

AGREEMENT NO. 17-3425-A

CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT
BETWEEN THE CITY OF LOS ANGELES,
GENERAL ELECTRIC COMPANY,
AND GE TRANSPORTATION PARTS, LLC

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT NO. 17-3425-A (hereinafter referred to as "Assignment") is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), GENERAL ELECTRIC COMPANY, a New York corporation, acting through its GE TRANSPORTATION operating division, ("GE" or "Assignor") and GE TRANSPORTATION PARTS, LLC, a Delaware limited liability company ("GETP" or "Assignee").

WHEREAS, in September, 2017, City entered into an amended and restated agreement, Agreement No. 17-3425-A ("Agreement"), with GE for the purpose of implementing a port information data portal, said Agreement is attached hereto and incorporated by reference herein as Exhibit A; and

WHEREAS, in May 2018, GE and Wabtec announced an agreement to combine GE Transportation's business operations with WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION ("Wabtec"), as further described in a letter dated September 25, 2018 from GE Transportation to the Harbor Department's Executive Director, said letter is attached hereto as Exhibit B; and

WHEREAS, GE seeks to assign the Agreement to GETP, GETP seeks to assume all rights and responsibilities pursuant to the assignment, and the City agrees to such assignment and assumption (the "GE Assignment"); and

WHEREAS, following the GE Assignment, and as a result of the combination of GE Transportation's business operations with Wabtec, GETP will experience a change of control and will become an indirect wholly-owned subsidiary of Wabtec, and will no longer be affiliated with GE, and the City further agrees to such change of control (the "Wabtec Change of Control").

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The Assignment and all rights, obligations, liabilities and provisions thereunder shall be subordinate to, and Assignee shall strictly comply with and not conflict with, all terms, covenants and conditions of the Agreement, or as hereinafter amended, which Assignor and Assignee agree that they have read. Assignee agrees to operate in accordance with and to assume all rights, obligations, operations, restrictions, limitations and liabilities associated with the Agreement.
2. Neither Assignor nor Assignee shall, by amendment or otherwise, alter the rights and obligations contained in the Agreement, approved by this Assignment, without the

prior written consent of the Department. Consent to one such change shall not be deemed to be consent to any subsequent change.

3. Assignee agrees to observe, obey and abide by the City of Los Angeles Charter and Administrative Code, and all applicable ordinances, rules and other regulations of the City.

4. Except for the Wabtec Change of Control, which is hereby permitted, Assignee shall not further assign, sell, or otherwise transfer its rights or obligations under the Agreement without prior written notice of City. City shall have ninety (90) days to approve any such assignment, sale or transfer, which approval shall not be unreasonably withheld. Assignee may not assign the Agreement or any right or obligation thereunder (including by change in ownership or control, by operation of law or otherwise) where such assignment would substantially impair City's ability to receive performance of Assignee's obligations under the Agreement. Any transfer in violation of this provision without City's prior written consent shall be voidable at City's option.

5. Merger. Assignee shall provide City not less than sixty (60) days prior written notice of any merger of Assignee with or into any other entity or of any dissolution of Assignee.

6. Amendments. The Agreement and this Assignment supersedes any and all agreements and understandings previously made between any of the parties hereto relating to the subject matter of the Agreement. The Agreement may only be modified, amended or altered in writing.

7. Successors and Assigns. The Agreement and this Assignment shall be binding upon and inure to the benefit or detriment of Department, Assignor and Assignee, their respective successors, assigns and legal representatives.

8. Governing Law. The Agreement and this Assignment shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one instrument.

/////

/////

/////

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

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

Dated: _____, 2018

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

GENERAL ELECTRIC COMPANY

Dated: 10/23, 2018

By: _____
Type Name: Jennifer Schopfer
Type Title: VP-Digital Ops., GE Transportation

Attest: _____
Type Name: Kimberly A. Ruggie
Type Title: Executive Administrative Assistant

GE TRANSPORTATION PARTS, LLC

Dated: 10-22-18, 2018

By: _____
Type Name: James L. Winget
Type Title: Vice President and Secretary

Attest: _____
Type Name: Kirsten M. Parr
Type Title: Paralegal

APPROVED AS TO FORM AND LEGALITY

_____, 2018
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By _____
Heather M. McCloskey, Deputy

EXHIBIT A

AGREEMENT NO. 17-3425-A
AMENDED AND RESTATED
AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
GENERAL ELECTRIC COMPANY

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 GENERAL ELECTRIC COMPANY, a New York corporation, acting through its GE Transportation operating division, with offices located at 500 West Monroe Street, Chicago, Illinois, 60661 ("Consultant").

WHEREAS, Consultant was selected by a competitive process to assist City with a port information data portal pilot project ("Pilot") for the purpose of improving ocean transportation cargo movement and supply chain efficiencies through the Port of Los Angeles ("Port"); and

WHEREAS, City and Consultant entered into Agreement No. 16-3425 effective November 4, 2016, for the performance of the Pilot ("Original Agreement"); and

WHEREAS, City and Consultant created an initial phase of the port information data portal and implemented the Pilot using a select group of supply chain partners at the Port; and

WHEREAS, the parties now seek to expand the scope of the Pilot and increase the number of participating supply chain partners in order to advance and improve upon the port information data portal; and

WHEREAS, the Board finds that the continued development of the port information data portal should continue with Consultant because, pursuant to City of Los Angeles Charter Section 371(e)(10) and Administrative Code Section 10.15(a)(10), a new competitive selection process would be impractical and undesirable (1) given the significant financial investment already made by City which may be forfeited through a new selection process; (2) the additional time required to perform a new selection process may jeopardize the successful implementation of the port information data portal; (3) a new selection process may result in additional and duplicative development costs; and (4) a new process may result in the loss of a committed successful partnership with Consultant and the uncertainty that a new partnership could be replicated with the same results; and

WHEREAS, City and Consultant desire to amend, restate and modify, but not extinguish, the Original Agreement on the terms set forth herein;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A and Exhibit A-1 ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

E. Notwithstanding anything in this Agreement to the contrary, Consultant's obligation to perform shall be excused on a day-for-day basis for each day that the City fails to meet its obligations (e.g., City furnished information, facility and equipment access, decisions, etc.) as stated in the Scope of Work and/or mutually agreed upon schedules.

II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents, information, data and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations. Consultant is provided a license to use all City documents, information, data and papers supplied to Consultant hereunder for the sole and exclusive purpose of providing the services contemplated hereunder. Notwithstanding the foregoing, City acknowledges that it does not anticipate providing documents, information, data or papers to Consultant in connection with the Scope of Work.

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 Consultant, the acceptable completion of this Agreement and the amount of compensation due, including the approval of funding amounts for contingency services. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article X (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises of Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Executive Director, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Consultant shall be consistent with any such occupancy or use.

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. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the requirements of Charter Section 245 have been met.

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

1. Three (3) years has lapsed from the effective date of the Original Agreement (the "Initial Term"); or
2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant thirty (30) days' notice in writing of its election to cancel and terminate this Agreement.

C. No later than six (6) months prior to the end of the Initial Term, the parties intend to engage in good faith discussions regarding the then-current and future market for the Data Portal and the status of the relationship between the parties. The overall purpose of these discussions would be to decide whether the parties wish to amend this Agreement to extend the term and add compensation for hosting and upkeep of the Data Portal.

D. If the parties decide to extend the Initial Term under C. above, then, no less than ninety (90) days prior to the expiration of the Initial Term, the City and Consultant will amend this Agreement to extend the term (the "Extension Term"). Provided, however, that any extension will be contingent upon (i) the extension amendment

containing a commitment by the City to spend additional funds for hosting fees and additional functionalities for the Data Portal over the course of the Extension Term, (ii) the Revenue Allocation Agreement, approved by the Board on August 17, 2017, is still in effect, and (iii) review and approval of the extension amendment by the City's Board of Harbor Commissioners and City Council in compliance with the Los Angeles City Charter.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates and amounts set forth in Exhibit A-1 and Exhibit B.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit A-1 and Exhibit B), shall be Thirteen Million One Hundred Thousand Four Hundred Twenty Dollars (\$13,100,420) ("Maximum Payable Amount"), which includes the One Million Three Hundred Nineteen Thousand and Fifty Dollars (\$1,319,050) authorized and paid to Consultant under the Original Agreement.

C. Within five (5) days of the effective date of this Agreement, the Executive Director will issue a Directive, in the form attached to Exhibit A-1, authorizing the Consultant to begin certain work in Exhibit A-1 and make payment therefore as set forth in said Directive.

D. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant 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.

(Consultant's Signature)

E. Consultant 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 net forty-five (45) days from date of invoice.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

F. 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

VI. RECORDKEEPING AND AUDIT RIGHTS

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

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 Consultant 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 Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant'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

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

VIII. BUSINESS TAX REGISTRATION CERTIFICATE

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

IX. INDEMNIFICATION

Subject to the limitations contained in Section XX and except for the sole negligence or willful misconduct of the City, or any of its Boards, officers, agents,

employees, assigns and successors in interest, Consultant 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 Consultant'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 Consultant 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.

Subject to the limitations contained in Section XX and except to the extent caused by the negligence or willful misconduct of the City, or any of its Boards, officers, agents, employees, assigns and successors in interest, Consultant 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 costs, losses, demands, expenses, including, but not limited to, attorney's fees 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, arising from any suit, cause of action, or claim by (i) any third party alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the Data Portal; or (ii) a Port customer authorized to use the Data Portal related to the failure of performance by, or the disruption of access to, the Data Portal and directly resulting from the grossly negligent acts, errors or omissions, or willful misconduct by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

X. INSURANCE

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

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Where Consultant

provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. 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 Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant'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 Consultant'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 and Employer's Liability

Consultant 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 Consultant 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. Consultant 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 Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

B. Insurance Procured by Consultant on Behalf of City

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

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

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

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

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

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

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

C. Required Features of Coverages

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

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant'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 Consultant's behalf.

Upon request by City, Consultant 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 Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of

California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

(3) Notice of Cancellation

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

(4) Modification of Coverage

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

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant 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 Consultant 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 Consultant.

(6) Limits of Coverage

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

D. Right to Self-Insure

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

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.

2. Consultant 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. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
5. Consultant provides the name and address of its claims administrator.
6. Consultant 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. Consultant 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. Consultant has complied with all laws pertaining to self-insurance.

E. Accident Reports.

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant'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 Consultant, 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 Consultant thirty (30) 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 consultants 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, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

XIII. AFFIRMATIVE ACTION

The Consultant, 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 E.

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. Consultant 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 F.

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. Consultant 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, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

XV. CONFLICT OF INTEREST

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

XVI. COMPLIANCE WITH APPLICABLE LAWS

Consultant 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. SUPPLEMENTAL TERMS AND CONDITIONS FOR SERVICE OFFERING USE AND ACCESS

Notwithstanding anything to the contrary in Section XXI.A. or B. of this Agreement, Consultant's license or grant of access, and the City's use or access, of any Service Offerings (as that term is defined in Exhibit H), including the Data Portal, shall be governed by the terms and conditions of the Supplemental Terms and Conditions attached hereto as Exhibit H ("Supplemental Terms and Conditions"). This Agreement, along with any exhibits, appendices or attachments thereto, are collectively an "Order Document" within the meaning of that term under the Supplemental Terms and Conditions." Except as stated in Section XXI.C of this Agreement and notwithstanding any other provision of this Agreement to the contrary, in the event of a conflict or inconsistency between the terms in the body of this Agreement and the Supplemental Terms and Conditions in Exhibit H, the terms in the body of this Agreement shall control.

For the purpose of this Agreement, "Data Portal" means the hosted, base data visibility application running on a cloud-based platform made available to the City under this Agreement and having the following general features: data harvesting, curation and security, and accessibility through a user interface with custom views for each user. For clarity, this definition includes the base data visibility application as it exists on the Effective Date with the additional data, users and enhancements described in Exhibit A-1 of this Agreement and any future patches, bug fixes or uniform updates across the user base. For additional clarity, the Data Portal does not include any (1) hosted operating system or platform; (2) future addition, modification or enhancement to the data visibility application not described in the preceding sentence, or (3) data, content or other information made available through the data visibility application.

XIX. DELIVERABLE VALIDATION AND SOFTWARE WARRANTY

A. Each deliverable identified and described in the Scope of Work ("Deliverable") will be subject to review and written acceptance by the City in accordance with this Section. Each Deliverable will be considered accepted: (a) when the City provides Consultant with written notice of acceptance, or (b) five (5) business days after Consultant's delivery of the Deliverable to the City, if Customer has not first provided Consultant with written notice of rejection. The City may reject a Deliverable only in the event that it materially deviates from the specifications set forth in the Scope of Work and only by written notice to Consultant setting forth the nature of such deviation. In the event of such rejection, Consultant will correct the deviation and redeliver the Deliverable to the City. After redelivery pursuant to the previous sentence, the parties will again follow the acceptance procedures set forth in this Section XIX.A.

B. Notwithstanding anything in this Agreement to the contrary, Consultant warrants that, during the ninety (90) days after acceptance of a Deliverable pursuant to Section XIX.A, the Deliverable will perform materially as described in the Scope of Work. If the Deliverable does not meet the foregoing warranty, Consultant shall have the option to undertake reasonable efforts to repair, replace or modify the defective portion of the Deliverable; or to reimburse City for the applicable portion of the affected Deliverable, as depreciated on a straight-line basis. This Section shall not apply to the extent the non-compliance arises from (a) operation of a Deliverable not in accordance with the Scope of Work, (b) an issue not caused by Consultant, (c) improper installation, use, operation or maintenance of the Deliverable, or (d) modification of the Deliverable.

C. Notwithstanding anything in this Agreement to the contrary, Consultant warrants that the Data Portal does not directly infringe a valid United States patent, copyright or trademark of a third party when used accordance with the Scope of Work. If the Data Portal becomes, or in Consultant's opinion is likely to become, the subject of a claim of infringement, Consultant may, at its option, (a) procure, at no cost to the City, the right to use the Data Portal, or (b) modify the Data Portal or provide a substitute to avoid the infringement. Consultant shall have no obligation or liability under this Section or Section IX for any claim of infringement to the extent such infringement is caused by: (a) a modification to the Data Portal not provided or performed by Consultant, (b) the combination of the Data Portal with other hardware, software, content, or services not

provided by Consultant, or (c) use of an infringing product after Consultant has provided a non-infringing alternative.

D. The warranties and remedies provided in this Section and the indemnity provided under Section IX are Consultant's sole obligation and exclusive liability (express, implied, statutory, or otherwise) and the City's sole remedy for any third party claims of infringement of any intellectual or proprietary right. The warranties provided in this Section are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. EXCEPT FOR THE EXPRESS WARRANTIES ABOVE, CONSULTANT MAKES NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

XX. DAMAGES AND LIABILITY

A. Notwithstanding anything in this Agreement to the contrary, in no event shall Consultant be liable for loss of profit or revenues, lost business opportunities, loss of use of equipment or systems, loss of data, interruption of business, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages arising out of or relating to this Agreement or the subject matter hereof, or claims of City's customers (defined in the Revenue Allocation Agreement as "Port's Customers") for any of the foregoing types of damages, regardless of the form of action, and whether or not Consultant was or should have been aware of the possibility of these damages.

B. Notwithstanding anything in this Agreement to the contrary, Consultant's maximum aggregate liability in connection with, arising out of, with respect to or any way connected with this Agreement, shall be limited to, in the aggregate, the amount City paid to Consultant under this Agreement. The limitations shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort, extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Consultant's liability.

XXI. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other

matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation.

B. 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 Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, 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.

C. Notwithstanding anything in this Section to the contrary, this Section shall not apply to any part of the Service Offerings or entitle the City to ownership rights in the Service Offerings. Consultant shall own and reserve all right, title and interest in and to the Service Offerings. For clarity, the Service Offering includes, but is not limited to, the Data Portal, with the additional data, users and enhancements described in Exhibit A-1 of this Agreement.

XXII. CONFIDENTIALITY

A party receiving Confidential Information (the "Receiving Party") will not directly or indirectly, at any time, without the prior written consent of the party disclosing such Confidential Information (the "Disclosing Party"), use or disclose the Confidential Information or any part thereof for any use other than necessary for the performance of the Receiving Party's obligations under this Agreement or as otherwise expressly permitted by this Agreement. The Receiving Party will use reasonable efforts, but not less than those efforts it uses to protect its own information of a similar nature, to avoid disclosure, dissemination, or unauthorized use of the Confidential Information of the Receiving Party.

Consultant acknowledges that the City may be compelled to disclose Confidential Information pursuant to the California Public Records Act. Should the City be compelled, by public information request or otherwise, to disclose Consultant's Confidential Information, the City will provide written notice to Consultant and use reasonable efforts to disclose only the information legally required to be disclosed and to apply any applicable exceptions to the disclosure request.

For the purpose of this Section XXII, "Confidential Information" of a party means all of that party's information and documentation disclosed to or accessed by the other party in connection with this Agreement that is marked (or, if disclosed other than in writing, designated at the time of disclosure) as "confidential" or with a similar designation. "Confidential Information" does not include information that: (1) is independently developed by the Receiving Party without violating the Disclosing Party's

proprietary rights; (2) is or becomes publicly known (other than through unauthorized disclosure); (3) is disclosed by the Disclosing Party to a third party free of any obligation of confidentiality; (4) is already known by the Receiving Party at the time of disclosure and the Receiving Party has no obligation of confidentiality other than pursuant to this Agreement; or (5) is rightfully received by the receiving party free of any obligation of confidentiality.

XXIII. 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 Information Technology, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXIV. TAXPAYER IDENTIFICATION NUMBER (TIN)

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

XXV. 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. Consultant 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.

XXVI. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

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

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

XXVIII. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION

The Consultant, 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, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant 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 Consultant 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 Consultant 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.

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

XXIX. 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. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXX. INTEGRATION

This Agreement, the Revenue Allocation Agreement, together with the exhibits hereto and thereto, contain 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 Revenue Allocation Agreement, the terms in the Primary 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.

XXXI. 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.

XXXII. 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.

XXXIII. 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.

XXXIV. 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.

XXXV. 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.

XXXVI. 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.

XXXVII. COUNTERPARTS

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

/////

/////

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

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

Dated: 9-11-17

for By *Mark Blavin*
EUGENE D. SEROKA
Executive Director

Attest: *[Signature]*
AMBER M. KLESGES
Board Secretary

GENERAL ELECTRIC COMPANY

Dated: _____

By *[Signature]*
Jennifer Schopfer, VP GE Transportation
(Print/type name and title)

Attest: *[Signature]*
Nanette Harrell FFid, Sr Director GET
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

August 17, 2017
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By *[Signature]*
Heather M. McCloskey, Deputy

Account #	<u>54310</u>	W.O. #	<u>000000</u>
Ctr/Div #	<u>0690</u>	Job Fac. #	
Proj/Prog #	<u>000000/000</u>		
Budget FY:		Amount:	
<u>16/17</u>	<u>1,020,052</u>		
<u>17/18</u>	<u>11,460,370</u>		
<u>18/19</u>	<u>559,000</u>		
TOTAL	<u>13,100,422</u>		
For Acct/Budget Div. Use Only:			
Verified by:	<u><i>[Signature]</i></u>		
Verified Funds Available:	<u><i>[Signature]</i></u>		
Date Approved:	<u>9/11/17</u>		

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

SCOPE OF WORK

Acronyms & Definitions

The following acronyms and terms are used within this document.

Acronyms Table

Acronym	Term
POLA	City of Los Angeles Harbor Department
GE	General Electric, Consultant
ETA	Estimated Time of Arrival
BCO	Beneficial Cargo Owner
WB	Waybill
UI	User Interface
UX	User Experience
DHS	Department of Homeland Security
CBP	Customs and Border Protection
SS	Steam Ship
BOL	Bill of Lading
SIT	Smart Intermodal Terminal™
PaaS	Platform as a Service

Scope

The engagement will include the following scope:

1. Base Portal and Optional Enhancements:

a. Base Portal:

- i. Data Source(s) include: US Customs and Border Protection (US CBP) System without data filtering.
- ii. Data Field(s) include: POLA and GE will mutually select six data fields.
- iii. Dashboard visible to: BCOs, Terminal Operators, Chassis Pool Owners, Railroads, Truckers, Port
- iv. Value tailored for: BCOs, Terminal Operators, Chassis Pool Owners
- v. Capabilities enabled: Providing visibility to these six pieces of primary baseline data and making it available to all User Groups will allow for better decision making in

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

matching the appropriate cargo, terminal operations, and asset pairing, for BCOs, Terminal Operators, and Chassis Pool Managers.

- b. Optional Additional Fields and Filtering (in addition to Base Portal):
 - i. Data Field(s) include: GE and POLA will mutually select up to 34 data fields.
 - ii. Filtering: Needed filtering across relevant and secure user groups.

- c. Optional Destination Planning:
 - i. Data Source(s) include: Includes up to 34 data fields from the US CBP System plus two additional data sources beyond the "Base Portal", as selected by POLA and agreed up on by GE. Total number of data sources is 3.
 - ii. Data Field(s) include: GE and POLA will mutually select the data fields as determined through the "Data Discovery" efforts.
 - iii. Dashboard visible to: BCOs, Terminal Operators, Chassis Pool Owners, Railroads, Truckers, Port
 - iv. Value tailored for: BCOs, Terminal Operators, Chassis Pool Owners
 - v. Capabilities enabled: By integrating cargo destination to the base "Inbound Planning" data sets, the visibility tool will enable the next level of decision making to better support terminal operators with spatial planning and resource planning, adding efficiency to the other stakeholder groups.

- d. Optional Rail Planning:
 - i. Data Source(s) include: Includes up to 34 data fields from the US CBP System plus two additional data sources beyond the "Optional Destination Planning" option, as selected by POLA and agreed up on by GE. Total number of data sources is 5.
 - ii. Data Field(s) include: GE and POLA will mutually select the data fields as determined through the "Data Discovery" efforts.
 - iii. Dashboard visible to: BCOs, Terminal Operators, Chassis Pool Owners, Railroads, Truckers, Port
 - iv. Value tailored for: BCOs, Terminal Operators, Chassis Pool Owners, Railroads
 - v. Capabilities enabled: By integrating railroad carrier information source data to the to the base of "Inbound Planning" and "Plus Destination Planning" data sets, the visibility tool will allow better matching of railcars and overall rail operations to meet inbound cargo needs. Additional UI focus on Rail operational metrics will drive towards increased throughput.

- e. Optional Multi-modal Planning:
 - i. Data Source(s) include: Includes up to 34 data fields from the US CBP System plus two additional data sources beyond "Optional Rail Planning" as selected by POLA and agreed upon by GE. Total number of data sources is 7.
 - ii. Data Field(s) include: GE and POLA will mutually select the data fields as determined through the "Data Discovery" efforts; likely to include the Truckers that are enrolled in the pilot.

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

- iii. Dashboard visible to: BCOs, Terminal Operators, Chassis Pool Owners, Railroads, Truckers, Port
 - iv. Value tailored for: BCOs, Terminal Operators, Chassis Pool Owners, Railroads, Truckers
 - v. Capabilities enabled: By integrating complete container, rail and truck carrier source data to the to the base of "Inbound Planning", "Plus Destination Planning", and "Plus Rail Planning" data sets, the tool will enable better truck planning and throughput within the port, reducing dwell times, decreasing container storage time, and enabling more efficient labor planning.
2. The Portal will be delivered through a web-based data visualization portal; also accessible via mobile device(s).
 3. The Portal will be deployed in a secure cloud environment that meets all POLA/port operations/DHS mandated security policies.
 4. Baseline performance indicators and subsequent progress measures will be delivered. During the first phase of the project, both GE & POLA teams will determine a set of baseline metrics to measure and monitor. The baseline effort is required in evaluating the success of each stage of the project. Given the complexities of the multiple stakeholder environment(s), GE and POLA will need to work in concert to ensure the project achieves the desired metrics. GE commits to delivering up to 10 KPIs, as jointly defined and agreed upon by GE and POLA.
 5. Pilot Participants:
 - a. Primary Stakeholders include:
 - i. Gene Seroka, POLA
 - ii. Jen Schopfer, GE
 - b. User group for Pilot Project to include:
 - i. 1 shipping line to be named by POLA
 - ii. 1 terminal operator to be named by POLA
 - iii. Up to 10 BCOs, to be named by POLA
 - iv. 3 Chassis providers
 - v. 1-2 railroads
 - vi. Up to 5 Trucking companies, to be named by POLA
 6. Data sources, quality, and delivery
 - a. Data sources will be defined, agreed to, and established by both parties.
 - b. Data curation phase to include identification of data gaps and data quality challenges that require mitigation to meet POLA's operational objectives (optional services on Options page).
 - i. 30-day curation, cleansing, and stitching of agreed upon, identified datasets
 - ii. Addition 30-60 days of curation if needed; to further cleanse and stitch either additional datasets or original data that required extensive cleansing beyond the 30 days provided.
 - c. The data will be refreshed in near real time

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

7. Team and Communications:

- a. The GE team and its partner will leverage subject matter expertise in the following:
 - i. Transportation, rail, and logistics
 - ii. Data engineering / Data Science
 - iii. Advance analytics
 - iv. Software solutions
 - v. Project management

- b. A weekly status update on progress, risks, and opportunities will be shared with the POLA as well as the stakeholders and user groups as selected by GE and POLA

Scope & Compensation Options

See Exhibit B.

Deliverables and Assumptions

NO.	NAME	DELIVERABLES AND ASSUMPTIONS
1	Data Collection	<ul style="list-style-type: none"> • POLA to facilitate GE receiving the following datasets, if commercial subscription is not available: <ul style="list-style-type: none"> ○ Manifest data from the SS Line (inclusive of Origin BOL) ○ AMS data (from DHS data feeds) ○ Piers historical data, other data sources as required, based on POLA's selected solution option • POLA and GET will establish a file transfer feed protocol able to exchange data during the pilot period based on agreed upon parameters and data dictionary templates. Feeds will be in alignment with "near real time" data reporting requirements
2	Data Quality / Completion	<ul style="list-style-type: none"> • The needed data elements (6 data elements for Base Portal; and up to 34 data elements to support all other optional enhancements) will be provided with ≥90% completeness and quality to ensure adequate end product and service solutions. Data curation and stitching will commence at the time of receipt and proceed for up to 30 days (inclusive within the agreement) prior to development work commencing. • If data is insufficient and requires augmentation from unanticipated data sources beyond the designated maximum for each option, GE will agree to ingest/curate such data sources at the prescribed rate of \$225 per hour. • Data received at <90% Quality and Completeness will need to either: <ul style="list-style-type: none"> ○ Be corrected by POLA prior to hand over alternate data source shall be provided by POLA with ≥90% ○ Otherwise, GE will engage in data curation activities, in an

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

		attempt to augment and improve data quality. (GE services for Data/Availability gaps at \$225/hour)
3	Data Hosting	<ul style="list-style-type: none"> Data storage will be held in a US cloud environment that will provide the required controls and accesses, as needed to secure sensitive data and regulated workloads
4	Business Rules Engine	<ul style="list-style-type: none"> As needed or applicable, GET will build a business rules engine based on historical data and BCO input If applicable, the GE analytics / rules engine will also run in a secured US cloud environment, per POLA's requirements Periodically, GE will perform and share the insights generated from the analytics
5	Data Visualization	<ul style="list-style-type: none"> Web-based user interfaces will be generated to demonstrate sample reporting and gain insights into stakeholder benefits; user interface will be displayable on mobile devices Available for twelve-month post pilot period; publish external facing link for end-user login and authentication Number of data visibility views will be determined based on which solution option POLA selects. For example: "Inbound Planning" will have a single data view whereas "Inbound Planning + Destination" has 4 unique stakeholder views, "Rail" has unique stakeholder views and "Multimodal" has all 6 unique stakeholder views. GE will use best practices in user experience and user design to optimize the number of unique views/ screens/ tools.
6	Post Pilot Warranty	<ul style="list-style-type: none"> Support Service Level Agreements ("SLA's) according to the below schedule Scope: Focused problem management based on ITIL framework for the warranty period 24x7 service coverage model Team Structure: Onsite presence organized for seamless interaction with POLA and stakeholder teams/ end-users. The team will also consist of offshore team members for maximum flexibility, especially in supporting global user groups in non-U.S. time zones.

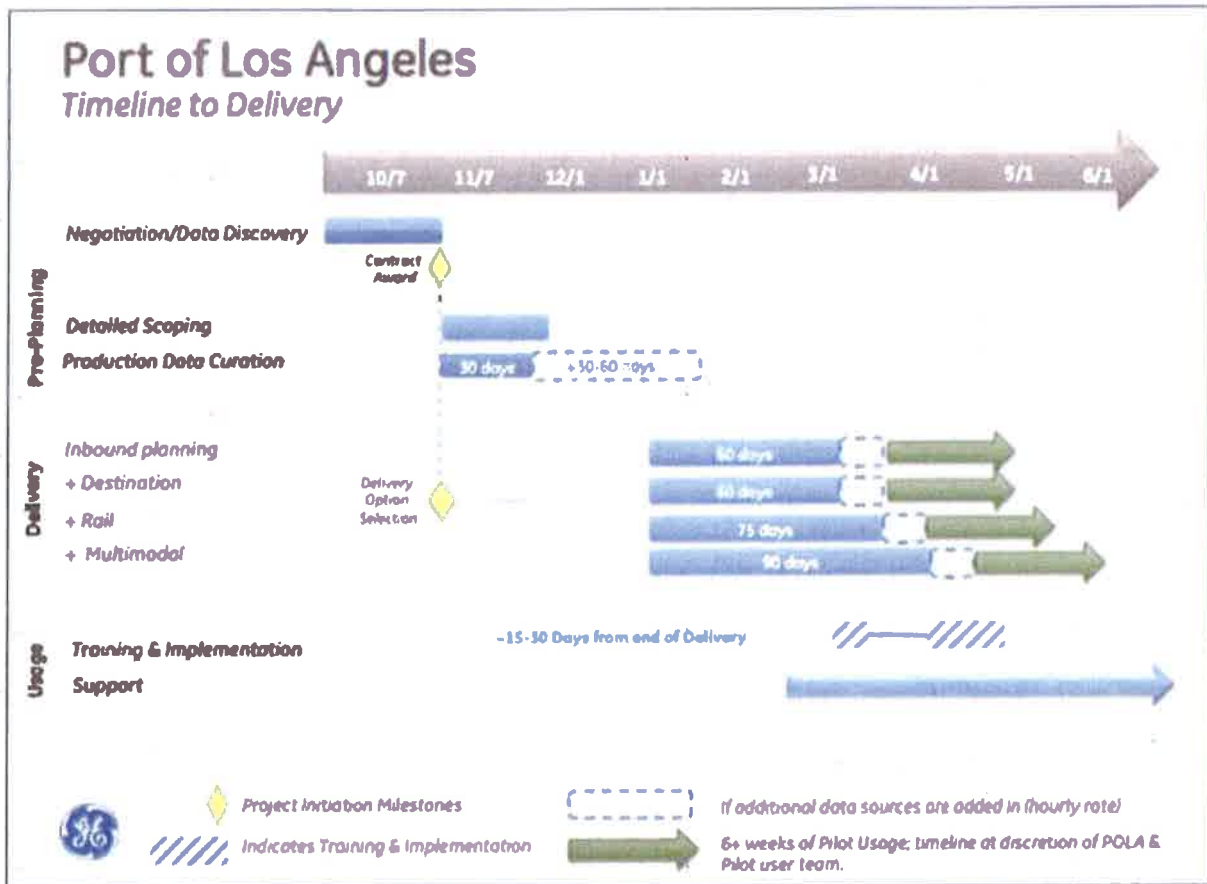
Schedule

The execution timeline below assumes data curation begins when POLA enters into contract with GE and upon delivery of the entire complete data set required for the solution option selected by POLA. Additionally, if the designated submitted data does not meet the 90% threshold required for the solution, the added timeline and fees as described in this document will apply (see dotted line boxes below). In this second scenario, the timeline will begin when both GE and POLA have mutually agreed that no further data sets/sources or data cleansing is needed, and POLA will notify GE in writing that the pilot is to begin. It is important to note that the length of the data curation period will vary based on the quality and completeness of the data provided. A set

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

30 days of data curation is scheduled for the identified data elements. The below timeline represents an estimate only. GE will work openly with POLA during this period to ensure timelines and progresses are both clear and reasonable.



Support Schedule

GE will provide support services following implementation of the Portal, as shown below.

EXHIBIT A

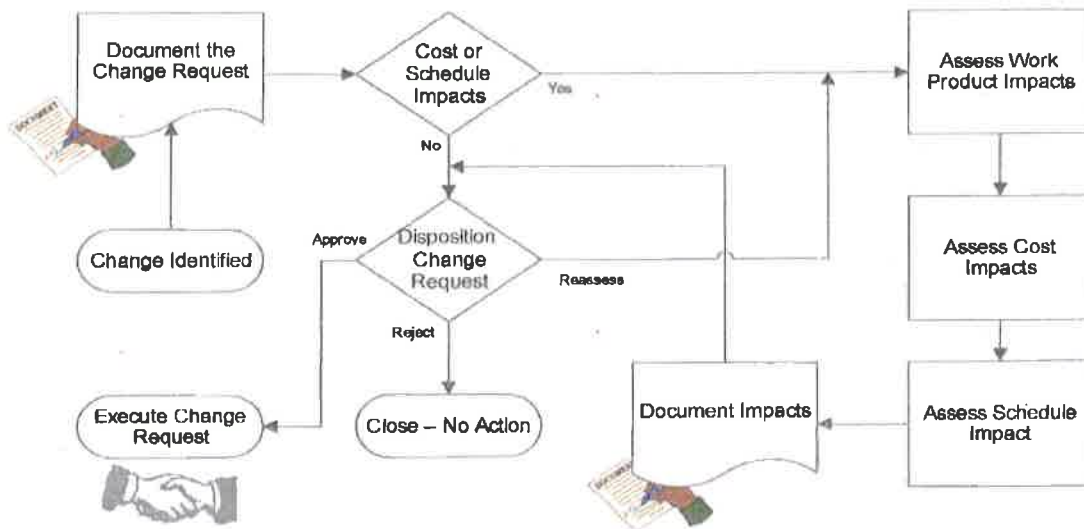
Scope of Work
Port Information Portal Pilot Project

Level 1	Pacific Time	08:00AM - 5:00 PM	5:00 PM to 7:30PM	7:30PM to 4:30AM	4:30AM to 8:00 AM
	All Days	US - On call			
Level 2	Pacific Time	08:00AM - 5:00 PM	5:00 PM to 7:30PM	7:30PM to 4:30AM	4:30AM to 8:00 AM
	Weekdays	US -On Desk	US - On call	Offshore - On Desk	Offshore -On Desk
	Pacific Time	08:00AM - 5:00 PM	5:00 PM to 7:30PM	7:30PM to 4:30AM	4:30AM to 8:00 AM
	Weekend	US -On call		Offshore - On Call	

Level 1 will provide support around system access, base usage, and enablement questions. Level 2 will address system issues that have been detected, even where a work around exists.

Change Control Procedure

This section describes the procedure to be used to effect the initiation, evaluation and disposition of modifications of this Scope of Work and Schedule that are within the allowable time and cost of the Agreement. The change control procedure ensures that the impact of each change is evaluated before the decision to implement that change is made.



Change Control Flow Chart

Change Control Management

The following process will be used when a change is considered or required this process will also be followed in cases where data quality or unavailability needs to be addressed:

- A Change Request ("CR") will be the vehicle for communicating a possible change. The CR must describe the change; the rationale for the changes and the impact the change will have on the

EXHIBIT A

Scope of Work
Port Information Portal Pilot Project

project (if known). A Change Request Form shall be developed and used to document this information.

- Any activity that impacts the scope or timeline must undergo this Change Control procedure.
- Any member of the team may initiate a CR. The CR must be submitted to the initiator's Program Manager, who will determine whether the CR is to be submitted to the other Party.
- GE and POLA Program Managers shall review the CR to decide whether it should be submitted for approval, whether it merits further investigation, or whether it should be rejected. The Program Managers shall assign a unique tracking number to each CR reviewed.
- In the event that the Program Managers decide that further investigation is required, they shall determine whether this investigation requires sufficient effort to potentially impact the Project. If there would be an impact, the investigation must be authorized in writing by POLA. Additional charges and time may be required for the investigation. GE would invoice POLA for any such charges according to the terms of this SOW.
- Following investigation of the CR, the GE and POLA Program Managers shall review the CR to decide whether it should be submitted for approval, rejected or returned for additional information.
- The GE Program Manager shall maintain a Change Request Log listing each proposed Change Request, including its identifier, description and status.
- Authorized representatives from both Parties must sign a CR before the work of any agreed changes begins. Until both Parties agree in writing, both Parties will continue to operate in accordance with the latest agreed version of the SOW. A CR that has been signed by authorized representatives from both Parties constitutes a change authorization for the purposes of this SOW.

EXHIBIT A-1

Statement of Work and Compensation

Base Items		Unit	Unit	Unit Price	Total Not-To-Exceed Amount
TERMINALS at POLA					
A1	TERMINAL Data Acquisition	6	Each	\$90,630.00	\$543,780
A2	TERMINAL Data Implementation (2 Terminals)	6	Each	\$211,470.50	\$1,268,823
A3	Export data functionality	7	Each	\$50,505.00	\$353,535
A4	API Implementations	7	Each	\$15,500.00	\$108,500
Cost per TERMINAL		6	Each	\$368,105.50	\$2,274,638
SHIPPING LINES serving POLA					
A5	SHIPPING LINE Data Acquisition	15	Each	\$83,077.67	\$1,246,165
A6	SHIPPING LINE Data Implementation	15	Each	\$193,847.92	\$2,907,719
Cost per SHIPPING LINE		15	Each	\$276,925.59	\$4,153,884
CORE COMPONENTS					
A7	Enhanced data architecture to support the additional gov't data feeds available; and associated security requirements	1	Each	\$151,050.00	\$151,050
A8	Hosting, Managed Services, Support - Predix	26	Monthly	\$76,923.07	\$2,000,000
AS NEEDED		Qty	Unit	Unit Price	Total Not-To-Exceed Amount
A9	Identified Enhancements (as per following pages)	1	Each	\$432,000.00	\$432,000
A10	RAILROAD: Data Implementation	1	Each	\$151,050.00	\$151,050
A11	Contingency	TBD	TBD	TBD	\$2,618,748

TOTAL \$11,781,370

Note: As-Needed Options will be issued via written directive from the Executive Director, or designee.

For the purpose of clarity, the items listed above are part of the Service Offering, as that term is defined in Exhibit H of this Agreement.

Definitions:

API: Application program interface (API) is a set of routines, protocols, and tools for building software applications. (Terminal operators have requested to have data to interface with their specific TO systems via API.)

Contingency: Unforeseen Work, including but not limited to: design and requirements analysis for potential future feature/functions; additional feature/functions (example, empty container returns), and other work required to accomplish Harbor Department objectives for the Portal. Negotiated price may be lump sum or hourly. If hourly, rate shall be \$225/hour.

Data acquisition: Interaction with customer (along with POLA), determining data availability, initial data analysis, data communications establishment and initial data throughput testing.

Data implementation: Parsing, mapping, filtering, cleansing of customer data to meet the requirements of the portal.

Data Portal: has the meaning given to that term in Section XVIII of this Agreement.

Export data functionality: Includes the export data relevant at each terminal to enable a more enhanced view of empty container return information, as well as relevant export information visibility to assist in facilitation of more efficient export throughput.

Hosting, Managed Services, Support: Includes the hosting of applications (such as the Data Portal) and data in a Predix environment, essential managed services to support the onboarding and usage of the tool, streamlined management of BCO data, GE's 24 x 7 customer support. Also includes the general maintenance enhancements from pilot phase 1 input received and prioritized jointly between POLA and GE.

Identified Enhancements:

- Snapshot of the Vessel profile by size
- Local v Rail total vessel volume
- Snapshot of the Vessel profile by IPI destinations
- Alternate View from MTO Site
- Consolidation of BCO on Terminal data
- Visibility into overall status of containers
- Highlighting dwell-time issues
- Snapshot of vessel status unloading
- Highlighting size issues for chassis planning
- Potential Peel-pile options with more truckers
- Inventory & Forecast for all Terminals
- Import & Export flows
- All EB/WB moves via Terminal & IPI point
- Gate hours
- Chassis Availability
- Snapshot of vessel status unloading
- Two-way communication (input to the portal)
- Repositioning Management tool
- Forecasting Tool
- Interface to the Business Exchange
- Analytics on Import/Export Flows
- Expected Availability
- Rail Info - EB/WB

EXHIBIT B

RATES

PORT INFORMATION PORTAL PILOT PROJECT

Base Portal

Item	Description	Quantity	Unit	Unit Cost
1	Base Portal (see Scope of Work)	1	Lump Sum	\$ 255,000

As-Needed Options

Item	Description	Quantity	Unit	Unit Cost	Not-to-Exceed
2	Up to 34 field visibility, user-based security/views	1	Lump Sum	\$ 74,000	n/a
3	Two destination planning source files, data filtering/curation as needed	1	Lump Sum	\$ 49,000	n/a
4	Two rail planning source files, data filtering/curation as needed	1	Lump Sum	\$ 178,000	n/a
5	Two multi-modal planning source files, data filtering/curation as needed	1	Lump Sum	\$ 111,000	n/a
6	Hosting and Support	10	Month	\$ 48,000	\$ 480,000
7	Contingency <ul style="list-style-type: none">• GE professional services rate is \$225 per hour.• Other costs and services to be determined per Section II B of the Agreement.	TBD	TBD	TBD	\$ 172,050

Note: As-Needed Options will be issued via written directive.

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/VSBE/MBE/WBE/OBE/DBE participation levels achieved for the month of _____ covered by the referenced contract number.

Contract No. _____ Division _____ Contractor Administrator _____

Contractor _____ *Group _____ Contract Title/Project _____

Contract Amount _____ Start Date _____ End Date _____

Total Amount Invoiced to Date _____

SBE Mandated Participation Percentage _____ SBE _____ VSBE _____

Proposed Subcontractor Percentage _____ MBE _____ WBE _____ OBE _____ DVBE _____

	Name of Subcontractor	Type of Work Performed	Group <small>(SBE/VSBE/MBE/WBE/OBE/DBE)</small>	PROPOSED		ACTUALS		
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Directions:

Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount

Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date

Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

EXHIBIT C

* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE/DBE)

EXHIBIT D

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 E - 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 F

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

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

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

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

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

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%.** The North American Industry Classification System (NAICS) Code for the scope of services is 541512. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$27.5 million.

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

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

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

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

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

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

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

AFFIDAVIT OF COMPANY STATUS

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

Name of Firm

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

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

SBE VSBE MBE WBE DVBE OBE

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

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

Signature _____
Printed Name _____

Title _____
Date Signed _____

NOTARY

<p>STATE OF CALIFORNIA)) ss COUNTY OF LOS ANGELES)</p> <p>Place Notary Seal and/or Stamp Above</p>	<p>Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20__ by</p> <p>(1) _____ Name of Signer (1)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me (,)(,)</p> <p>(and)</p> <p>(2) _____ Name of Signer (2)</p> <p>Who proved to me on the basis of satisfactory evidence to be the person who appeared before me.)</p> <p>Signature _____</p>
--	---

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document _____
Document Date _____ Number of Pages _____
Signers Other than Named Above: _____

Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: _____
Business Name: _____ Award Total: \$ _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Circle all that apply)
Local Business Enterprise: YES _____ No _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

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

SUBCONTRACTOR

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

Contractor Description Form

SUBCONTRACTOR

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

SUBCONTRACTOR

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

SUBCONTRACTOR

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

EXHIBIT G

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.

Exhibit H

SUPPLEMENTAL TERMS AND CONDITIONS

This Exhibit H (the "Exhibit") contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between General Electric Company, doing business through its Transportation business, ("GE," "we," "us," or "our") and the City of Los Angeles, acting by and through its Board of Harbor Commissioners ("you," "your," or "Customer"). Capitalized terms used in this Exhibit H are defined in Section 11 of this Exhibit.

1. Service Offerings.

1.1. Generally. You may access and use, in accordance with this Exhibit, the Service Offerings provided by us through this Agreement. You will adhere to all laws, rules, and regulations applicable to your use of the Service Offerings and all terms and conditions of this Exhibit, the Data Protection Plan, the Acceptable Use Policy, and the other Policies as defined in Section 12.

1.2. Your Account. You must set up an account to access and manage your Service Offerings. Your account information can be used to access your account, including Your Content, and to make changes to your account. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Exhibit, we and our affiliates are not responsible for unauthorized access to your account. You will contact us immediately if you believe an unauthorized person may be using your account or if your account information is lost or stolen.

1.3. Third Party Content. Third Party Content, such as software applications and services provided by third parties, may be offered to you by other companies or individuals under separate terms and conditions. Your acceptance of such offers will constitute a separate agreement directly between you and the Third Party Content provider for the provision of the Third Party Content. The Third Party Content provider is solely responsible for the Third Party Content, and we shall have no obligation or liability arising from such Third Party Content.

1.4. Trial Services. From time to time, we may offer you access to certain Service Offerings that we designate as "beta," "evaluation," or "trial" in Order Documents ("Trial Services"). Trial Services are provided to you free of charge, except as otherwise specified by us. We may limit, suspend, or terminate your access to any portion of the Trial Services for any reason, in our sole discretion, including, for example, the expiration of the Trial Services period, to enforce Trial Services usage limitations, or to protect our services or systems. Any product or service designated "beta" is subject to change without notice and may differ substantially upon commercial release. You acknowledge and understand that Trial Services may not have been tested or verified to meet security

requirements, including the Data Protection Plan. Trial Services may not provide standard security features, like encryption, that are available in our other Service Offerings and may not be secure against cyber-attacks or other data breaches. Accordingly, you agree not to store any data that require confidential or secure treatment, including sensitive, regulatory or personal data. Trial Services may become unavailable or be taken offline at any time without notice and any data maintained in Trial Services environments may be deleted at any time, including at the end of the trial period. We are not responsible for any loss or compromise of data or breach of data security arising from your use of Trial Services. YOUR USE OF ANY TRIAL SERVICES IS AT YOUR SOLE RISK.

1.5. Technical Support Policy. We will use commercially reasonable efforts to provide you with technical support in accordance with our Technical Support Policy.

1.6. Our Performance. We may appoint subcontractors, agents, affiliates, or partners to host, perform, modify, improve, enhance, or otherwise provide the Service Offerings or any components or portions thereof and to fulfill our obligations and exercise our rights under this Exhibit. We shall be solely responsible for such third parties.

2. Changes.

2.1. Service Offerings. We may change, discontinue, or deprecate any part of the Service Offerings (other than the Data Portal) or change or remove features or functionality of the Service Offerings (other than the Data Portal) from time to time, including by providing additional Content through the Service from time to time. We will notify you of any material change to or discontinuation of the Service Offerings.

2.2. Technical Support Policy. We may change or add to the Technical Support Policy or Technical Support plans from time to time upon notice to you.

2.3. Material Change. If a change made by us pursuant to Sections 2.1 or 2.2 has a materially adverse effect on your use of the Service Offerings, you may notify us in writing, and we may propose resolutions or work-arounds. If we are unable to provide you with a resolution or work-around reasonably satisfactory to you, then notwithstanding anything to the contrary, you may terminate the Service Offering upon 30 days' written notice to us.

2.4. APIs. We may change, discontinue or deprecate any APIs utilized for the Service from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for 12 months after the change, discontinuation, or deprecation (except if supporting the previous version (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is rendered impossible or impractical as a result of a requirement of the law or requests of governmental entities).

3. Security and Data Privacy.

3.1. Service Security. Without limiting Section XXII of the Primary Agreement or your obligations under Section 4.2, we will use reasonable efforts to implement appropriate measures, in accordance with the Data Protection Plan, designed to help you secure Your Content against accidental or unlawful loss, access, or disclosure. You confirm that you understand and will comply with all of your responsibilities and obligations under the Data Protection Plan and this Exhibit, including, but not limited to Section 4.2.

3.2. Data Privacy. You consent to our collection, use, and disclosure of information associated with the Service Offerings as described in the Data Protection Plan, and in particular to the processing of Your Content in, and the transfer of Your Content into, any country in which GE or its affiliates or subcontractors maintain facilities (including the United States). If you subscribe to any Third Party Content, you consent to our sharing information, including Your Content, with the provider of the Third Party Content in connection with your use of the Third Party Content.

4. Your Responsibilities.

4.1 Your Content. You are solely responsible for the development, content, operation, maintenance, and use of Your Content. You are responsible for securing all necessary rights and permissions to provide Your Content to us and to use Your Content with the Service Offerings. For example, You are solely responsible for:

- A.** the technical operation of Your Content, including ensuring that calls you make to any service are compatible with then-current APIs for that service;
- B.** compliance of Your Content with the Acceptable Use Policy, the Data Protection Plan, the other Policies, and all applicable laws, rules, regulations, ordinances and government orders;
- C.** any claims relating to Your Content;
- D.** the operation, control, and maintenance of your equipment and assets and ensuring that your equipment and assets meet the current technical requirements for the Service Offerings;
- E.** the accuracy, completeness, and timeliness of Your Content; and
- F.** proper handling and processing of notices sent to you (or any of your affiliates) by any person claiming that Your Content violates such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

4.2. Other Security and Backup. You are responsible for properly configuring and using the Service Offerings and taking your own steps to maintain appropriate security, protection, and backup of Your Content, which may include routine archiving of Your Content and the use of encryption technology to protect Your Content from unauthorized access. Your credentials (which may include username, passwords, tokens, certificates, keys, and pins) issued by us or selected by you for accessing the Service are for your internal use only and you may not sell, transfer, or sublicense them to any other entity or person, except that you may disclose your credentials to your agents and subcontractors performing work on your behalf. You are responsible for any use of your credentials and for notifying us immediately of any breach of security related to your credentials.

4.3. End User Violations. You are deemed to have taken any action that you permit, assist, or facilitate any End User or any other person or entity to take related to this Exhibit, Your Content or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Exhibit. If you become aware of any violation of this Exhibit by an End User, you will immediately terminate such End User's access to Your Content and the Service Offerings.

5. Temporary Suspension.

5.1. Generally. We may suspend your or any End Users' right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine that:

- A.** your or an End User's use of or registration for the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) may adversely impact the Service Offerings or the systems or Content of any other customer, (iii) may subject us, our affiliates, or any third party to liability, or (iv) may be fraudulent or prohibited by law;
- B.** our provision of a Service Offering is rendered impossible or impractical as a result of any requirement of any law or judicial order.
- C.** our relationship with a third party partner who provides software or other technology we use to provide the Service Offerings (but not including the Data Portal) expires, terminates, or requires us to change the way we provide the software or other technology as part of the Service Offerings; and
- D.** you materially breach your obligations under this Exhibit and such breach is not cured within 60 days

5.2. Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

- A. you remain responsible for all fees and charges you have incurred through the date of suspension and for use of any Service Offerings not suspended;
- B. we may suspend or cancel any processing of Your Content;
- C. we will not erase any of Your Content as a result of your suspension, except as specified elsewhere in this Exhibit; and
- D. you may retrieve Your Content from the Service Offerings during any suspension only if you have paid any charges for any post-suspension use of the Service Offerings and all other amounts due.

6. Effect of Termination.

- A. **Generally.** Upon any termination of the Primary Agreement:
 - A.1. all your rights under this Exhibit immediately terminate;
 - A.2. we may terminate your access to, and processing of Your Content by, the Service Offerings on or after the date of termination;
 - A.3. you remain responsible for all fees and charges you have incurred through the date of termination and any post-termination use by you;
 - A.4. you will immediately return or, if instructed by us, destroy all GE Content in your possession; and
 - A.5. Sections 4.1, 4.3, 6, 7 (except the rights granted to you in Section 7.4), 8, 9, 10 and 10 will continue to apply in accordance with their terms.
- B. **Post-Termination Assistance.** During the 30 days following termination:
 - B.1. we will not erase any of Your Content as a result of the termination;
 - B.2. you may retrieve Your Content from the Service Offerings only if you have paid any charges for any post-termination use of the Service Offerings and all other amounts due; and
 - B.3. unless we terminate your use of the Service Offerings for cause, we will provide you with the same post-termination assistance that we generally make available to all customers, subject to your payment of our standard time-and materials daily rates and reasonable travel

expenses. Any additional post termination assistance from us is subject to mutual agreement by you and us.

7. Proprietary Rights.

7.1. Your Content. As between you and us, you own all right, title, and interest in and to Your Content. Except as provided in this Section 8, we obtain no rights under this Exhibit from you or your licensors to Your Content, including any related intellectual property rights. You consent to our use of Your Content to provide the Service Offerings to you and any End Users. We may disclose Your Content to provide the Service Offerings to you and any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

7.2. Service Data. You agree that we and our affiliates may use information derived from or generated by the Service Offerings to provide, maintain, protect, and improve the Service Offerings and to develop new products and services, to the extent permitted by applicable law.

7.3. Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content; (b) you have all rights in Your Content necessary to grant the rights contemplated by this Exhibit; and (c) none of Your Content or End Users' use of Your Content will violate the Acceptable Use Policy.

7.4. Service Offerings. As between you and us, we or our affiliates or licensors own and reserve all right, title, and interest in and to the Service Offerings. We will grant you access to the Service Offerings for which you have a current subscription and authorize you to: (i) access and Use the Service Offerings solely in accordance with this Exhibit; and (ii) copy and Use the GE Content solely in connection with your permitted use of the Service. As used in the preceding sentence, "Use" means your internal use and use by your End Users to exchange data with you in connection with your business, provided, that Use expressly excludes any selling, renting, or leasing the Service Offerings or otherwise making the Service Offerings available as a time-share or commercial product or service. Except as provided in this Section 7.4, you obtain no rights under this Exhibit from us or our licensors to the Service Offerings, including any related intellectual property rights. Some GE Content may be provided to you under a separate license, including an Open Source Software license. In the event of a conflict between this Exhibit and any separate license, the separate license will prevail with respect to that GE Content. Your use of Third Party Content may be subject to third party agreements accepted by you.

7.5. Use Restrictions. Neither you nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Exhibit. Neither you nor any End User may (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Service Offerings (except to the extent software included in the Service Offerings is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse

engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) sell, rent, or lease the Service Offerings or make the Service Offerings available as a commercial product or service.

7.6. Suggestions. If you provide any Suggestions to us or our affiliates, we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We and our affiliates will be entitled to use the Suggestions without restriction or compensation to you.

8. Indemnification.

You shall defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your account and use by your employees and personnel or End Users); (b) breach of this Exhibit or violation of applicable law by you or any End User; (c) Your Content or the combination of Your Content with other applications, content, or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising, or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates. We will promptly notify you of any claim subject to Section 9, but our failure to promptly notify you will only affect your obligations under Section 9 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

9. Disclaimers.

EXCEPT AS PROVIDED BY SECTION XIX OF THE PRIMARY AGREEMENT, THE SERVICE OFFERINGS ARE PROVIDED "AS IS," AND NEITHER WE NOR OUR AFFILIATES, SUPPLIERS, OR LICENSORS MAKE ANY WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO YOU OR ANY OTHER PARTY WITH RESPECT TO THE SERVICE OFFERINGS, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE MAKE NO REPRESENTATION OR WARRANTY THAT (I) THE SERVICE OFFERINGS WILL BE FREE FROM ERROR OR INTERRUPTION CAUSED

BY CYBER-ATTACKS, OR THAT WE WILL BE ABLE TO DETECT OR BLOCK ALL CYBER-ATTACKS, MALICIOUS OR OTHERWISE, FROM INTERFERING WITH YOUR USE OF THE SERVICE OFFERINGS, (II) THE SERVICE OFFERINGS WILL SATISFY YOUR REQUIREMENTS, OR (III) THE SERVICE OFFERINGS WILL BE UNINTERRUPTED OR OPERATE ERROR-FREE OR BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE NOT EXPLICITLY SPECIFIED IN THE DOCUMENTATION. ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OR SYSTEM INTEGRATION IS EXPRESSLY EXCLUDED AND DISCLAIMED.

10. Miscellaneous.

10.1. Force Majeure. We and our affiliates will not be liable for any delay or failure to perform any obligation under this Exhibit where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

10.2. No Third Party Beneficiaries. This Exhibit does not create any third party beneficiary rights in any individual or entity that is not a party to this Exhibit.

10.3. U.S. Government Rights. The Service Offerings are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service Offerings. If you are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Service Offerings. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

10.4. Import and Export Compliance. In connection with this Exhibit, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the region in which any of the foregoing occur.

11. Definitions.

"Acceptable Use Policy" means the document currently available at <https://www.predix.io/legal/acceptable-use-policy>, as it may be updated by us from time to time.

"API" means an application program interface.

"Applications" means the hosted applications (including the Data Portal) providing asset performance management services, microservices, or industrial Internet solutions running on the hosted platform, as further described in your Order Documents.

"Content" means all information, works, equipment, and materials, including, but not limited to, software (including machine images), data, databases, text, audio, video, and images.

"Data Protection Plan" means the document currently available at <https://www.predix.io/legal/data-protection>, as it may be updated by us from time to time.

"Documentation" means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Service Offerings provided with the Service Offerings, as such documentation may be updated by us from time to time.

"End User" means any individual or entity that directly or indirectly through another user accesses or uses the Service Offerings under your account.

"Open Source Software" means software available under a separate license that permits the recipient of such software to copy, modify, and distribute such software to anyone.

"Order Document" means an order form or a similar document executed between GE and you for the provision of the Service Offerings.

"Policies" means the Acceptable Use Policy, all restrictions described in the GE Content, and any other policy or terms referenced in or incorporated into this Exhibit. Policies do not include whitepapers or other marketing materials.

"Primary Agreement" means Agreement No. 16-3425 entered into between GE and the City of Los Angeles on November 4, 2016 and as may be amended by the parties from time to time.

"GE Content" means Content we or any of our affiliates distribute or make available for download in connection with the Service to allow access to or use of the Service Offerings, including Documentation; sample code; software libraries; command line tools; and other related technology. GE Content does not include the Service.

"Platform Services" means the hosted platform for developing, running, and managing Applications, as further described on your Order Documents.

"Service" means the Platform Services and Applications made available by us or our affiliates.

"Service Offerings" means the Service (including associated APIs), the GE Content, and any other product or service provided by us under this Exhibit. Service Offerings do not include Third Party Content that is offered to you by a third party under separate terms and conditions.

"Suggestions" means all suggested improvements to the Service Offerings that you provide to us.

"Technical Support Policy" means the technical support procedures and policies applicable, as described in Exhibits A and A-1 to the Primary Agreement.

"Third Party Content" means Content offered to you by a third party in conjunction with the Service that is identified as Content governed by an agreement directly between you and such third party.

"Your Content" means Content you or any End User (a) run on the Service, (b) cause to interface with the Service, (c) provide in connection with the Service, or (d) upload to the Service under your account or otherwise transfer, process, use, or store in connection with your account.

EXHIBIT B



GE Transportation

Jennifer Schopfer
Vice President & General Manager

3475 Piedmont Road NE
Atlanta, GA 30305

M +1 203-583-2679
E jennifer.schopfer@ge.com

City of Los Angeles
Gene Seroka
Executive Director, Port of LA
425 South Palos Verdes Street
San Pedro, CA, USA 90731

RE: Contracts with GE Transportation

September 25, 2018

Dear Mr. Seroka,

As you know, on May 21, 2018, General Electric Company ("GE") and Westinghouse Air Brake Technologies Corporation ("Wabtec") announced a definitive agreement to combine GE's Transportation business operations with Wabtec. The combined entity will be a global transportation leader in rail equipment, software and services, with operations in more than 50 countries.

The combination will be implemented as follows: GE has entered into the Separation, Distribution and Sale Agreement dated as of May 20, 2018 with, among other parties named therein, Wabtec pursuant to which, among other things, (1) GE will sell, directly or indirectly, a portion of the assets of GE Transportation to Wabtec (the "Sale"), (2) GE will distribute to its shareholders at least 80% of the stock of Transportation System Holdings, Inc. ("SpinCo") which will own, directly and indirectly, the balance of the assets comprising GE Transportation (the "Distribution"), and (3) immediately following the Distribution, a subsidiary of Wabtec will merge with and into SpinCo and the shares of SpinCo will be converted into shares of Wabtec (the "Merger"). In furtherance of the Distribution and the Merger, GE is undertaking an internal reorganization pursuant to which it will transfer, directly or indirectly, substantially all of the assets and liabilities comprising GE Transportation, other than those to be sold pursuant to the Sale, to SpinCo (the "Internal Reorganization").

Our existing contracts with you will remain in place through the Merger. However, please note the following:

- Contracts currently held by **General Electric Company** will be transferred/assigned to **GE Transportation Parts, LLC**, a dedicated GE Transportation entity (one that is not utilized by other GE businesses). As part of the Internal Reorganization, this entity will be moved to be under the ownership of SpinCo in preparation for the Merger. Upon formal closing of the Merger, this entity will become a subsidiary of Wabtec, and will no longer be affiliated with General Electric Company.

Appendix A attached to this letter specifies our existing contracts and the necessary assignment information, where applicable. Where an existing contract will be assigned, both the assignee entity and the assignor GE entity are specified in the Appendix. Further, necessary information about the assignee entity (bank account, tax ID, etc.) will be available upon request. **The assignment of contracts where applicable, and subsequent change of control of the entities in the GE Transportation business, should be seamless and should have no impact on our business relationship or the performance of your contract(s).** Nonetheless, we are reaching out to request that you formally consent to the transfer of your contracts and ultimate change of control of the contracting entities in relation to the

Internal Reorganization, Sale and Merger described above. As part of your consent, you agree that upon formal closing of the Sale and Merger transaction, General Electric Company and its remaining subsidiaries and affiliates that are not part of such transaction shall be released and discharged from any and all liabilities and obligations under the applicable contracts. Please sign where indicated below to indicate such consent and acceptance.

If you need more information or have questions, please contact me.

We look forward to continuing our valued relationship with you. Thank you in advance for your support of GE Transportation and its strategic objectives, as we combine with Wabtec Corporation.



Jennifer Schopfer
Vice President & General Manager

M +1 203-583-2679
E jennifer.schopfer@ge.com

Acknowledged and Agreed by

City of Los Angeles

Accepted by: _____

Signature: _____

Title: _____

Date: _____

Appendix A

City of Los Angeles

CONTRACTS REQUIRING ASSIGNMENT			
<u>Contract</u>	<u>Assigning GE Entity</u>	<u>Receiving/Assignee Entity</u>	<u>Timing</u>
Revenue Allocation Agreement ("Agreement") dated September 20, 2017	General Electric Company Tax ID# 14-0689340	GE Transportation Parts, LLC Tax ID# 31-1802128	Nov 01, 2018
Amended and Restated Agreement ("Agreement") dated September 11, 2017	General Electric Company Tax ID# 14-0689340	GE Transportation Parts, LLC Tax ID# 31-1802128	Nov 01, 2018

Note: The above list is intended to be comprehensive with respect to the contractual relationships between City of Los Angeles and the GE Transportation business operations. In the event any contract, agreement or purchase order has been inadvertently left off this list, the consent provided herein shall be deemed to be extended to such documents as well. All contract references include applicable amendments; Amendments are not listed separately.