

32771

MEMORANDUM OF AGREEMENT

Between

THE MARINE EXCHANGE OF LOS ANGELES-LONG BEACH HARBOR,

And The

City of Long Beach Police Department

This MEMORANDUM OF AGREEMENT (MOA) is made and entered into by and between the MARINE EXCHANGE OF LOS ANGELES LONG-BEACH HARBOR, a California corporation, acting by and through its Executive Director of the Marine Exchange of Southern California (Marine Exchange) in conjunction with its Program Manager and the City of Long Beach Police Department

WHEREAS, the Marine Exchange has been nominated by the Area Maritime Security Committee (AMSC), and appointed by the Federal Emergency Management Agency (FEMA) on behalf of the Department of Homeland Security (DHS), to act as the Fiduciary Agent (FA) for FY 2011 per DHS Award No: EMW-2011-PU-K00001 (Award), which requires the Marine Exchange to monitor the progress of projects funded by FEMA under the Port Security Grants Program (PSGP) and submit supporting documentation to FEMA for reimbursement, and

WHEREAS, the City of Long Beach Police Department will be planning, developing and executing its Projects as defined by its Investment Justifications (IJs) #8 CBRNE Response and Mitigation Equipment, #9 Equipment Maintenance, #10 Public Safety Dive Team Equipment, #11 Port Police Training and Exercises, #28 Multi-Use Patrol Boats, #30 Thermal Imaging Downlink Camera System, #31 Port Police All Hazards Response and Detection Equipment, and #32 SWAT Tactical and Response Equipment, submitted to the FA and approved by FEMA, for a sub-grant, which is not to exceed an amount of U.S.\$4,420,262.00; and

WHEREAS, the Marine Exchange, as FA, will act as the intermediary between FEMA and the City of Long Beach Police Department, in obtaining reimbursement of funds expended by the City of Long Beach Police Department in implementing its Projects; and

WHEREAS, the purpose of this MOA is to define the relationship between the FA and the City of Long Beach Police Department with respect to the City of Long Beach's activities implementing the Projects and the FA obtaining reimbursement of expenditures for same;

ACCORDINGLY, the parties agree as follows:

1. The City of Long Beach Police Department shall promptly submit to the FA all invoices for expenditures incurred relating to the Projects as defined by the IJs, attached as Exhibit A. The invoices shall be signed by authorized personnel within the City of Long Beach Police Department, submitted in duplicate and should contain the following certification:

"I certify under penalty of perjury that the above invoice is just and correct according to the terms of Award No: EMW-2011-PU-K00001 and this Memorandum of Agreement and that payment has already been made."

(Signature of authorized personnel)

2(a) Each invoice submitted by the City of Long Beach Police Department shall contain any and all information as may be needed by the federal government to review and

approve the expenditures, including any supplemental documentation that may be necessary. The City of Long Beach Police Department shall be solely responsible to correct and supplement any invoice the federal government determines to be insufficient for reimbursement.

2(b) The City of Long Beach Police Department shall strictly adhere to the requirements set forth in 44 CFR Part 13 and 2 CFR as it pertains to Port Security Grants Program.

2(c) The City of Long Beach Police Department agrees to make, be bound by and otherwise comply with Federal Standard Assurances and certifications required by FEMA as part of the City of Long Beach Police Department's PSGP application. These include, but are not limited to Forms SF 424B, 424D as applicable (Assurances – Non-Construction and Construction Programs), Certifications Regarding Lobbying (Standard Form), and Drug-Free Workplace Requirements.

2(d) The City of Long Beach Police Department shall be additionally guided by and will strictly adhere to all the requirements set forth in the Attachments.

3. Upon receiving the invoices, the FA's Executive Director or Program Manager shall be authorized to review the City of Long Beach Police Department's request for reimbursement. The Executive Director or Program Manager will also be authorized to request additional information or clarification from the City of Long Beach Police Department. Such a response shall not be un-reasonably withheld by the City of Long Beach Police Department.

4. After receiving and reviewing the invoices from the City of Long Beach Police Department, the FA shall submit a request to FEMA for reimbursement in accordance with Award No: EMW-2011-PU-K00001 It is expressly understood by the City of Long Beach Police Department, that the City of Long Beach Police Department shall be entitled to reimbursement only upon approval of the request by FEMA and subsequent reimbursement of the funds from FEMA to the FA.

4(a) The City of Long Beach Police Department agrees to comply with requirements of OMB Circular A-133 for States, Local Governments and Non-Profits. Unless a lower threshold is established by any applicable rule, regulation or standard, if the City of Long Beach Police Department expends \$500,000 or more of federal funds during its fiscal year, the City of Long Beach Police Department must submit to the FA an organization-wide financial and compliance audit report. In addition, the City of Long Beach Police Department agrees to submit a copy of the Project's Annual Audit to the FA.

4(b) The City of Long Beach Police Department agrees to submit, at such times and in such form as the FA may prescribe, reports on the Sub-award and the Projects. Without limiting the generality of the foregoing, the City of Long Beach Police Department shall submit quarterly financial reports not later than the 15th day of January, April, July and October; and the Semi-Annual Progress Reports by the 15th of January and July during each year this MOA is effective, as well as final financial reports and evaluation reports. The final progress report must be filed with the FA within thirty (30) days after the termination of the last year of the Federal Award. The FA must receive the final progress report prior to the final cost report being paid.

4(c) No contract or agreement may be entered into by the City of Long Beach Police Department for execution of Project activities or provision of services to the Project that are not incorporated in the approved application other than for the purchase of supplies or standard

commercial or maintenance services. All contracts and agreements shall provide that the City of Long Beach Police Department shall retain ultimate control and responsibility for the Projects and that these conditions shall bind the contractor. In any case, where the City of Long Beach Police Department enters into a contract with a third party, the Marine Exchange is not a party to such a contract and shall not be obligated or liable for any breach of contract or other action in law to any party other than the City of Long Beach Police Department under the specific terms of this MOA.

4(d) It is agreed that the failure of the FA to insist upon strict performance of any provision of this agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to the FA under this MOA.

5. The FA agrees to reimburse the City of Long Beach Police Department for actual expenditures made relating to the Projects within thirty (30) days of the FA receiving reimbursement from DHS, which in no case may exceed the amount awarded to the City of Long Beach Police Department at the time of approval of the City of Long Beach Police Department's IJs by FEMA.

6. In entering into this MOA, it is expressly agreed between both signatories of this MOA that the FA shall not be under any obligation to reimburse the City of Long Beach Police Department for any amounts not received by the FA from FEMA.

7. Subject to and without waiver of the City of Long Beach Police Department's rights of protect and appeal, the City of Long Beach Police Department shall indemnify, and hold harmless the FA for any sums deemed a disallowed cost by FEMA, based upon FEMA's determination that the City of Long Beach Police Department used such disallowed sums in violation of applicable regulations of the Port Security Grant Program. FA's rights to indemnification under this paragraph shall be limited in amount to those funds for which FA is deemed liable to FEMA, as a disallowed cost arising directly from the City of the Long Beach Police Department's use of Award funds. The City of Long Beach Police Department further expressly agrees that it will indemnify, defend, hold harmless and reimburse the FA for any sums the FA is obligated to reimburse or indemnify to FEMA for any reason, including but not limited to FEMA's determination that an expense is not covered or reimbursable despite the FA's prior approval of said expense.

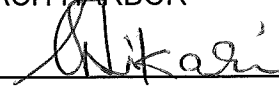
8. If any action in law or in equity, including an action for declaratory or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and litigation costs incurred in prosecuting or defending that action.

9. It is understood by both signatories to this MOA, that this MOA shall remain in effect for the duration of the Award Performance Period, ending Aug 31st, 2014 in accordance with the terms and conditions of the Award, but in no event, later than Jan 1st, 2015.

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

MARINE EXCHANGE OF LOS ANGELES-
LONG BEACH HARBOR

Dated: 8/27/12

By 

Capt. Ghalib Tikari, Program Manager

Dated: 8.20.12

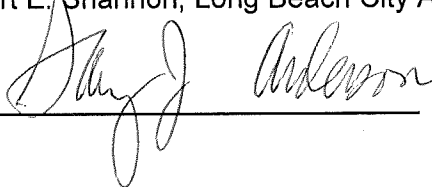
By  **Assistant City Manager**

Patrick H. West, City Manager

Approved as to form:

June 14, 2012

Robert E. Shannon, Long Beach City Attorney

By: 

Gary Anderson

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Port Grant Project List	Total Allocated	Remaining Balance	Grant Specialist Project Notes
Port Security Grant Program (PSGP) - Round 11 Council Approved Spending - TBD Grant Award for LBPD is \$4,420,262	Index Code PD10PSGP11	Projected Project End Date - 08/31/2014	Revised - 5/30/2012 There is no cost share associated with this grant.
Training Port Security Unit and OCT Training and Exercises Training and exercises include travel to prominent ports to observe best practices, attendance at FBI InfraGuard Quarterly Board meetings, and CSTI Terrorism Level I, II and III courses. Chad Ellis	\$450,000	\$450,000	AMSC approved - April 2011 FEMA approved - Jan 2012 Working on MOU and Council Letter Expect to start spending funds in Summer 2012
Port Security Unit Equipment Maintenance Project for patrol vessels, dive compressors, vessel communication equipment and vessel trailers and tow vehicles Jeff Liberman	\$395,000	\$395,000	AMSC approved - April 2011 FEMA approved - Jan 2012 Working on MOU and Council Letter Expect to start spending funds in Summer 2012
CBRNE Response and Mitigation Equipment - CBRNE Response Vehicles - 2 - Personal Handheld gamma-ray and neutron radiation monitor (HRM) - Radio-isotope inspection device (RIID) - CBRNE Personal - Protective Suit - 45 suits Rich Hill/Paula Johnson	\$395,000	\$395,000	AMSC approved - April 2011 FEMA approved - Jan 2012 Working on MOU and Council Letter Expect to start spending funds in Summer 2012 Will not be buying these two (2) trucks - need to modify project to buy something else

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<p>Port Security Grant Program (PSGP) - Round 11 Index Code PD10PSGP11 Revised - 5/30/2012</p> <p>Council Approved Spending - TBD Projected Project End Date - 08/31/2014</p> <p>Grant Award for LBPD is \$4,420,262 There is no cost share associated with this grant.</p>			
<p>Public Safety Dive Team Equipment (PSDT)</p> <p>Equipment to be purchased includes communication equipment, rapid response search equipment, safety gear, dive related HAZMAT protection equipment, surface supply air equipment and self-contained underwater breathing apparatus.</p> <p>Steve Smock/Randy Foster</p>	\$450,000	\$450,000	<p>AMSC approved - April 2011</p> <p>FEMA approved - Jan 2012</p> <p>Working on MOU and Council Letter</p> <p>Expect to start spending funds in Summer 2012</p>
<p>Multi-use Patrol Boats (2)</p> <p>- Port Security Unit Patrol Boats (2)</p> <p>Jeff Liberman</p>	\$975,000	\$975,000	<p>AMSC approved - Feb 2012</p> <p>FEMA approved - May 2012</p> <p>Acquired with surrendered funds</p> <p>Working on MOU and Council Letter</p> <p>Expect to start spending funds in Summer 2012</p>
<p>Air Support Unit Response and Detection Equip</p> <p>- thermal imaging equip for both helicopters</p> <p>Marcus Hodge/Darren Davenport</p>	\$975,000	\$975,000	<p>AMSC approved - Feb 2012</p> <p>FEMA approved - May 2012</p> <p>Acquired with surrendered funds</p> <p>Working on MOU and Council Letter</p> <p>Expect to start spending funds in Summer 2012</p>

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Port Security Grant Program (PSSGP) - Round 11 Council Approved Spending - TBD Grant Award for LBPD is \$4,420,262 Projected Project End Date - 08/31/2014 There is no cost share associated with this grant.	Index Code PD10PSSGP11 Revised - 5/30/2012		
Port Security Unit Response and Detection Equip - Four (4) personal response watercraft - Four (4) explosive/CBRNE K9's for the PSU - PSU Day/Night optics Jeff Liberman	\$675,000	\$675,000	AMSC approved - Feb 2012 FEMA approved - May 2012 Acquired with surrendered funds Working on MOU and Council Letter Expect to start spending funds in Summer 2012
SWAT Tactical Response Equipment Rob Owens/Robert Razo	\$105,262	\$105,262	AMSC approved - Feb 2012 FEMA approved - May 2012 Acquired with surrendered funds Only Partially funded - total project is \$430,000 Working on MOU and Council Letter Expect to start spending funds in Summer 2012
	\$4,420,262	\$4,420,262	5/29/2012