2	Matt Hillyer	Louisville, MS to Los Angeles, CA	Re-Visit, Customer Assurance, Monitoring and Modifications	\$ -	\$ 1,750	\$ 1,750
1	Ricky Patterson	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 3,500	\$ 3,500
1	Rob Fulton	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 7,000	\$ 7,000
2	Rob Fulton	Louisville, MS to Los Angeles, CA	Re-Visit, Customer Assurance, Monitoring and Modifications	\$ -	\$ 1,750	\$ 1,750
1	Zach Duncan	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 7,000	\$ 7,000
1	SSI Service Technician	Louisville, MS to Los Angeles, CA	Initial Units Setup, Validation, Customer Approval	\$ -	\$ 7,000	\$ 7,000
2	SSI Service Technician	Louisville, MS to Los Angeles, CA	Re-Visit, Customer Assurance, Monitoring and Modifications	\$ -	\$ 1,750	\$ 1,750
Total:				\$ -	\$ 45,500	\$ 45,500

EXHIBIT B

Equipment

Taylor Machine Works, Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
2	Miscellaneous vehicle development components for drivetrain, powertrain, chassis and battery packs	Build 2 top handlers for demonstration at the Port of LA Everport Terminal	Varies	Varies	\$ 3,654,000	\$ -	\$ 3,654,000
Total:					\$ 3,654,000	\$ -	\$ 3,654,000

EXHIBIT B

Materials & Miscellaneous

Taylor Machine Works, Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

EXHIBIT B

Subcontracts

Taylor Machine Works, Inc.

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

EXHIBIT B

Indirect Costs and Profit

Taylor Machine Works, Inc.

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
	0.00%		\$ -	\$ -	\$ -	\$ -
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

EXHIBIT C

ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY PROGRAM (ARFVTP) TERMS AND CONDITIONS

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TERMS AND CONDITIONS

1. **Grant Agreement**

This project is being funded with a grant from the California Energy Commission's (Energy Commission) Alternative and Renewable Fuel and Vehicle Technology Program.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Energy Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The Recipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Energy Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

The term of this Agreement or the Agreement Period is the length of this Agreement between the Energy Commission and the Recipient. Project means Recipient's specific project that is funded in whole or in part by this Agreement. The Recipient's project may coincide with or extend outside the Agreement Period.

All reimbursable work and/or the expenditure of funds must occur within the approved term of this Agreement. The Energy Commission cannot authorize any payments until all parties sign this Agreement.

2. **Documents Incorporated by Reference**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (f). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if applicable)

- a. The funding solicitation under which this Agreement was awarded.
- b. The Recipient's proposal submitted in response to the solicitation

Federal Cost Principles (applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)

- c. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (applicable to commercial organizations)

- d. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- e. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- f. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. *Funding Limitations*

Any federal, State, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

4. *Due Diligence*

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Energy Commission Agreement Manager (CAM) will periodically evaluate the Schedule of Products and Due Dates for completion of the Statement of Work tasks. If the CAM determines (1) the Recipient is not being diligent in completing the tasks in the Statement of Work or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the CAM may recommend that this Agreement be terminated, and the Agreement may, without prejudice to any of the Energy Commission's remedies, be terminated.

5. *Products*

Products are defined as any tangible item specified in the Statement of Work. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the CAM for review and comment. The Recipient will submit an original and two copies of the final version of all products to the CAM.

6. *Reports*

- a. Progress Reports

The Recipient shall submit progress reports to the CAM as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

Work Statement: This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each, including a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section should include a narrative report comparing costs incurred to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

Additional Information: Additional information may be required in the progress reports as specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the CAM no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant Recipient. Include the name, address, concise statement of work done, period, and value of each.
- Additional information specified in the Work Statement or Special Conditions.

The CAM will review the draft report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the CAM.

Upon receipt of the final report, the CAM shall ensure that all work has been satisfactorily completed.

c. Rights in Reports

The Energy Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Energy Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this Agreement will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

7. Publications - Legal Statement on Reports and Products

You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such products or reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

8. Changes to the Agreement

a. **Significant Changes**

Significant changes to this Agreement must be approved by the Energy Commission through a formal amendment. Significant changes include, but are not limited to:

- Change of Recipient's legal name,
- Change of Recipient,
- Changes in order to disencumber funds,
- Changes to the Work Statement that reasonably modify the purpose of the Agreement,
- Changes to the Schedule of Products that extend the due dates beyond the term of the Agreement,
- Changes to the Budget that increase the amount of the Agreement,

- Changes to the Budget that increase rates or fees.

The Recipient shall submit a request in writing to the CAM with a copy to the Energy Commission Grants and Loans Officer for any significant change. The CAM will notify the Recipient Project Manager of the appropriate Energy Commission action within ten (10) working days.

b. Nonsignificant Changes

Changes that are not significant to the Agreement do not need to be approved at a Energy Commission business meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

c. Schedule of Products and Due Dates

If the Schedule of Products and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement without a formal amendment. Recipient shall work with the CAM to agree on the new product due dates. The CAM will issue the revised Schedule of Products and Due Dates to the Recipient and the Grants and Loans Office.

d. Budget Reallocations

- (1) The Energy Commission, through its CAM and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- (a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$150,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

For example, if under an agreement the Energy Commission agrees to pay a recipient \$100,000 and the recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds could be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a recipient \$2,000,000, ten percent would be \$200,000, but the cap is \$150,000, so the most that could be reallocated without a formal amendment is \$150,000.

- (b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:
- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
- (c) The budget reallocation only involves moving funds between tasks. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
- (d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.
- (2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the CAM and the Grants and Loans Officer. Both the CAM and the Grants and Loans Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the CAM and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the CAM shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.
- (3) Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment.
- (4) Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

e. Amendments

This Agreement may be amended to make changes, including without limitation, additional funds, additional time, additional or modified tasks, and additional or modified terms.

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a third party ("subcontractor").

All subcontracts must be submitted to the CAM for review prior to execution, pursuant to the administrative task. For subcontracts that are listed as "to be determined" in the budget, the Recipient must submit the subcontractor's budget information to the CAM, using the budget forms provided, and have an executed subcontract, before the subcontractor can incur any costs for which the Recipient will seek reimbursement.

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

The Energy Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement.

Upon request, the Recipient must submit to the CAM a copy of all solicitations for services or products required to carry out the terms of this Agreement and copies of the proposals or bids received. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the CAM is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- The Standard of Performance provisions specified in this Agreement.

- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Public Work -- Payment of Prevailing Wages Generally Required by Law provisions in this Agreement

Recipients who are subcontracting with University of California (UC) may use the terms and conditions negotiated by the Energy Commission with UC for their subcontracts. Recipients who are subcontracting with the Department of Energy (DOE) national laboratories may use the terms and conditions negotiated with DOE.

Failure to comply with the above requirements may result in the termination of this Agreement.

10. Bonding and Insurance

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations.

11. Permits and Clearances

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

12. Equipment

Equipment is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without CAM approval. When no longer needed for the original project or program, the Recipient shall contact the CAM for disposition instructions.

13. Termination

This project may be terminated for any reason set forth below.

a. **With Cause**

In the event of any breach by the Recipient of the conditions set forth in this Agreement, this Agreement may be terminated for cause upon five (5) days written notice to the Recipient, without prejudice to any of the Energy Commission's legal remedies.

b. **Without Cause**

This Agreement may, at the Energy Commission's option, be terminated without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Energy Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

14. Stop Work

The Energy Commission Grants Officer may, at any time, by written notice to Recipient, require Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- a. **Compliance.** Upon receipt of such stop work order, Recipient shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- b. **Equitable Adjustment.** An equitable adjustment shall be made by Energy Commission based upon a written request by Recipient. Such adjustment request must be made by Recipient within thirty (30) days from the date of the stop work order.
- c. **Canceling a Stop Work Order.** Recipient shall resume the work only upon receipt of written instructions from the Energy Commission Grants Officer.

15. Travel and Per Diem

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commission's Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

- b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.
- c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the CAM and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return, departure and destination cities. Travel receipts, including for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

16. Standard of Performance

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by CAM, shall be borne in total by Recipient and not the Energy Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission;
- The Energy Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and

- The Energy Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the CAM pursuant to application of (1) and (2) above. In the event the Energy Commission directs Recipient/subcontractor not to re-perform a task, the Energy Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

17. Payment of Funds

The Energy Commission agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the Budget. The rates in the Budget are rate caps, or the maximum amount allowed to be billed. The Recipient can only bill for actual expenses incurred at the Recipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the Budget.

a. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports. The final payment request must be received by the Energy Commission along with the draft Final Report 60 days prior to the end of the Agreement term.

Payments will generally be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has incurred the cost for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures must occur within the approved term of this Agreement.

b. Documentation

All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Energy Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Certification

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

Additional certification required related to the payment of prevailing wages. Refer to section 27 of these terms and conditions for more information.

d. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

e. Release of Funds

The CAM will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the CAM.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the CAM.
- All products due have been submitted and are satisfactory to the CAM.
- Other prepayment conditions as may be required by the CAM have been met. Such conditions will be specified in writing ahead of time, if possible.

f. Fringe Benefits, Indirect Overhead, and General and Administrative (G&A), Indirect cost rates must be developed in accordance with generally accepted accounting principles. If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead or G&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed in this agreement.
- The cost pools used to develop the federal rates must be allocable to the Energy Commission Agreement, and the rates must be representative of the portion of costs benefiting the Energy Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Energy Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Energy Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Energy Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

It is the Energy Commission's policy to retain 10 percent of any payment request or 10 percent of the total Energy Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The CAM will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

h. State Controller's Office

Payments are made by the State Controller's Office.

18. Fiscal Accounting Requirements

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Energy Commission funds for each project funded by the Energy Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Energy Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Energy Commission or any other agency of the State, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Energy Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the CAM within 30 days of the completion of such audits.

d. Cost or Match Share

Cost or Match Share means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs incurred even if the project is terminated early or is not funded to its completion.

Total allowable project cost is the sum of the Agreement share and Recipient share of the project costs. *Cost share* percentage is calculated by dividing Recipient cost share amount by the total allowable project cost. *Match share* percentage is calculated by dividing Recipient match share by the Agreement share of the project costs.

Failure to provide the minimum required cost or match share may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

19. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to Recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

20. Disputes

In the event of a dispute or grievance between Recipient and the Energy Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

a. Energy Commission Dispute Resolution Level 1

The Recipient shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Energy Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Energy Commission Grants and Loans Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Recipient. The Grants and Loans Officer shall respond in writing to the Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

b. Energy Commission Dispute Resolution Level 2

The Recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Energy Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may exercise the option of presenting the decision to the Energy Commission at a business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Energy Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Energy Commission Business Meeting Agenda.

21. Workers' Compensation Insurance

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.

22. General Provisions

a. Governing Law

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission.

c. Assignment

Without the written consent of the Energy Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Energy Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

- (1) Recipient shall promptly notify the Energy Commission of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the project.
 - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Recipient, the Energy Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"
- "Termination"
- "Audit"
- "Indemnification"
- "Fiscal Accounting Requirements"

23. Certifications and Compliance

a. Federal, State and Municipal Requirements

Recipient must obtain any required permits and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Energy Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Child Support Compliance Act (Applicable to California Employers)

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

- It recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- e. **Americans with Disabilities Act**

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. Site Visits

The Energy Commission and/or its designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

25. Confidentiality

A. Information Considered Confidential

Confidential information is information designated confidential pursuant to the procedures specified in 20 CCR 2505. If applicable, all Recipient information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Recipient, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Energy Commission Grants Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Recipient shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

26. Budget Contingency Clause

It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Recipient or to furnish any other consideration under this Agreement, and the Recipient shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: 1) cancel this Agreement with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

27. Public Works -- Payment of Prevailing Wages

Generally Required by Law

Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over \$1,000.

NOTE: Projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this grant, Recipient as a material term of this agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this grant, Recipient must either:

(a) Proceed on the assumption that the project is a public work and ensure that:

- (i) prevailing wages are paid; and
- (ii) the project budget for labor reflects these prevailing wage requirements; and
- (iii) the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;

or,

(b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.

NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

If the Recipient is unsure whether the project receiving this award is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.

NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.

If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before the grant agreement from the Energy Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Recipient shall ensure that its subcontractors, if any, also comply with above requirements with respect to public works/prevaling wage. Recipient shall ensure that all agreements with its contractors/subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient's subcontractors to comply with California prevailing wage and public works laws.

Indemnification and breach. Any failure of Recipient or its subcontractors to comply with the above requirements shall constitute a breach of this agreement that excuses the Energy Commission's performance of this grant agreement at the Energy Commission's option, and shall be at Recipient's sole risk. In such a case, Energy Commission may refuse payment to Recipient of any amount under this award and Energy Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this grant award, as a material term of this agreement, Recipient agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

Questions. If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting the award for this grant.

Certification. Recipient shall certify to the Energy Commission on each Payment Request Form, either that (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (b) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this grant, and Energy Commission shall be relieved of any obligation to pay said funds.

28. *Intellectual Property*

The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

**EXHIBIT D
Contacts**

California Energy Commission	Recipient
<p>Commission Agreement Manager:</p> <p>Andre Freeman California Energy Commission 1516 Ninth Street, MS-27 Sacramento, CA 95814 Phone: (916) 654-4162 e-mail: andre.freeman@energy.ca.gov</p>	<p>Project Manager:</p> <p>Carter Atkins City of Los Angeles, Harbor Department 425 S. Palos Verdes Street San Pedro, CA 90731 Phone: (310) 732-7649 Fax: (310) 547-4643 e-mail: catkins@portla.org</p>
<p>Commission Agreement Officer:</p> <p>Andrea Hoppe California Energy Commission 1516 Ninth Street, MS-18 Sacramento, CA 95814 Phone: (916) 651-0588 Fax: (916) 654-4423 e-mail: andrea.hoppe@energy.ca.gov</p>	<p>Administrator:</p> <p>Christopher Cannon Chief Sustainability Officer City of Los Angeles, Harbor Department 425 S. Palos Verdes Street San Pedro, CA 90731 Phone: (310) 732-7649 Fax: (310) 547-4643 e-mail: ccannon@portla.org</p>
<p>Accounting Officer:</p> <p>Kathy Jones California Energy Commission 1516 Ninth Street, MS-2 Sacramento, CA 95814 Phone: (916) 654-4377 Fax: (916) 654-4423 e-mail: kathy.jones@energy.ca.gov</p>	<p>Accounting Officer:</p> <p>Frank Liu Accounting Director City of Los Angeles, Harbor Department 425 S. Palos Verdes Street San Pedro, CA 90731 Phone: (310) 732-3799 Fax: (310) 831-0439 e-mail: fliu@portla.org</p>
<p>Legal Notices:</p> <p>Tatyana Yakshina Grants Manager 1516 Ninth Street, MS-18 Sacramento, CA 95814 Phone: (916) 654-4204 Fax: (916) 654-4423 e-mail: tatyana.yakshina@energy.ca.gov</p>	<p>Recipient Legal Notices:</p> <p>Office of the City Attorney, Harbor Division 425 S. Palos Verdes Street San Pedro, CA 90731 Phone: (310) 732-3750 Fax: (310) 831-9778 e-mail: PolaGeneralCounsel@portla.org</p>

EXHIBIT B

PORT OF LOS ANGELES' EVERPORT ADVANCED CARGO HANDLING DEMONSTRATION PROJECT

PROJECT MILESTONES AND DISBURSEMENT SCHEDULE (For Subrecipient Specific Scope of Work See Exhibit B-1)

Task	Task Description	Responsible Team	Estimated Completion Date	Grant Funding	Match Funding
1.1	Attend Kick-off Meeting	Harbor Department, Everport, BYD, Taylor	9/30/17	N/A	N/A
1.2	Critical Project Review Meeting No. 1	Harbor Department	05/15/18	N/A	N/A
	Critical Project Review Meeting No. 2	Harbor Department	1/08/19	N/A	N/A
1.3	Final Meeting	Harbor Department, Everport	11/15/19	N/A	N/A
1.4	Monthly Progress Reports	Harbor Department, Everport, BYD, Taylor	5 th calendar day of each month	N/A	N/A
1.5	Final Report**	Harbor Department, Everport	9/15/20	BYD: \$87,000 Taylor: \$365,400	0
1.6	Identify and Obtain Match Funds	Harbor Department, Everport, BYD, Taylor	10/05/17	N/A	N/A
1.7	Identify and Obtain Required Permits	Harbor Department	12/15/17	N/A	N/A
1.8	Obtain and Execute Subcontracts	Harbor Department	10/20/17	N/A	N/A

2	Plan, Design, and Build Cargo Handling Equipment				
	Three Yard Tractors (See Exhibit B-2)	BYD	7/01/19	N/A	\$189,403
	Two Top Handlers (See Exhibit B-3)	Taylor	7/15/19	N/A	\$121,500
2.1	Delivery Equipment to Port of Los Angeles' Everport Terminal				
	Three Yard Tractors	BYD	7/08/19	\$783,000 (90%)	N/A
	Two Top Handlers	Taylor	7/22/19	\$3,288,600 (90%)	N/A
2.2	12-Month Demonstration				
	Three Yard Tractors	Everport, BYD	7/31/20	N/A	\$450,168
	Two Top Handlers	Everport, Taylor	7/31/20	N/A	\$405,832
3	Plan, build and construct charging infrastructure and an E-Truck Smart Plug-In System	Harbor Department	6/01/19	N/A	\$1,071,428
4	Data Collection and Analysis	Harbor Department, Everport, BYD, Taylor	7/31/20	N/A	N/A
Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project				\$4,524,000	\$2,238,331
TOTAL:				\$6,762,331	

**Remaining 10% of funds will be released upon final report submittal or earlier (at discretion of CEC).

EXHIBIT B-1
PORT OF LOS ANGELES' EVERPORT ADVANCED CARGO
HANDLING DEMONSTRATION PROJECT

SUBRECIPIENT SCOPE OF WORK

SCOPE OF WORK:

The Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project (Project) is funded through the California Energy Commission's Sustainable Freight Transportation Projects (GFO-016-604) under the Alternative and Renewable Fuel and Vehicle Technology Program.

The goal of the Project is to enhance market acceptance of advanced vehicle technology in top handler and yard tractor cargo handling equipment applications. This will be accomplished through the following objectives:

- 1) Design and build 5 zero-emissions cargo handling equipment for field demonstration in order to verify operational performance and to collect in-use performance data.
 - a. Three zero-emission battery electric yard tractors
 - b. Two zero-emission battery electric top handlers
- 2) Design and build charging infrastructure to support the zero-emission top handler daily power requirements.
- 3) Design and build an Electric Truck Smart Plug-in System (also known as the Automated SmartCharging System) which is an automatic vehicle charging system that would automatically connect to, and disconnect from, electric battery-powered yard tractors, eliminating the need for manual connections.
- 4) Document significant reduction in greenhouse gases and criteria pollutant emissions compared with conventional diesel cargo handling equipment performing similar work at the terminal.
- 5) Document energy cost savings and the reduction in petroleum fuel consumption, compared to cost and fuel used in comparable diesel powered equipment in operation at the terminal.

Location: The cargo handling equipment will be delivered to and operated for 12-months at the Port of Los Angeles' Everport Terminal Services container terminal.

Equipment Title: The Title to equipment purchased with grant funds shall vest with the Harbor Department. When the equipment is no longer needed for the Project, the Harbor Department shall contact California Energy Commission for disposition instructions.

RESPONSIBILITIES OF TEAM MEMBERS:

- **Everport Terminal Services, Inc. (Everport)** – Everport assembled the team for this Project. Everport will be responsible for operating and maintaining the ZE equipment throughout the 12-month demonstration at their facility. Everport will satisfy their commitment of \$856,000 in match funding through the cost of labor to operate the equipment and provide as needed maintenance of equipment outside of the manufacturer's warranty. Everport will attend planning meetings as scheduled by the Harbor Department, submit information to the Harbor Department to support the Monthly Progress Reports, collect data during the demonstration period and complete a Final Report at the conclusion of demonstration. Everport is financially responsible for all applicable licensing fees for cargo handling equipment and electricity costs to charge vehicles.
- **BYD Motors, Inc. (BYD)** - BYD will receive grant funding in the amount of \$870,000 to design, build, and deliver three pre-commercial zero emission yard tractors for demonstration at Everport. The vehicles will be designed to accept the Electric Truck Smart Plug-In System for purposes of vehicle charging. See Exhibit B-2 for yard tractor specifications. BYD will provide \$189,403 for in-kind match for labor and travel. BYD will attend planning meetings as scheduled by the Harbor Department, submit information to the Harbor Department to support the Monthly Progress Reports, collect data during the demonstration period and assist in the preparation of a Final Report at the conclusion of demonstration.
- **Taylor Machine Works, Inc. (Taylor)** – Taylor will receive grant funding in the amount of \$3,654,000 to design, build, and deliver two pre-commercial ZE top handlers for demonstration at Everport. See Exhibit B-3 for the top handler specifications. Taylor will provide \$121,500 for in-kind match for labor and travel. Taylor will attend planning meetings as scheduled by the Harbor Department, submit information to the Harbor Department to support the Monthly Progress Reports, collect data during the demonstration period and assist in the preparation of a Final Report at the conclusion of demonstration.
- **Los Angeles Harbor Department (Harbor Department)** – The Harbor Department will provide administrative oversight for the Project and act as fiduciary agent for reimbursement to Subrecipients (BYD and Taylor) for Project expenditures. The Harbor Department will provide \$1,071,428 as match funding applied towards the grant. This will be accomplished through the development of the electrical infrastructure to deliver power to the charging units and the development of the Electric Truck Smart Plug-In System which is estimated to cost \$2,000,000. Finally the Harbor Department will submit Monthly Progress Reports to the CEC.

REPORTING REQUIREMENTS:

Monthly Progress Reports - The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of the Grant Agreement on time and within budget.

The objectives of this task are to summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, and to form the basis for determining whether invoices are consistent with work performed.

Data Collection and Analysis - The goal of this task is to collect operational data from the project, to analyze the data for economic and environmental impacts, and to include the data and analysis in the Final Report. Below is a summary of project tasks as well as a preliminary list of data to be collected for the duration of this demonstration, for each project unit, as well as a baseline diesel fleet:

- Facilitate training and support to demonstration vehicles operators, maintenance and operations staff, data collectors, and key project participants.
- Participate in a bi-weekly call with the project team to discuss project truck performance and any other issues that arise.
- Support demonstration of project vehicles under normal terminal operating conditions for a period of 12 months, including necessary maintenance.
- Work with Everport to collect 12 months of fuel usage and operations data for project equipment including, but not limited to:
 - Gallons of diesel fuel displaced per day, per unit.
 - Mileage and/or hours of operation per day, per unit
 - Charging transaction counts
 - Additional metrics in accordance with the Data Collection Test Plan, which will be developed as a part of this project by all project partners.
- Provide analysis and input for the project Final Report, including a comparison of project performance and expectations provided in the proposal to Energy Commission with actual project performance and accomplishments.

Final Report - The final report will assess the project's success in achieving the Grant Agreement's goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

EXHIBIT B2



ELECTRIC TOUGH



HEAVY DUTY PERFORMANCE
CLASS 8 – 10 HOURS – UP TO 102,000 LBS GCWR

100% BATTERY-ELECTRIC CLASS 8 TERMINAL TRACTOR Affordable, Dependable and Environmentally Friendly

The BYD 8Y utilizes the first battery specifically designed for vehicle electrification. Our proprietary iron phosphate technology is the core of BYD's Class 8 yard truck, enabling 10 hours of operation between charges with minimal battery degradation. The Class 8 yard truck is manufactured at BYD's Lancaster, CA facility and is compliant with FMVSS and CMVSS regulations.

- ✓ Environmentally friendly: no heavy metals or toxic electrolytes
- ✓ Highly efficient, transversely mounted motors that are intergrated with the drive axle

- ✓ Regenerative braking extends battery life and reduces brake component wear
- ✓ Vehicle-to-Grid (V2G) system that allows the truck to deliver power back to the grid, to a load, or to another vehicle

WHAT SETS BYD APART



Build Your Dreams



HIGH PERFORMANCE

BYD's breakthrough battery technology enables 10 hours of continuous operation.



ECO-FRIENDLY

Each truck equals 1590 metric tons of CO2 eliminated or 1500 acres of US forests saved.⁴



FUEL SAVINGS

\$18,300 annual savings assuming 16 hours per day and 7 days per week.



LONG-LASTING

BYD's batteries will still have 80% strength of charge after 5,000 cycles or 14 years if cycled every day.



SAFE

No thermal events, no oxygen released, and no cell swelling. Proprietary Battery Management System (BMS) assists with balancing and charging safety.



MAINTENANCE SAVINGS

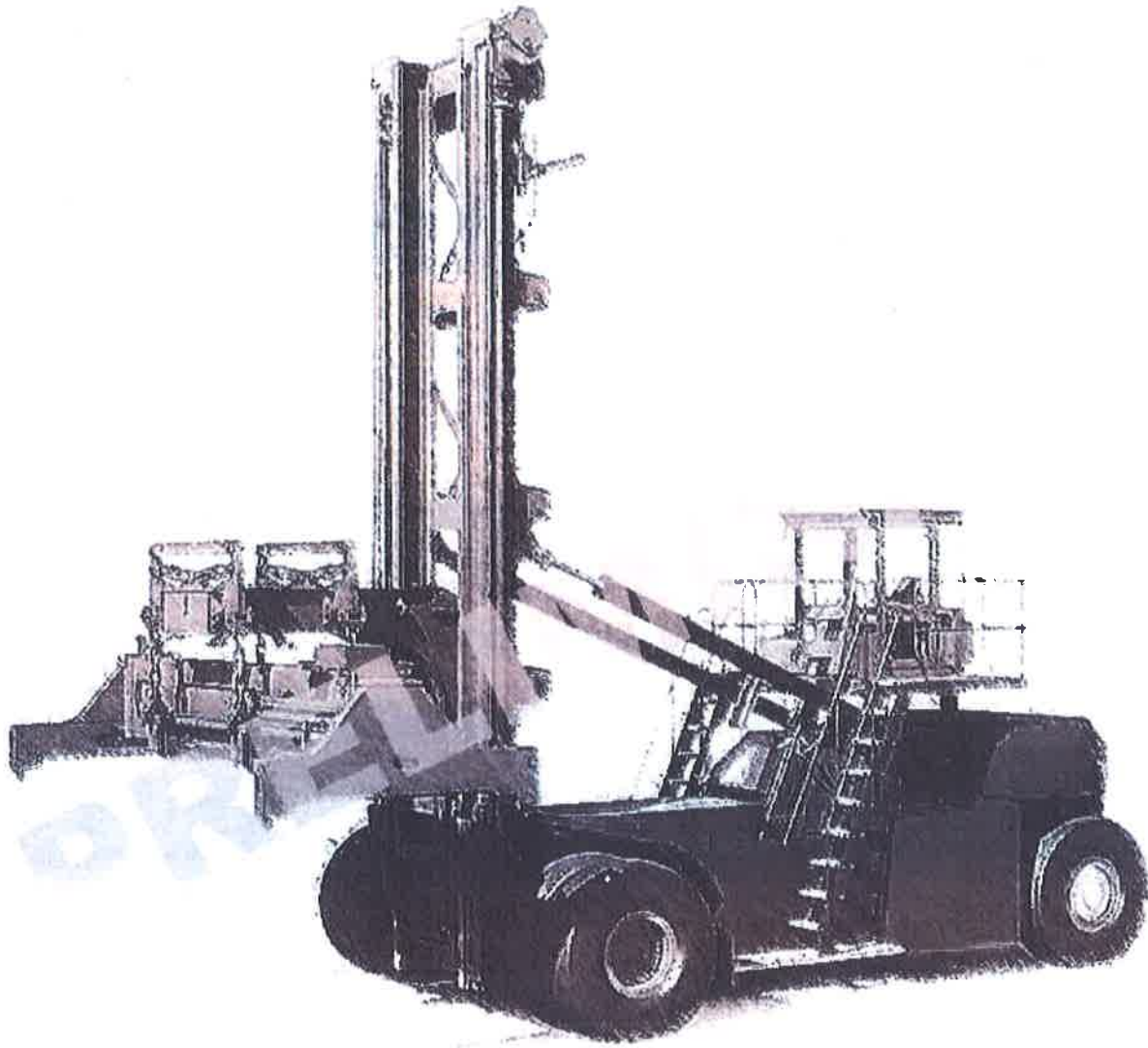
\$8,800 annual savings. Fewer moving parts, less brake wear, and fewer fluids to change.

VEHICLE	BYD 8Y	
Dimensions	Length	17.6 ft
	Width	102 in
	Height	126 in
	Wheelbase	118 in
	Curb Weight	19,800 lbs
	GCWR	102,000 lbs
Performance	Top Speed	29 mph
	Max Gradeability	15%
	Range	10 hours
	Turning Radius	21 ft
	Approach/Departure Angle	29° / 33°
Chassis	Suspension	Leaf Spring 10L-9R Frong, Rigid Suspension Rear
	Brakes	Pneumatic Disc Brakes, ABS Optional, Regenerative braking
	Tires	11 R 22.5
Powertrain	Motor Type	AC Permanent Magnet Synchronous Motor
	Max Power	241 hp
	Max Torque	738 lbs-ft
	Battery Type	Iron-Phosphate
	Battery Capacity	209 kWh
	Charging Capacity	200 kW / 100kW
	Charging Voltage	480 V AC 3-phase
Charging Time	1 hr (200 kW) or 2 hrs (100 kW)	

Note:

1. All information based on the latest data available at the time of printing. Final specs subject to change at production
2. Initial capacity shown. Numbers may decrease with time and use.
3. Battery age and outside ambient temperature affect charging times.
4. According to the California Air Resources Board GHG calculator based on 90,000 miles

EXHIBIT B-3



NOTE: Image is for concept purposes only.



Zero Emissions
Electric Container Handler

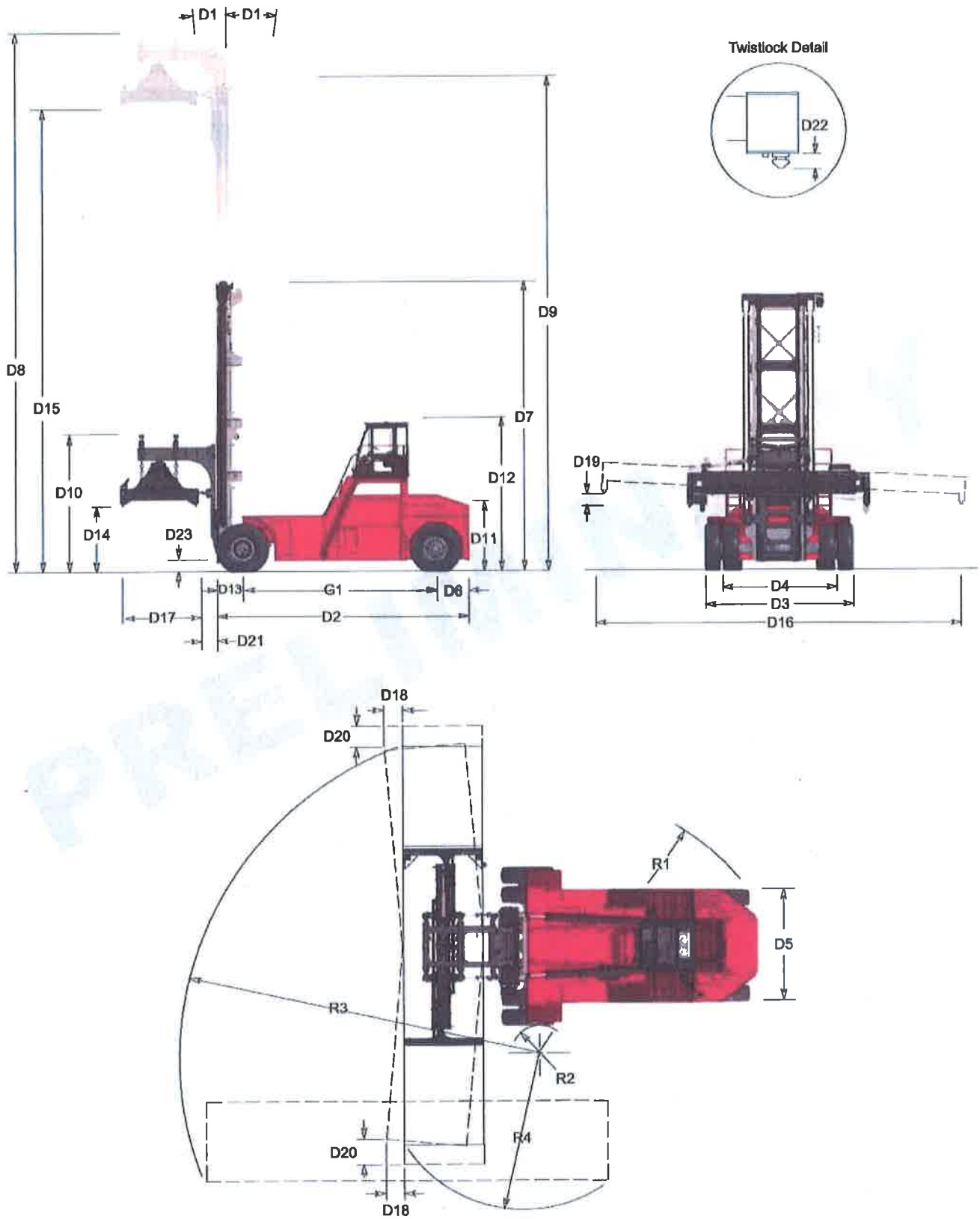
Rated Capacity At 97-in. (2,464 mm) Center of Load
90,000-lbs. (40,824 kg) / 2-high Stacking
80,000-lbs. (36,288 kg) / 6-high Stacking

Rated Capacity At 106-in. (2,692 mm) Center of Load
82,000-lbs. (37,195 kg) / 2-high Stacking
75,000-lbs. (34,020 kg) / 6-high Stacking
236-in. (5,994 mm) Wheelbase

Electric Container Handler

General	Model	Manufacturer's Designation			
	97-In Load Center	Center of Load to Center of Axle	In (mm)	97	2,464
	Rated Capacity	2-High Stacking @ 97-In L.C.	Lb (kg)	90,000	40,823
		5-High Stacking @ 97-In L.C.	Lb (kg)	80,000	36,287
	106-In Load Center	Center of Load to Center of Axle	In (mm)	106	2,692
	Rated Capacity	2-High Stacking @ 106-In L.C.	Lb (kg)	82,000	37,195
		5-High Stacking @ 106-In L.C.	Lb (kg)	75,000	34,019
	Wheelbase	G1 Distance	In (mm)	236	5,994
	Power Type	BYD® Lithium Iron-Phosphate (Lithium Ion)			Electric
	Tilt Angle	D1 Standard Upright - FWD/Backward	Degrees		5° / 10°
Dimensions	Overall Dimensions	D2 Overall Length to Face of Tire	In (mm)	308	7,823
		D3 Width (Over Drive Tires)	In (mm)	192	4,877
		D4 Tread Width (Drive Axle)	In (mm)	148.5	3,772
		D5 Width (Over Counterweight/Fenders)	In (mm)	136	3,454
		D6 Steer Axle CL to Rear of Counterweight	In (mm)	40	1,016
		D7 Overall Height (Lowered)	In (mm)	416	10,566
		D8 Overall Height (Raised)* See note below	In (mm)	791	20,091
		D9 Height (Mast Fully Raised)	In (mm)	725	18,415
		D10 Height (Ground to Top of Carriage)* See note below	In (mm)	173	4,394
		D11 Height (Top of Counterweight)	In (mm)	86	2,184
		D12 Height (Top of Overhead Guard/Cab)	In (mm)	185.5	4,712
		D13 Center of Wheel to Face of Tire	In (mm)	32	813
		D14 Height to Tip of Twistlock (Lowered)	In (mm)	82	2,083
		D15 Height to Tip of Twistlock (Raised)	In (mm)	700	17,780
		* add 8-In (203mm) if equipped with optional pile slope			
Attachment Dimensions	20-ft Container (6.1m)	D16 Length of Attachment (Retracted)	In (mm)	238	6,045
	40-ft Container (12.2m)	D16 Length of Attachment (Expanded)	In (mm)	480	12,192
		D17 Width of Attachment(Nominal)	In (mm)	96	2,438
	20-ft Container (6.1m)	D18 Slewing (6.5-deg Either End)	In (mm)	27	686
	40-ft Container (12.2m)	D18 Slewing (6.5-deg Either End)	In (mm)	54	1,372
	20-ft Container (6.1m)	D19 Pile Slope - Non-Powered (3-deg Each End)	In (mm)	12	305
	20-ft Container (6.1m)	D19 Optional Pile Slope - Hydraulic (3-deg Each End)	In (mm)	12	305
	20-ft: Total Pile Slope 5-deg	D19 Achievable by Hyd. Pile Slope & Structural Clearance	In (mm)	20.9	531
	40-ft Container (12.2m)	D19 Pile Slope - Non-Powered (3-deg Each End)	In (mm)	24	610
	40-ft Container (12.2m)	D19 Optional Pile Slope - Hydraulic (3-deg Each End)	In (mm)	24	610
	40-ft: Total Pile Slope 5-deg	D19 Achievable by Hyd. Pile Slope & Structural Clearance	In (mm)	41.8	1,062
	20-ft Container (6.1m)	Min. Aisle for 90-deg Stacking - 4-In Clearance	In (mm)	460	11,684
	20-ft Container (6.1m)	Min. Aisle for 90-deg Stacking - 4-In Clearance	In (mm)	555	14,097
		D20 Sideshift	In (mm)	12	305
		Reach	In (mm)	9	229
	Minimum Distance	D21 Face of Tire to Side of 8-ft Container	In (mm)	17	432
	Maximum with Reach	D21 Face of Tire to Side of 8-ft Container	In (mm)	26	660
	Nominal	D22 Length of Twistlock Below Attachment	In (mm)	4	102
Turn Radius	Truck Only	R1 Minimum Outside (Tallswing)	In (mm)	312	7,925
		R2 Minimum Inside	In (mm)	15.5	394
	20-ft Container (6.1m)	R3 Outside Far Corner (Retracted)	In (mm)	272	6,909
Turn Radius with Attach.	40-ft Container (12.2m)	R3 Outside Far Corner (Expanded)	In (mm)	380	9,652
	20-ft Container (6.1m)	R4 Inside Near Corner (Retracted)	In (mm)	144	3,658
	40-ft Container (12.2m)	R4 Inside Near Corner (Expanded)	In (mm)	192	4,877
Weight	Total Apprx. (Empty)	Standard Truck	Lb (kg)	162,000	73,482
	Axle Loading	Static with Rated Load (Front)	Lb (kg)	230,800	104,598
		Static with Rated Load (Rear)	Lb (kg)	21,500	9,752
		Static with No Load (Front)	Lb (kg)	103,700	47,037
		Static with No Load (Rear)	Lb (kg)	58,400	26,490
Wheels & Tires	Tire Type	Cushion or Pneumatic (Front / Rear)			Pneumatic / Pneumatic
	Wheels	Number (Front / Rear)			4/1
	Tires	Number (Front / Rear)			4/1
		Size (Front)			18.00 X 25 - 40 PR
		Size (Rear)			18.00 X 25 - 40 PR
	Ground Clearance	D23 Lowest Point	In (mm)	11.3	287
	Brakes	System Type			Wet Disc
		Control Method (Service / Parking)			Foot / Hand
		Operation Method (Service / Parking)			Hyd / Spring
Misc.	Load Moment	With Attachment & 90,000-lbs (40,824 kg)	In-lbs (m-kg)	8,730,000	100,580
	Operator Eye to Ground	Elevated Cab - Center Mount	In (mm)	171	4,343
	Hydraulic Fluid	Tank Capacity	gal (L)	216	818

Electric Container Handler



Performance Specs:

Travel Speed	Maximum Fwd/Rev - No Load	mph (km/h)	14.5	23.3
	Maximum Fwd/Rev - With Load	mph (km/h)	14.5	23.3
Lift Speed	No Load	fpm (m/s)	60	0.31
	With Load	fpm (m/s)	48	0.24
Lowering Speed	No Load	fpm (m/s)	61	0.31
	With Load	fpm (m/s)	61	0.31
Grade Clearance	Center of Truck	%	27	
	Rear Overhang	%	50	
Gradeability	No Load*	%	30	
	With Load*	%	18	
Tractive Effort	Maximum	lb (kN)	50,000	222

* (Maximum @ Zero Speed)

† NOTE: Performance specifications are based on trucks with standard equipment. Performance specifications are affected by the condition of the vehicle, its components, and the nature and condition of the operating area. If these specifications are critical, the proposed application should be discussed with your Taylor sales representative.

Drive Train:

Power Source

Tractive Power Source	Make & Model	BYD PMSM (Permanent Magnet Synchronous Motor) Traction Motor		
	Tier Compliance	Zero Emissions		
	Fuel	All-Electric Battery Power		
	Maximum Traction Output	hp (kW)	241	180
	Maximum Traction Torque	ft-lbs/RPM (Nm/RPM)	1106	1500

Battery Pack

Low Voltage	Battery	Voltage	690 V	
		Capacity	931 kWh	
		Volt/Ah (2 batteries)	48/2	
		Amps	70	

Battery Capacity

Batteries	Manufacturer	BYD Lithium Iron-Phosphate (Lithium Ion)		
	Capacity (KiloWatt-hours)	931		
	Charging Time	5-6 Hours		

Lithium Iron Phosphate battery technology provides industry-leading power density, battery longevity, stability and safety when compared with other Lithium Ion battery chemistries. Lithium Iron Phosphate chemistry is also one of the most eco-friendly battery chemistries available in these applications.

Transmission:

Transmission	Make & Model	Taylor / Dana TE-30 Base with Special Application		
	Number of Speeds	(Fwd/Rev)	5/3	
	Gear Change	Electronic / TICS Max Gear Selection		
	Direction Change	Column Mounted Directional Control		

The multi-speed Powershift transmission has been developed specifically for the zero-emissions all-electric battery powered top handler application. Included are electronic controls designed to provide the maximum tractive effort required for full-duty cycle application while optimizing efficiency, maximizing power capacity, and resulting in high quality shift controls.

Axles:

Drive Axle	Make & Model	Wet Disc	Kessler D-102W
Steer Axle	Make & Model		Taylor 600

The bolted heavy-duty planetary drive axle utilizes wet disc brakes. The steer axle is a single hydraulic cylinder design with heavy-duty links from the cylinder ram directly to tapered roller bearing mounted spindles.

Standard Features:

- 42' ULTRA-VIEW Telescopic Mast for stacking 5-High (9' 6" Loaded)
- 20-40 ISO Container Handling Attachment, Chain Suspended, with reach, slew, side shift, guide arms and mechanical pile slope
- Accumulator in Lift Circuit
- 690V All-electric battery power drivetrain. Two-full shift run time (under normal work cycles)
- Taylor/Dana TE-30 multi-speed transmission designed specifically for battery powered drivetrains
- Kessler D-102W HD planetary drive axle with wet disc brakes
- Taylor 600 welded steel steer axle with stud protectors (single hydraulic cylinder design with heavy-duty links from the cylinder ram directly to tapered roller bearing mounted spindles)
- 18.00 X 25 – 40PR bias pneumatic drive and steer tires

CHASSIS:

- All-welded steel frame with 4 Lifting Eyes (lifting eyes not designed for level pick)
- Integrated counterweight
- Replaceable bolt-on steps and handrails
- Lift-off deckplates expose drive train and hydraulics for ease of maintenance.

CAB:

- Enclosed, elevated operator, 2-door all-welded steel center mount cab (includes dome light, wide angle mirrors, door hold back latches with trip handles, handrails, black floor mats and is isolation mounted for noise and vibration reduction)
- Operator cab heater and interior circulation fan
- Tinted glass with front and rear windshield wipers and front windshield washer
- Fully adjustable air ride swivel seat with 35° of rotation (15°/20° left-right)
- Multifunction joystick mounted on adjustable arm rest
- Column mounted directional control
- Operator Restraint System (Orange, anti-cinch seat belt with starting sequence neutral lock)

- Operator Presence System with timed idle and neutral shutdown (5 minute default, password adjustable from 1-120 minutes by end user)
- Taylor Integrated Control System (TICS) ...see next page for additional info
- 7-in touch screen color display
- The one-piece flip-down instrument panel is pre-wired to accommodate heavy-duty accessories.
- All wiring is color and number coded.
- Dual USB charging ports
- Hydrostatic, steer-on-demand power steering with tilt steering column

ELECTRICAL:

- 24-volt low voltage electrical system. Dual heavy-duty batteries
- 690-volt high voltage electrical system
- 931 kWh battery capacity
- 200 kW external charging equipment - 5-6 hours full charging time
- 2 Sets of Amber/Green/Red Twistlock operation signal lights (mounted in cab and on container attachment)
- (4) forward facing LED work lights (cab mounted)
- (2) rear facing LED work lights ("A" pillar mounted)
- (2) LED work lights (mast mounted)
- (2) LED work lights (twistlock mounted)
- (2) LED step lights
- Low Voltage System Circuit breakers with heavy duty connectors (no automotive type fuses)
- Breaker reset switches
- Air Horn with 2-gal air tank (126 dBA)
- Keyswitch-actuated amber strobe light
- Forward and reverse-actuated warning alarms

VIP:

- Operators Guide
- Maintenance and Service documentation including key circuit drawings (Serial Number Specific Parts Book is available upon request)
- Safety Check Manual and Video

Serviceability:

Taylor Container Handlers are designed with ease of maintenance and serviceability as a key priority. The Zero Emissions Container Handler eliminates service requirements normally encountered with diesel engine driven powertrains. The electric traction and pump motors are maintenance free as is the high-voltage battery pack. Internal system controls monitor the battery conditions and provide information to the user when faults occur or when attention is required. All daily checks across the Taylor product line can be accessed from either the ground or running board, ensuring that operators can complete these requirements with ease. Also, the side service doors and removable deck panels open to expose the drivetrain and hydraulics to provide easy access for service and inspection.

Taylor Integrated Control System (TICS)

The TICS system is a vehicle electronic control system comprised of multiple components including an operator display module, which provides integrated control of the battery, electronic and hydraulic systems on the truck. J1939 CANbus technology allows all machine data to be accessed through the 7-in. touch screen color display (located in the cab) and allows controllers and sensors to communicate with minimal wiring between the components. The display indicates battery system, transmission, hydraulic, and controls information as well as active warnings, battery state of charge, maintenance data and man/machine interface data. The display also allows service personnel to access data needed during troubleshooting (such as sensor status and controller outputs). Machine functions can be tuned through this display and are password protected.

...TICS gives customers the ability to customize operation parameters of their Taylor lift truck, perform diagnostics, and monitor key functions including battery state of charge. The TICS interface is simple, easy to understand and user friendly. The TICS diagnostic ability is key to quick repair and less downtime. Troubleshooting and diagnosing most problems can be done by the customer's own mechanic, without the need for a service tech with a detached computer. There are multiple options available including, but not limited to, scale systems, modem based fleet tracking and the Vision Plus™ pedestrian detection system.

DISCLAIMER:

This vehicle is certified to meet the applicable design and performance criteria required for Powered Industrial Trucks in OSHA Safety and Health Standards, Title 29 CFR, Part 1910.178, and the applicable design and performance requirements in ANSI B56.1 and UL 583 that were in effect at the time of manufacture. These standards also apply to the user and should be adhered to while operating this vehicle. All specifications are subject to change without notice. Some operating data may be affected by the condition of the vehicle, how it is operated and the nature and condition of the operating area. If these specifications are critical, contact the factory.



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for all
Taylor Heavy Lift Trucks**

**No-one can match our record for service and reliability.
Unbeatable customer service, backed by over 88 years of customer satisfaction.**



EXHIBIT C

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

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

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

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

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

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(844) 663-4411

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

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

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

EXHIBIT E

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

(2) LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

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

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

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

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the LABAVN by the time proposals are due.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

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

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

The Harbor Department defines a LBE as:

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

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

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

AFFIDAVIT OF COMPANY STATUS

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

BYD MOTORS, INC.

Name of Firm

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

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE Non-LBE

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

Signature: 

Printed Name: Rebecca Schenker

Title: Director of Strategy

Date Signed: September 19, 2017

Consultant Description Form

PRIME CONSULTANT:

Contract Title: Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project

Business Name: BYD Motors, Inc. LABAVN ID#: 76002

Award Total: \$870,000

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

Local Business Enterprise: YES NO (Check only one)

Primary NAICS Code: 423100 Average Three Year Gross Revenue: \$9,222,133

Address: 1800 S. Figueroa St.

City/State/Zip: Los Angeles, CA 90015

County: Los Angeles

Telephone: (213) 748-3980 FAX: (213) 748-3945

Contact Person/Title: Andy Swanton, Vice President of Sales

Email Address: andy.swanton@byd.com

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

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

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

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

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

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

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

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

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____

AFFIDAVIT OF COMPANY STATUS

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

Everport Terminal Services

Name of Firm

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

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE VSBE MBE WBE DVBE OBE

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 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE Non-LBE

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

Signature: _____

Printed Name: GEORGE LANG

Title: PRESIDENT

Date Signed: 9/20/17

Consultant Description Form

PRIME CONSULTANT:

Contract Title: CEC Agreement No.
Business Name: Everport Terminal Services LABAVN ID#: 91965
Award Total: \$ _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO X (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: 389 Terminal Way
City/State/Zip: Terminal Island, Ca. 90731
County: Los Angeles
Telephone: (310) 221-4809 FAX: () _____
Contact Person/Title: Ron Neal
Email Address: rneal@everport-terminals.com

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: 91965
Award Total: (% or \$): _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
County: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____
Award Total: (% or \$): _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
County: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

AFFIDAVIT OF COMPANY STATUS

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

TAYLOR MACHINE WORKS, INC.

Name of Firm

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

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SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
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 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
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(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE Non-LBE

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- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: Pete Reynolds
Printed Name: Pete Reynolds

Title: CFO
Date Signed: 9-20-17

Consultant Description Form

PRIME CONSULTANT:

Contract Title: Agreement Between The City of Los Angeles + Everport Terminal Services, Inc.
Business Name: Taylor Machine Works, Inc. LABAVN ID#: 92586 840 NOTDAS, INC.
TAYLOR MACHINE WORKS
Award Total: \$ 3,654,000.00
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO (Check only one)
Primary NAICS Code: 333924 Average Three Year Gross Revenue: \$ 195 Million
Address: 3690 North Church Ave
City/State/Zip: Louisville, MS 39339
County: Winston
Telephone: (662) 773-3421 FAX: (662) 773-9143
Contact Person/Title: Pete Reynolds / CFO
Email Address: preynolds@taylorbigred.com

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____
Award Total: (% or \$): _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
County: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____
Award Total: (% or \$): _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
County: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

EXHIBIT F

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.