



DATE: November 8, 2012

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Douglas A. Thiessen, Executive Director

SUBJECT: Third Party Independent EIR Review

It is recommended that the Board receive and file a contract with Ascent Environmental, Inc. (Ascent) in an amount of \$100,000 to perform third party review of the ICTF Modernization and Expansion Project Administrative Draft Environmental Impact Report (ADEIR).

Three firms were identified by JPA Technical Staff to meet the criteria required to perform an independent third party review of the ICTF ADEIR, possessing professional technical expertise for environmental assessments and more specifically being qualified as well as not having a conflict of interest or currently holding a contract with any individual Board member or entity.

On September 7, 2012 each firm was notified and requested to submit a Request for Expression of Interest (RFEI) by September 21, 2012. Upon receipt of the RFEIs, JPA Management engaged E2 ManageTech (E2) to perform a responsiveness and completeness review. On October 3, 2012 E2 notified JPA Management that all three RFEI responses were complete and responsive. On October 4, 2012 the JPA Technical and Legal Staff were provided a memo from E2 regarding its review.

On October 18, 2012 the JPA Technical Staff met and evaluated each RFEI for content. The JPA Technical Staff deemed Ascent to be the best candidate to perform the independent third party review. Based on staff's evaluation and recommendation, the Executive Director executed a contract with Ascent in the amount of \$100,000 for third party review with a period of performance of one year. It is recommended that the JPA Board receive and file the contract with Ascent.

It is also recommended that the Board make the following finding:
"The Board finds the activity is administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a "project" as defined by CEQA Guidelines section 15378."


Douglas A. Thiessen
Executive Director

AGREEMENT BETWEEN THE
INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY
AND
ASCENT ENVIRONMENTAL, INC.

THIS AGREEMENT ("Agreement") is made and entered into by and between the INTERMODAL CONTAINER TRANSFER FACILITY, a Joint Powers Authority ("ICTF"), acting by and through its Executive Director ("Executive Director") and ASCENT ENVIRONMENTAL, INC., a California corporation, whose address is 455 Capitol Mall, Suite 205, Sacramento, California 95814 ("Consultant").

WHEREAS, ICTF has received and accepted an application from Union Pacific Railroad ("UP") for a proposed modernization project ("Project") for an existing railyard on property leased by the ICTF from the City of Los Angeles and subleased to UP ("ICTF Facility"); and

WHEREAS, ICTF is the lead agency preparing an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act, California Public Resources Code §21000, et seq. ("CEQA") to assess the proposed Project prior to consideration of Project approval; and

WHEREAS, ICTF requires professional, scientific, expert or technical services of a temporary or occasional basis to assist the ICTF in preparing the EIR for the proposed Project for the ICTF's independent review and consideration, including without limitation, technical expertise in CEQA assessments of aesthetics, air quality, health risk, cultural resources, hazards, and noise, and other issues; and

WHEREAS, Consultant is an organization that provides services, including, but not limited to those services required by the ICTF and, by virtue of training and experience, is well-qualified to provide such services to the ICTF; and

WHEREAS, by reason of the technical requirements, nature and length of the services required by ICTF, it is not feasible for ICTF to have such services performed by ICTF staff;

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

1. Incorporation of Recitals.

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant.

2.1 All of the services Consultant shall perform for ICTF are set forth as "Scope of Work" of the Project in Exhibit A hereto ("Scope of Work").

2.2 The Executive Director or environmental staff of the ICTF shall provide further instructions to Consultant that specify, without limitation, the specific services, deliverables and schedule required in connection with each task or subtask in the Scope of Work, and authorized personnel who may perform the work including pre-approval of the scope of work, identity and billing rates of any subconsultant or subcontractor proposed to be used by Contractor to perform any aspect of the Scope of Work.

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that Executive Director lacks authority to request the performance of 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.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of Executive Director, whether performance is undertaken by Consultant or third-parties with whom the ICTF or Consultant has contracted on the effective date of this Agreement or whom Executive Director may subsequently approve in writing ("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 ICTF. If Subconsultants in direct contract with Consultant ("Consultant's Subconsultants) perform any portion of the Scope of Work hereunder, all obligations including without limitation the obligation to pay Consultant's Subconsultants for services performed, are those of Consultant alone. If Subconsultants in direct contract with ICTF ("ICTF's Subconsultants") perform any portion of the Scope of Work hereunder, obligations that may be owed to ICTF's Subconsultants, including, but not limited to, the obligation to pay ICTF's Subconsultants for services performed, are those of ICTF alone. Upon written request, each party shall supply the other party with all agreements between it and its Subconsultants for the performance of any portion of the Scope of Work hereunder.

2.5 As between ICTF 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, any municipality, or any other governmental entity.

2.6 Executive Director shall resolve in his or her sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of work, and the amount of compensation due. Upon written notice from Executive Director, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to Executive Director's reasonable satisfaction

and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.6 is a condition to payment by ICTF of compensation to Consultant pursuant to this Agreement.

2.7 Consultant's representative responsible for administering this Agreement, Curtis E. Alling, AICP ("Project Manager"), shall not be changed without Executive Director's written approval. Executive Director may, for any reason in his or her sole reasonable discretion, require Consultant to substitute a new Project Manager. If ICTF requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.8 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.9 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.9 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice ICTF at the lower rate.

2.10 Consultant shall promptly consider and implement, to the reasonable satisfaction of Executive Director, any written comments of Executive Director or ICTF staff.

2.11 Consultant shall review information provided by ICTF staff. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of Executive Director in writing.

2.12 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by the Executive Director. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in the Scope of Work shall entitle ICTF to have services completed by others, shall obligate Consultant to pay ICTF's cost to undertake completion of such services, and shall authorize ICTF to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in the Scope of Work shall result in economic losses to the ICTF, including, but not limited to, the timely bidding and awarding of contracts, completion of the project in connection with which Consultant's services are rendered and the use of such project by ICTF, its tenants and the public.

3. Services To Be Performed By ICTF.

3.1 ICTF shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by ICTF, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, existing oceanographic studies and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of Executive Director, shall assist in completing the Scope of Work.

3.2 Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises owned, leased or controlled by ICTF. 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 premises may be occupied or used by tenants or contractors of ICTF and that access rights granted by ICTF to Consultant shall be consistent with any such occupancy or use.

3.3 Pursuant to California Public Resources Code Sections 21082.1(c)(1) and (2) and CEQA Guidelines Section 15084(e), the draft EIR and the final EIR shall reflect the independent judgment of the ICTF. Accordingly, the ICTF will independently review and analyze the draft and final EIRs prior to their distribution to the public. The ICTF shall be solely responsible for the adequacy and objectivity of the documents. Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the documents lies within the sole discretion of the ICTF.

3.4 ICTF shall not be obligated to provide information and/or services except as specified in this Agreement.

4. Effective Date and Term.

4.1 The effective date of this Agreement shall be the date of execution by its Executive Director.

4.2 The term of this Agreement shall be one (1) year, commencing on the Agreement's effective date. This Agreement shall be in full force and effect until:

a. Executive Director determines that Consultant has completed the Scope of Work and provides Consultant written notice thereof; or

b. ICTF, in its sole discretion, terminates this Agreement, which termination shall become effective five (5) calendar days following Executive Director's transmittal of written notice advising Consultant of such action. Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. Executive Director, in his or her sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant

accordingly. If ICTF so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to ICTF in an organized, usable form with all items properly labeled to the degree of detail specified by the Executive Director. No compensation shall be due Consultant until it complies with the requirements of this paragraph; or

c. One (1) year has elapsed from the effective date of the Agreement.

4.3. Notwithstanding the foregoing, this Agreement is subject to the ICTF's appropriation of funds for this Agreement. The ICTF is precluded from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor. ICTF, 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, ICTF is under no legal obligation to do so. ICTF, 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 ICTF does not appropriate funds therefor. Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by ICTF.

Although Consultant is not obligated to perform any services required by the Scope of Work in any fiscal year in which no appropriation for the Agreement has been made, Consultant shall resume performance of the Scope of Work on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefor is approved by ICTF within that sixty (60) day period. Consultant is responsible for maintaining all insurance and bonds during this sixty (60) day period. The time for performance shall be extended during this 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 ICTF for this Agreement, this Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, ICTF shall pay Consultant and Consultant shall accept a sum not to exceed One Hundred Thousand Dollars (\$100,000.00), inclusive of all labor and expenses. The total sum payable under this Agreement shall be determined by actual work performed and Consultant acknowledges that final compensation may not reach the maximum sum allowed for herein.

5.2 Compensation payable under this Agreement for payment for labor, travel, per diem, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses") are listed in Exhibit B. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit B expressly so allows.

5.3 Compensation payable under this Agreement shall be on a Time and Materials basis based on the actual time expended in the performance of Tasks using the applicable rates set forth in Exhibit B. Consultant will also be reimbursed for materials and other out-of-pocket expenses at cost. The rates identified in Exhibit B state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged unless authorized in Exhibit B.

5.4 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to ICTF for services performed during the prior month, accompanied by such records and receipts as may be required by Section 5.5. Each such invoice shall bear a Taxpayer Identification Number. Each invoice shall identify all services performed by Subconsultants. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and three (3) copies of each such invoice for payment in the format that contains the information specified in Exhibit C, and that includes 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 of Los Angeles' Living Wage Ordinance.

(signed)

5.5 Consultant shall submit supporting documents with each invoice, which may include, but not be limited to, provider invoices, receipts, payrolls, and time sheets. Consultant is not required to submit support for direct costs items of \$25 or less.

5.6 If Consultant utilizes Consultant's Subconsultants to perform aspects of the Scope of Work, Consultant shall submit to ICTF, with each monthly invoice, a Monthly Subconsultant Monitoring Report in the form attached hereto as Exhibit D. Consultant shall provide an explanation for any item that does not meet or exceed the participation levels required by a particular Directive, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report form.

5.7 All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of ICTF business, the same may be reviewed and approved.

For payment and processing, all invoices shall be mailed to the following address:

Douglas Thiessen, Executive Director
ICTF Joint Powers Authority
c/o Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

6. Recordkeeping and Audit Rights.

6.1 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. Consultant's books and records shall be readily accessible to and open for inspection and copying at the premises by ICTF, 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.

6.2 During the term of this Agreement, ICTF 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 ICTF. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ICTF at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ICTF. ICTF'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 ICTF, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Section 6.2 shall constitute a material breach of this Agreement and shall entitle ICTF to withhold any payment due under this Agreement until such breach is cured.

7. Consultant Is An Independent Contractor.

Consultant, in the performance of the Scope of Work, is an independent contractor and not an agent or employee of ICTF. Consultant shall not represent itself as an agent or employee of the ICTF and shall have no power to bind the ICTF in contract or otherwise.

8. Intentionally omitted.

9. Indemnification and Insurance.

9.1 Indemnification

Except for the sole negligence or willful misconduct of the ICTF, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the ICTF 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 ICTF, 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 ICTF 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 ICTF.

9.2 Intentionally Omitted

9.3 Professional Liability

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

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

Each policy shall include a Waiver of Subrogation in favor of the ICTF, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons. Consultant's insurance broker or agent shall submit for approval on Consultant's behalf evidence of said insurance to the ICTF.

Notice of occurrences of claims under the policy shall be made to the ICTF General Counsel's office with copies to Risk Management.

9.4 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 ICTF in any circumstance in which it is alleged that actions or omissions of the ICTF 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. Consultant's insurance broker or agent shall submit for approval on Consultant's behalf evidence of said insurance to the ICTF.

9.5 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 ICTF.

9.6 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Executive Director and the ICTF General Counsel have each been given thirty (30) days' prior written notice by registered mail addressed to Douglas Thiessen, ICTF Executive Director, c/o Port of Long Beach, 925 Harbor Plaza, Long Beach, CA 90802 and Thomas A. Russell, ICTF General Counsel, c/o Port of Los Angeles, 425 S. Palos Verdes Street, San Pedro, California 90731.

9.7 Copies of Policies

Two certified copies of each policy containing the 30-day cancellation notice language shall be furnished to Executive Director. The form of such policy shall be subject to the approval of the Executive Director or Risk Manager of the ICTF.

9.8 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to ICTF, 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.

9.9 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Consultant shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended 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 ICTF's interests. The cost of such insurance will be deducted from the next payment due Consultant.

9.10 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 ICTF, 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 ICTF, 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 ICTF 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 a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.
7. Consultant agrees to inform ICTF in writing immediately of any change in its status or policy which would materially affect the protection afforded ICTF by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

9.11 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 Cities of Long Beach or 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.

10. Personal Services Agreement.

10.1 During the term of this Agreement, 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 ICTF.

10.2 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 Section 2.3. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. 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 ICTF to such Subconsultant(s) or give the Subconsultant(s) any rights against the ICTF.

11. Confidentiality.

Consultant shall not disclose any proprietary or confidential information of ICTF to any third party or parties during or after the term of this Agreement without the prior written consent of ICTF. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

12. Affirmative Action.

Consultant 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 are incorporated herein by this reference and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit E.

13. Small/Very Small Business Enterprise Program And Local Business Preference Program.

It is the policy of the ICTF 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 ICTF contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the ICTF 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.

14. Conflict of Interest.

Consultant has reviewed and understands 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 of Los Angeles which are followed by the ICTF joint powers authority. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ICTF 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, ICTF may immediately terminate this Agreement by giving written notice thereof. Consultant's signature of this Agreement constitutes its affirmation that any former employees of ICTF, the Cities of Los Angeles or Long Beach, the Los Angeles Harbor Department or Long Beach Harbor Department that are employed by Consultant and that assist in performing the Scope of Work shall be free of any conflicts of interest with respect to of ICTF, the Cities of Los Angeles or Long Beach, the Los Angeles Harbor Department or Long Beach Harbor Department.

15. Compliance with Applicable Laws.

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders.

16. Trademarks, Copyrights and Patents.

Consultant shall promptly and fully inform Executive Director in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant agrees to save, keep, hold harmless, protect and indemnify ICTF and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ICTF of any materials supplied by Consultant in the performance of this Agreement.

17. Proprietary Information.

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 ICTF as soon as they are developed, whether in draft or final form. ICTF 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 ICTF 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 ICTF 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. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ICTF, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the ICTF, its boards, officers, agents or employees, is not given in confidence. Accordingly, ICTF or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

18. Royalty-Free License.

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 ICTF 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 ICTF. Upon ICTF'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 ICTF. It is expressly understood and agreed that, as between ICTF and Consultant, the referenced license shall arise for ICTF's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ICTF 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 ICTF.

19. ICTF's Disclosure Obligations.

Consultant acknowledges that ICTF is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

20. 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 purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to ICTF shall be addressed to Douglas Thiessen, ICTF Executive Director, c/o Port of Long Beach, 925 Harbor Plaza, Long Beach, CA 90802, and notice to Consultant shall be addressed to it at the address set forth in the first paragraph of this Agreement. Nothing herein contained shall preclude or render

inoperative service of such notice in the manner provided by law.

21. 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 its authorized TIN is 27-1537109. No payments will be made under this Agreement without a valid TIN.

22. Service Contractor Worker Retention Policy and Living Wage Requirements.

As the ICTF follows the contracting policies of the City of Los Angeles, Consultant shall comply with 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, and the City of Los Angeles 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 ICTF to terminate this Agreement and otherwise pursue legal remedies that may be available.

23. Wage and Earnings Assignment Orders/Notices of Assignments.

Consultant and Subconsultants shall comply with all applicable state and federal employment reporting requirements for employees.

Consultant and Subconsultants shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Consultant and Subconsultants shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 et seq. of the California Family Code.

24. Equal Benefits Policy.

As the ICTF follows the contracting policies of the City of Los Angeles, Consultant shall comply with 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. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the ICTF to terminate any agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit G.

25. 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.

26. 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.

27. Titles and Captions.

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section 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.

28. 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 the Agreement Between the Port of Los Angeles and the Port of Long Beach Creating the Intermodal Container Facility Joint powers Authority dated October 5, 1983 and the ICTF's By-Laws.

29. 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.

30. Governing Law.

This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules.

31. 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.

32. Jurisdiction.

The parties hereto consent to the jurisdiction of the State of California for the enforcement of this Agreement.

33. Integrated Agreement.

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

34. Exhibits; Sections.

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 sections are to sections of this Agreement unless stated otherwise.

Exhibit A – Scope of Work and Future Project Phases

Exhibit B – Schedule of Fees and Charges

Exhibit C – Form of Invoices

Exhibit D – Subconsultant Monitoring Form

Exhibit E – Affirmative Action Provisions

Exhibit F – Small Business Provisions

Exhibit G – Equal Benefits Provisions

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

INTERMODAL CONTAINER
TRANSFER FACILITY,
A Joint Powers Authority
By its Executive Director

Date: _____

By: _____
Executive Director

Attest: _____
Secretary

ASCENT INTERNATIONAL, INC.;
a California corporation

Date: 11-7-12

By: _____

Name: Curtis E. Alling

Title: CEO / Principal

Attest: _____

Name: Honey Waters

Title: Secretary

APPROVED AS TO FORM AND LEGALITY

November 8, 2012

By Joy M. Crose
JOY M. CROSE
Acting General Counsel

EXHIBIT A

SCOPE OF WORK

Scope of Services Overview

As allowed in the statutes, prior to completing the draft EIR for the proposed Project, the ICTF as CEQA Lead Agency may also consult directly with independent experts or organizations it believes could contribute to the preparation of a defensible document that properly evaluates the environmental effects of the proposed Project. Many public agencies have found that an early independent review by a third party consultant that did not prepare the draft EIR provides additional benefits. The purposes and expected benefits of an independent review of the Administrative Draft EIR for the proposed Project (ADEIR) include:

- (a) Sharing expertise
- (b) Disclosing agency analyses
- (c) Checking for accuracy
- (d) Detecting omissions
- (e) Discovering public concerns
- (f) Soliciting counter proposals

Consultant has been retained to perform such independent review of the ADEIR. In reviewing the ADEIR, the Consultant will focus on the sufficiency of the document in its compliance with the California Environmental Quality Act in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments will be expected to suggest, if/when appropriate, additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects.

Reviewers will explain the basis for their comments, and will submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. An effect shall not be considered significant in the absence of substantial evidence.

Schedule & Budget Requirements

1. Based on current information, the ADEIR is estimated to be provided by the ICTF JPA to Consultant for performance of the review in this scope of work, within an approximate time period of December 19, 2012 to January 18, 2013. ICTF staff shall keep Consultant apprised if this approximate date for delivery of the ADEIR for review changes.
2. The consultant will complete the required scope of services and deliver the work product in the form of written technical review comments on or before the date which is six calendar weeks following the date of Consultant's receipt of the ADEIR (e.g., written technical comments must be delivered to ICTF no later than February 25, 2013 if Consultant received the ADEIR for review on January 14, 2013).

3. The deliverable work product will be a document containing a compiled list of comments in Microsoft Excel format providing:
 - a. the comment;
 - b. a detailed reference to the location of the item in the ADEIR to which the comment applies;
 - c. the name and contact information of the person offering the comment; and
 - d. the comments must be segregated into three categories: (i) technical, (ii) legal and (iii) other.

4. The selected consultant will be performing its independent review of the ADEIR simultaneously with the JPA's technical, legal and administrative staff.

The ICTF has chosen to designate a not-to-exceed project allowance of \$100,000 (inclusive of all labor and expense charges). During the Project kickoff meeting (targeted for the Consultant's first week of the proposed Project), a project delivery approach will be discussed and established for the delivery of the required scope of services. This negotiated approach will include a project delivery schedule and a project delivery budget consistent with the restrictions as provided above (e.g., all work completed within six weeks of Consultant's receipt of the ADEIR for a not-to-exceed authorized maximum compensation of \$100,000). Labor & expense charges will be invoiced to the ICTF JPA monthly on a time and material basis (see attached Exhibits B and C).

EXHIBIT B
SCHEDULE OF FEES

ATTACHMENT B
RATE SCHEDULE

This attachment presents the billing rates for all named, key staff, as well as the standard schedule of rates for Ascent Environmental, Inc. and the two subcontractors.

Key Staff Proposed for the Technical Review of the ICTF Administrative Draft EIR	
Technical Professional	Hourly Rate
Curtis E. Alling, AICP (Ascent - Project Manager/CEQA Expert)	\$225
Honey Walters (Ascent - Principal Scientist - Air Quality, GHG, and Noise)	\$190
Austin Kerr (Ascent - Noise Specialist)	\$130
Heather Phillips (Ascent - Air Quality and GHG Specialist)	\$125
Fran Ruger (Ascent - Environmental Review)	\$145
Netai Basu, AICP (Fehr and Peers - Transportation/Modeling)	\$200
Julio A Nuno, REA (SCS - Hazardous Materials)	\$220
J. Rodney Marsh, REA (SCS - Hazardous Materials)	\$170



Ascent Standard Fee Schedule for 2012

Labor Classification	Hourly Rate
Project Principal/Director/Senior Project Manager	\$160 to \$225
Project Manager/Senior Consultant	\$135 to \$190
Environmental Planner/Staff Scientist/Biologist	\$95 to \$150
Environmental Analyst/Staff or Biological Technician	\$70 to \$120
Document Production/Word Processor/Graphics	\$65 to \$100
Administrative Assistant	\$55 to \$85
Direct Expenses	Rates*
Reproduction: 8 ½" by 11" black & white	\$0.08/page
Reproduction: 8 ½" by 11" color	\$0.45/page
Automobile mileage: IRS rate in effect or	\$0.505/mile
Noise meter	½ day/\$100 Full day (daytime only-no overnight)/\$150 Multiple day (24-hour)/\$200 Week/\$500
Per Diem	Standard Government Rates or as negotiated
Other direct costs, including subcontractors	As incurred

FEHR & PEERS

HOURLY BILLING RATES

(through June 2013)

Classification	Hourly Rate
Principal	\$200.00 - \$295.00
Senior Associate	\$185.00 - \$200.00
Associate	\$165.00 - \$185.00
Senior Engineer/Planner	\$135.00 - \$165.00
Engineer/Planner	\$110.00 - \$135.00
Senior Technical Support	\$120.00 - \$155.00
Administrative Support	\$100.00 - \$120.00
Technician	\$115.00 - \$120.00
Intern	\$90.00

- *Personal auto mileage is reimbursed at the then current IRS approved rate (55.5 cents per mile as of Jul 2012).*
- *Voice & Data Communications (Telephone, fax, computer, e-mail, etc.) are invoiced at cost as a percentage of project labor.*

Fehr & Peers reserves the right to change these rates at any time with or without advance notice.

SCS ENGINEERS

FEE SCHEDULE

(Effective April 1, 2012 through March 31, 2013)

	Rate/Hour
Principal	\$255
Project Director/Associate	220
Senior Project/Technical Manager	205
Project Manager	170
Certified Industrial Hygienist	165
Senior Project Professional	140
Project Professional	120
Construction Superintendent	125
Staff Professional	100
Project Administrator	85
Senior Engineering Technician	95
Designer/Drafter	85
Administrative/Secretarial	70
Technician	70

General Terms

1. Scheduled rates are effective through March 31, 2013. Work performed thereafter is subject to a new Fee Schedule.
2. Scheduled labor rates include overhead, administration, and profit. Costs for outside consultants and subcontractors, equipment/supplies, and for job-related employee travel and subsistence, are billed at actual cost plus a 15 percent administrative fee.
3. Charges for SCS field equipment and instruments will be in accordance with SCS's Field Equipment Rental Rates Schedule in effect at the time the work is performed. Company trucks are charged at \$50 for up to a half day (4 hours) of use, and \$100 for up to a full day (company cars at \$40/\$80). These charges incorporate an allowance of 100 miles per job per day; a \$0.30 per mile surcharge is applied for additional miles. Vehicle charges for long-term and/or high-mileage projects may be negotiated on a case-by-case basis.
4. Invoices will be prepared monthly or more frequently for work in progress, unless otherwise agreed. Invoices are due and payable upon receipt. Invoices not paid within 30 days are subject to a service charge of 1.5 percent per month on the unpaid balance.
5. Payment of SCS invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed in writing. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amounts past due and owing on client's accounts.
6. For special situations such as expert court testimony and limited consultation, hourly rates will be on an individually negotiated basis.



OTHER PROJECT CHARGES

Subconsultant/Subcontractors

The cost of services rendered by subconsultants/subcontractors that have been pre-approved by the ICTF will be charged at actual cost.

Travel and Subsistence (Meals, Lodging and Airfare)

The cost of travel will be at actual cost; subsistence will be charged in accordance with the City of Los Angeles travel policy per diem.

Vehicles and Mileage

Company vehicle (not listed in the rate schedule) mileage will be charged at the current Federal Travel Regulation (FTR) mileage allowance for vehicles equal to or less than 1 ton and at 55 cents per mile for vehicles greater than 1 ton.

Reproduction

All outside reproduction materials and supplies will be charged at cost.

Field Equipment

Field equipment will be charged at cost.

Computers

The charge for the use of Computer Aided Design and Drafting (CADD), graphics generation and modeling applications computing will be charged at \$20.00 per hour.

Any other direct costs, not specifically identified herein shall be reimbursed at cost.

NOTE:

When staff appears as expert witnesses in court trials, mediations, arbitration hearings and depositions, their time will be charged at 1.5 times individual hourly rates as stated in consultant's rate schedule.

EXHIBIT C
FORM OF INVOICES

Company Letterhead

Agreement No.:
ADP No.:
BTRC No.:
TIN:

Invoice Number:
Date:
POLA PM:

Task number, Project Title
Billing Period: Month/Day/Year to Month/Day/Year

Authorized PD Budget	Current Invoice	Invoiced To-Date	PD Balance
\$0.00	\$0.00	\$0.00	\$0.00

PERSONNEL:	Rate/Hour	Current Hours	Cumulative Hours	Current Total
Name & Title	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
"	\$0.00	0	0	\$0.00
Total Labor Cost:				\$0.00

SUBCONSULTANT:	Activity	Current Total
Name of Subconsultant	Work Performed	\$0.00
"		\$0.00
"		\$0.00
"		\$0.00
Total Subconsultant Cost:		\$0.00

REIMBURSABLE EXPENSES:	Current Total	
Mileage, Parking, Car Rentals, Reproduction/Copies, etc.	\$0.00	
"	\$0.00	
"	\$0.00	
"	\$0.00	
"	\$0.00	
Total Other Direct Cost:		\$0.00

REMIT PAYMENT TO: Company Name Address City, ST Zip
--

TOTAL AMOUNT NOW DUE: \$0.00

Progress Report: Describe the work undertaken during this billing period. Identify accomplishments and challenges encountered. Provide other info as appropriate.

I certify under penalty of perjury that the above bill is just and correct according to the terms of Agmt # _____ 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 Representative Name

Date: _____
 APPROVED AS TO SCOPE AND
 AMOUNT OF WORK PERFORMED

 POLA PROJECT MANAGER

EXHIBIT D
SUBCONTRACTOR MONITORING FORM

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/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 _____ DBE _____

				PROPOSED		ACTUALS		
#	Name of Subcontractor	Type of Work Performed	Group SBE/VSBE/MBE/WBE/OBE DVBE/DBE	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 D

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

EXHIBIT E

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 BUSINESS ENTERPRISE PROGRAM

The ICTF is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the ICTF in a manner that reflects the diversity of the City of Los Angeles. The ICTF follows the Los Angeles Harbor Department's Small Business Enterprise (SBE) Program, which 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), and minority-owned business enterprises (MBEs). The SBE Program allows the Harbor Department to target small business participation, including MBEs and WBEs, 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.

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%, including 0% VSBE participation.** The North American Industry Classification System (NAICS) Code for the Scope of Services under the Agreement is _____. 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 \$_ 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.

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.

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 requirement. 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 the City's Contracts Management and Opportunities Database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

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

Ascent Environmental, Inc.

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the ICTF, 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."

Please indicate the ownership of your company: SBE VSBE MBE WBE 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 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).

- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE or WBE.

Signature [Handwritten Signature]
Printed Name Curtis E. Alling

Title CEO/Principal
Date Signed 11/7/12

NOTARY

On this 7 day of November 20 12, before me appeared Curtis E. Alling to me personally known, who being duly sworn, did execute the

foregoing affidavit, and did state that he/she was properly authorized by Ascent Environmental, Inc
Name of Firm

to execute the affidavit and did so as his or he free act and deed.

SEAL

Notary Public Toni Jo A. Gaona

Commission Expires May 26, 2015



Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: _____
Business Name: Ascent Environmental, Inc. Award Total: \$ 100,000
Owner's Ethnicity: _____ Gender M/F Group: SBE VSBE MBE WBE OBE (Please check all that apply)
Primary NAICS Code: _____
Address: 455 Capitol Mall, Suite 205
City/State/Zip: Sacramento CA 95814
Telephone: (916) 444-7301 FAX: (916) 444-3927
Contact Person/Title: Curtis E. Alling | Principal
Email Address: curtis.alling@ascentenvironmental.com

SUBCONTRACTOR

Business Name: Fehr and Peers Award Total: \$ _____
Services to be provided: Transportation
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE OBE (Please check all that apply)
Primary NAICS Code: _____
Address: 201 Santa Monica Blvd, Suite 500
City/State/Zip: Santa Monica, CA 90401
Telephone: (310) 458-9916 FAX: () _____
Contact Person/Title: Netai Basu, AICP Senior Associate
Email Address: n.basu@fehrandpeers.com

SUBCONTRACTOR

Business Name: SCS Engineers Award Total: \$ _____
Services to be provided: Environmental engineering & construction
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE OBE (Please check all that apply)
Primary NAICS Code: _____
Address: 3900 Kilroy Airport Way, Suite 100
City/State/Zip: Long Beach CA 90806-6816
Telephone: (562) 426-9544 FAX: (562) 427-0805
Contact Person/Title: Julio Nuno - Vice President
Email address: jnuno@scsengineers.com

Contractor Description Form

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

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

Primary NAICS Code: _____

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 OBE (Please check all that apply)

Primary NAICS Code: _____

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 OBE (Please check all that apply)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____

EXHIBIT G EQUAL BENEFITS ORDINANCE

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.