

**AGREEMENT BETWEEN THE CITY OF LOS ANGELES
AND THE CITY OF LONG BEACH**

**ESTABLISHING COSTS TO BE SHARED
UNDER THE CLEAN AIR ACTION PLAN**

MILLENNIUM MARITIME, INC.

Design Near-zero Emissions Tier 4 Engine and Electric Drive System Tugboat

THIS AGREEMENT is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners, at its meeting of _____, 2019, and the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners, at its meeting of August 26, 2019.

WHEREAS, the Cities of Los Angeles and Long Beach, acting by their respective Board of Harbor Commissioners ("Ports") have entered into Los Angeles Agreement No. 2546/Long Beach Agreement No. HD-7173 ("Master Cost Sharing Agreement") expressing their desire to share the costs of certain contracts related to the San Pedro Bay Ports Clean Air Action Plan; and

WHEREAS, the Ports are interested in sharing the cost to have Millennium Maritime, Inc. ("Millennium") design a tugboat with a near-zero emissions Tier 4 engine and electric drive system and design the bid specifications for construction of the boat (the "Project") in accordance with the terms of the Master Cost Sharing Agreement;

NOW, THEREFORE, THE PORTS AGREE AS FOLLOWS:

1. As part of the Technology Advancement Program, the City of Long Beach has entered into or intends to enter into a funding agreement with Millennium for the Project.
2. The term of the funding agreement between the City of Long Beach and Millennium shall commence upon execution by the Executive Director and, subject to the City of Long Beach's right to terminate early, shall terminate on April 21, 2021.
3. The total cost of the overall project to design, build and demonstrate the tugboat is estimated at \$18,000,000, with the Ports paying \$117,500 each, and Millennium receiving grant funding and contributing the remaining amount.
4. The terms and conditions of the Master Cost Sharing Agreement are incorporated by reference into this agreement and the Ports agree to abide by all the terms and conditions of said agreement.
5. The terms of this cost sharing agreement shall be amended only in writing and signed by both parties.

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

THE CITY OF LOS ANGELES HARBOR DEPARTMENT, a municipal corporation, acting by and through its Executive Director of the Harbor Department

Date: _____, 2019 By: _____

Eugene D. Seroka
Executive Director

APPROVED AS TO FORM:

Michael N. Feuer, City Attorney

By: Joy M. Crose

Joy M. Crose, Asst. Gen. Counsel

Date: November 18, 2019

THE CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

Date: 9/9, 2019 By: for Mario Cordero

Mario Cordero
Executive Director

APPROVED AS TO FORM:

CHARLES PARKIN, City Attorney

By: Lauren E. Misajon

Lauren E. Misajon, Deputy

Date: 9-4, 2019

Account#	59965	W.O.#	18035
Ctr/Div#	0330	Job Fac.#	637-00
Proj/Prog#	000		
Budget FY:		Amount:	
	FY19 20		\$117,500.00
	TOTAL		\$117,500.00
For Acct/Budget Div. Use Only			
Verified by:	<u>File</u>		
Verified Funds Available:	<u>File</u>		
Date Approved:	<u>11/6/19</u>		

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CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

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AGREEMENT

BETWEEN THE CITY OF LONG BEACH AND

**MILLENNIUM MARITIME, INC.
910 SW SPOKANE STREET
SEATTLE, WA 98135
TELEPHONE NO. (206) 447-3055
FAX NO. (206) 628-0293**

THIS AGREEMENT is made and entered into, in duplicate, as of the date executed by the Executive Director of the Long Beach Harbor Department (“Executive Director”), by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners (“City”), pursuant to authority granted by said Board at its meeting of _____, 2019; and MILLENNIUM MARITIME, INC., a Washington corporation and wholly owned subsidiary of Harley Marine Services, Inc. (“Millennium”).

1. This agreement is made with reference to the following facts and objectives:

1.1 City and the City of Los Angeles Harbor Department (“Los Angeles”) (referred to collectively as “joint ports”) created the Technology Advancement Program (“TAP”) as part of the joint ports’ Clean Air Action Plan (“CAAP”) in order to accelerate the verification or commercial availability of new, clean technologies that are applicable to the port industry and result in significant reductions of diesel particulate matter, nitrogen oxides, sulfur oxides and other pollutants.

1.2 Through the TAP, the joint ports provide grant funding to assist port-related technology vendors in identifying, evaluating and demonstrating new and emerging emissions reductions technologies and strategies that may result in new control measures, alternatives to existing strategies or as additional mitigation options under the CAAP.

1.3 The TAP Committee reviewed proposed projects for funding

1 and hereby recommends approval of the Scope of Work attached hereto as Exhibit
2 A and incorporated herein by this reference ("Proposal") for Millennium to design a
3 Tier 4 engine and electric drive system for a near-zero emissions tugboat and design
4 the bid specifications for construction of the boat (the "Project").

5 1.4 The total amount which shall be payable by City and City of Los
6 Angeles to Millennium for Millennium's Project costs during the term of this
7 agreement shall not exceed \$235,000. City intends to seek reimbursement for fifty
8 percent (50%) of the funding for Consultant's services (\$117,500) from the City of
9 Los Angeles pursuant to a separate cost sharing agreement with the City of Los
10 Angeles.

11 2. Millennium agrees to design and report on the Project in accordance
12 with the Proposal.

13 3. The term of this agreement shall commence upon execution by the
14 Executive Director and, subject to the provisions of paragraph 7, shall terminate on April
15 21, 2021.

16 4. Charges to City shall be billed by Millennium only following completion
17 of each Project deliverable set forth in Task 1 in Exhibit A and payments for work performed
18 shall be made in accordance with the Funding Disbursement Schedule, attached hereto
19 as Exhibit B and incorporated by this reference.

20 5. Millennium shall submit a separate statement no later than the
21 twentieth day after each Project deliverable set forth in Exhibit A has been achieved,
22 detailing the work performed. All payments to Millennium shall be made by City in due
23 course, not to exceed twenty (20) days, after approval of invoice by the Director of
24 Environmental Planning.

25 6. All test results, data and reports, in whatever form or medium,
26 compiled or prepared by Millennium in performing its services or furnished to Millennium
27 by City shall be the property of the Cities of Long Beach and Los Angeles which shall have
28 the unrestricted right to use or disseminate same without payment of further compensation

1 to Millennium. Copies of Millennium's work product may be retained by Millennium for its
2 own records.

3 7. City shall have the right to terminate this agreement at any time upon
4 ten (10) days' written notice to Millennium. If this agreement is so terminated prior to the
5 expiration of the term, Millennium shall be paid for those charges which have accrued but
6 not been paid through the effective date of termination. Millennium agrees to accept such
7 amount, plus all amounts previously paid, as full payment and satisfaction of all obligations
8 of City to Millennium. Millennium shall deliver to City all test data gathered and all reports
9 for work performed prior to termination of this agreement.

10 8. Neither City nor any of its employees shall have any control over the
11 conduct of Millennium, or employees of Millennium, except as herein set forth, and
12 Millennium and employees of Millennium shall not, at any time or in any manner, represent
13 that Millennium or employees of Millennium, or any of them, are the officers, agents, or
14 employees of City. It is expressly understood and agreed that Millennium is, and shall at
15 all times remain, as to City a wholly independent contractor, and each party's obligations
16 to the other party are solely such as are set forth in this agreement. Millennium shall be
17 free to contract for similar services to be performed for others during this agreement.

18 9. Millennium agrees, subject to applicable laws, rules, and regulations,
19 not to discriminate in the performance of this agreement against any employee or applicant
20 for employment on the basis of race, color, national origin, religion, sex, sexual orientation,
21 gender identity, AIDS, HIV status, age, disability, handicap, or veteran status. Millennium
22 shall ensure that applicants are employed and that employees are treated during
23 employment without regard to any of these bases, including but not limited to employment,
24 upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination,
25 rates of pay or other forms of compensation, and selection for training, including
26 apprenticeship. Millennium agrees to post in conspicuous places available to employees
27 and applicants for employment notices to be provided by City setting out the provisions of
28 this nondiscrimination clause. Millennium shall in all solicitations or advertisements for

1 employees state that all qualified applicants will receive consideration for employment
2 without regard to these bases. Compliance with the Americans with Disabilities Act of 1990
3 shall be the sole responsibility of Millennium, and Millennium shall defend and hold the City
4 harmless from any expense or liability arising from Millennium's non-compliance therewith.

5 10. Except for payment specifically provided in the Funding Disbursement
6 Schedule set forth in Exhibit B, any access, use or other issues, expenses, liabilities
7 relating to or arising out of Millennium's use of any facility operated by any other entity shall
8 be the responsibility of Millennium.

9 11. Any notices to be given under this agreement shall be given in writing.
10 Such notices may be served by personal delivery, facsimile transmission or by first class
11 regular mail, postage prepaid. Any such notice, when served by mail, shall be effective
12 two (2) calendar days after the date of mailing of the same, and when served by facsimile
13 transmission or personal delivery shall be effective upon receipt. For the purposes hereof,
14 the address of City, and the proper person to receive any such notices on its behalf, is:
15 Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California
16 90801; and the address of Millennium as indicated above.

17 12. Millennium covenants that both itself, in its corporate capacity, and its
18 principals presently have no interest and shall not acquire any interest, direct or indirect,
19 which would conflict in any manner or degree with the performance of services required to
20 be performed under this agreement.

21 13. (a) Millennium shall indemnify, protect and hold harmless City, the
22 Board of Harbor Commissioners, and their officials, employees and agents ("Indemnified
23 Parties"), from and against any and all liability, claims (including product liability claims),
24 demands, damage, loss, obligations, causes of action, proceedings, awards, fines,
25 judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert
26 and witness fees, and other costs and fees of litigation, arising or alleged to have arisen,
27 in whole or in part, out of or in connection with (1) Millennium's breach or failure to comply
28 with any of its obligations contained in this agreement, or (2) negligent or willful acts, errors,

1 omissions or misrepresentations committed by Millennium, its officers, employees, agents,
2 subcontractors, or anyone under Millennium's control, in the performance of work or
3 services under this agreement (collectively "Claims" or individually "Claim").

4 (b) In addition to Millennium's duty to indemnify, Millennium shall
5 have a separate and wholly independent duty to defend Indemnified Parties at Millennium's
6 expense by legal counsel approved by City, from and against all Claims, and shall continue
7 this defense until the Claims are resolved, whether by settlement, judgment or otherwise.
8 No finding or judgment of negligence, fault, breach, or the like on the part of Consultant
9 shall be required for the duty to defend to arise. City shall notify Millennium of any Claim,
10 shall tender the defense of the Claim to Millennium, and shall assist Millennium, as may be
11 reasonably requested, in the defense.

12 (c) If a court of competent jurisdiction determines that a Claim was
13 caused by the sole negligence or willful misconduct of Indemnified Parties, Millennium's
14 costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole
15 negligence by the Indemnified Parties, or (2) reduced by the percentage of willful
16 misconduct attributed by the court to the Indemnified Parties.

17 (d) The provisions of this paragraph shall survive the expiration or
18 termination of this agreement.

19 14. Millennium shall obtain and maintain any necessary licenses and
20 permits required under Title 3 and Title 5 of the Long Beach Municipal Code. City may
21 withhold any payment to Millennium until Millennium comes into compliance with such
22 licensing and permitting requirements.

23 15. This agreement shall be deemed made in the State of California and
24 shall be governed by the laws of said State (except those provisions of California law
25 dealing with conflicts of law), both as to interpretation and performance.

26 16. In the event of any conflict or ambiguity between this written
27 agreement and any exhibit hereto, the provisions of this agreement shall govern.

28 17. If there is any legal proceeding between the parties to enforce or

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CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 interpret this agreement or to protect or establish any rights or remedies hereunder, the
2 prevailing party shall be entitled to its costs and expenses, including reasonable attorneys'
3 fees.

4 18. This agreement shall not be amended, nor any provision or breach
5 hereof waived, except in writing signed by the parties which expressly refers to this
6 agreement.

7 19. Except with the written consent of the City, whose consent may be
8 withheld in its sole and absolute discretion, this agreement shall not be assigned. Any
9 proposed assignment without such consent shall be void.

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20. This agreement, including all exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

MILLENNIUM MARITIME, INC., a Washington corporation and wholly owned subsidiary of Harley Marine Services, Inc.

August 12, 2019

By: [Signature]
Name: STERLING V. ALKHA
Title: CFO

AUGUST 12, 2019

By: [Signature]
Name: STEVEN CARLSON
Title: SVP, ENG

MILLENNIUM

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

9/9, 2019

By: [Signature]
for Mario Cordero
Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

9-4, 2019

By: [Signature]
CHARLES PARKIN, City Attorney
Lauren E. Misajon, Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Washington)
County of King)
On 8/12/2019 before me, Derick Lillejord, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Sterling Adlakha and Steven Carlson
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Derick Lillejord
Signature of Notary Public

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: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

**EXHIBIT A
SCOPE OF WORK**

DESIGN NEAR-ZERO-EMISSIONS TUGBOAT

This project aims to demonstrate the performance and effectiveness of a near-zero-emissions tugboat in Long Beach. Harley Marine will design the tugboat under the Technology Advancement Program, and it is the intent of Harley Marine to construct the tugboat pending the receipt of additional funding.

Harley Marine will design a new tugboat with a Tier 4 engine and an electric-drive system. The diesel-electric system, as envisioned prior to commencing design activities, includes six Caterpillar C32 diesel engine generators (994 kW, 1,332 hp, Tier 4), a power management system (PMS), two variable frequency drives (VFD), two electric propulsion motors, and two azimuth drives. The electric drive tugboat utilizes shared load capability; during periods of low speed transit in the harbor it operates one engine, and as demand for resources increases, the power management system turns on additional engines as needed.

This project is based on an estimated budget of \$18,000,000. Following design, Harley Marine shall solicit price quotes to determine the actual vessel construction cost. Harley Marine also must secure financing to advance the construction phase.

City shall make contributions to the project as set forth in Exhibit "B" after Harley Marine completes the following tasks.

Task 1 Tugboat Design

The purpose of this task is to complete the design of the Tier 4 electric-drive tugboat.

Task 1.1 Preliminary Design – Harley Marine will work with Robert Allan LTD Naval Architects and Marine Engineers (Robert Allan LTD) to complete the preliminary vessel design.

Task 1.2 Contract Design – Harley Marine will work with Robert Allan LTD to finalize the design and contract bid specifications.

Milestone	Deliverable	Due Date
1.1	Preliminary Design	September 30, 2019
1.2	Contract Design	December 2, 2019

Task 2 Reporting

Harley Marine shall submit monthly reports on the status of design and progress toward meeting the milestones.

Milestone	Deliverable	Due Date
2	Monthly Reports	Monthly

EXHIBIT B

FUNDING DISBURSEMENT SCHEDULE

Payments under this contract shall be disbursed according to the "Tasks" set forth below which are described in more detail in Exhibit "A" attached to this contract. Upon completion of each "Task" identified below, including providing to City the "Deliverable" for each "Task," Harley Marine may request disbursement of funds. City shall not be required to disburse any funds for a "Task" that has not been completed as described in Exhibit "A".

Each invoice shall include a report containing (i) the description of the completed "Task"; and (ii) findings or results for each "Task" with discussions of actions completed, including photographs where applicable, and documents, data and test results of equipment performance where applicable. Regardless of the expenses incurred by Millennium Maritime in no event shall the total funds disbursed pursuant to this contract exceed the amount of the grant award which is \$235,000.

Task	Task Description/Deliverable	TAP Funding	DUE DATE
Task 1 – Tugboat Design			
1.1	Preliminary Design	\$117,500	6 weeks from contract execution
1.2	Contract Design	\$117,500	8 weeks from completion of preliminary design
TOTAL		\$235,000	