

Grant Agreement No. _____

**Caltrans/ACTA Heim Bridge Mitigation Truck Program
GRANT AGREEMENT**

This Grant Agreement (“Agreement”), dated as of _____, 2014, is made and entered into by and between the Alameda Corridor Transportation Authority, a Joint Powers Authority, acting by and through its Chief Executive Officer (“ACTA”), as agent for the California Department of Transportation (“Caltrans”) and <GRANTEE NAME>, a <GRANTEE ORGANIZATION TYPE> (“Grantee”), [address information].

RECITALS

WHEREAS, In January 2010, ACTA approved a resolution adopting Caltrans’ Findings of Fact and Statement of Overriding Considerations for Segment 1 (Heim Bridge Replacement) of the State Route 47 (“SR-47”) Project (SCH No. 20021009, FHWA-CA-EIA-2007-07-01F, 07-LA-47, EA: 238500). One of the environmental mitigation measures in the Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) was Mitigation Measure AQ-9 requiring the replacement of approximately 15 heavy-duty trucks. The purpose of the measure is to mitigate the increased air pollution caused by construction truck and tugboat-related emissions by putting cleaner exempt trucks on the roads serving the Port of Los Angeles and the Port of Long Beach (“San Pedro Bay Ports”).

WHEREAS, Mitigation Measure AQ-9 is otherwise known as the Heim Bridge Mitigation Truck Program (“Truck Program”). The Truck Program will be a forty-two month project with mandatory reporting periods that will extend from approximately September 2014 through February 2018.

WHEREAS, Under Cooperative Agreement No. 07-4914 with Caltrans, approved by the ACTA Board and effective September 7, 2011, ACTA is responsible for implementing the Truck Program on behalf of Caltrans. The Truck Program will provide a total of \$375,000 in grant awards to truck owners to be applied toward the purchase of new cleaner trucks to be used serving the San Pedro Bay Ports during the term of this Agreement.

WHEREAS, Grantee has submitted an Application for the Truck Program (“Grant Application”), which has been approved by ACTA, and Grantee will be awarded a grant to be used toward the purchase of the truck identified herein, and on the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. DEFINITIONS

In addition to the definitions set forth in the above Preamble and Recitals, the terms below have the following meanings:

“ACTA” means the Alameda Corridor Transportation Authority Board, its Executive Director, staff or its designated representative(s), as may be indicated herein.

“Anniversary Date” means the month and day on which the Grantee takes possession of the Replacement Truck, set forth in Attachment 1, Form E, on the Dealership Sales Invoice.

“Annual Report” means the reports Grantee shall submit to ACTA no later than thirty (30) days after each annual Anniversary Date. An Annual Report and Report Checklist are attached to this Agreement as Attachment 2.

“Caltrans” means the California Department of Transportation.

“Eligible Truck” means an Exempt Truck that meets the Truck Program’s replacement requirements as determined by the information submitted by Grantee in the Grant Application process.

“Existing Truck” means the currently operational, insured and registered, diesel-fueled, Class 8 On-Road Vehicle with a Gross Vehicle Weight Rating (“GVWR”) greater than 33,001 pounds, equipped with a heavy-duty engine model year 2009 or older as identified by Grantee in Grantee’s Grant Application.

“Exempt Truck” means a truck that is exempt from California Air Resources Board (“CARB”) Drayage Truck Regulations. Examples of exempt trucks may be found at:
<http://www.arb.ca.gov/msprog/onroad/porttruck/truckexemptionguidelines.pdf>.

“Grant” means the \$25,000 which will be awarded to the Grantee for each Replacement Truck purchased under the Truck Program.

“Grant Agreement Review” means the process that will take place should the Grantee not make a minimum annual 150 Service Trips or not complete the minimum Vehicle Miles Traveled by each of the three annual Anniversary Dates of this Agreement.

“Grant Application” and “Grant Application Forms” means the information submitted by Grantee to ACTA via computer and the Internet as required by the Truck Program for the purpose of determining Grantee’s qualifications for the Truck Program.

“Grantee” means the individual or corporation entering into this Grant Agreement, who will receive a sum of money per this Agreement, up to a maximum of \$25,000 for each Replacement Truck purchased.

“Replacement Truck” means a new or used, diesel-fueled or alternative fuel, Class 8, On-Road Vehicle with a GVWR greater than 33,001 pounds, equipped with a heavy-duty engine that meets or exceeds model year 2007 California or federal heavy-duty, Diesel-Fueled On-Road emissions standards, which is purchased by Grantee from a California licensed truck dealership.

“San Pedro Bay Ports” means the various properties owned by the City of Los Angeles and the City of Long Beach and colloquially referred to as the Port of Los Angeles and the Port of Long Beach.

“Service Trip” means the act of driving a Replacement Truck inside the gates of a marine terminal at the San Pedro Bay Ports, with each Service Trip evidenced by documentation as provided for herein.

“Two-Party Check” means the check that requires two signatories in order to use it as payment.

“Vehicle Miles Traveled” means the minimum number of miles the Replacement Truck is required to travel on an annual basis for the term of this Agreement and as established in Attachment 1, Form A, of the Grant Application.

2. CLOSING REQUIREMENTS FOR FUNDING GRANTS FOR REPLACEMENT TRUCK

A. Grant Application Forms. The Grant Application Forms are attached hereto as Attachment 1, Forms A through G, and are incorporated herein by this reference. Grantee represents and warrants to ACTA under penalty of perjury that all information set forth in the Grant Application Forms is complete, true and correct.

Grantee hereby acknowledges and agrees that ACTA shall not be responsible nor in any way liable, for any malfunction of the ACTA Truck Program Internet Site, <http://www.acta.org/truckbuyback>, or for any late, lost, misdirected, incomplete, illegible or undeliverable Grant Application information submitted or supplied by Grantee as part of the Truck Program. Further, ACTA shall not be responsible nor liable for any system failures or errors, failures or technical malfunctions, hardware or software failures of any kind, lost or unavailable network connections, typographical or system/human errors and failures, technical malfunction(s) of any telephone network or lines, cable connections, satellite transmissions, servers or providers, or computer equipment, traffic congestion on the Internet or at the ACTA Truck Program Internet Site, or any combination thereof, including other telecommunication, cable, or satellite malfunctions that may have limited Grantee’s ability to completely or accurately provide information for the Truck Program Grant Application Forms.

B. Grantee Information. Grantee represents and warrants to ACTA under penalty of perjury that the information regarding Grantee in Attachment 1, Forms A through G, is complete, true and correct, and throughout the term of this Agreement Grantee shall advise ACTA within thirty (30) days in writing pursuant to the Notice Provision herein if any such information changes or ceases to be true and correct.

C. Replacement Truck Information. Grantee's Grant Application has been approved by ACTA for grant funding towards the purchase of the Replacement Truck identified in Attachment 1, Form E, to this Agreement. Grantee represents and warrants to ACTA under penalty of perjury that the Replacement Truck is an Eligible Truck. ACTA shall pay to Grantee \$25,000, which shall be used solely for the purchase of the Replacement Truck identified in Attachment 1, Form E, of this Agreement.

Within sixty (60) days of execution of this Agreement by ACTA's Chief Executive Officer, Grantee shall submit a Dealership Sales Invoice for the Replacement Truck. The Dealership Sales Invoice submitted by Grantee shall be incorporated into this Agreement as Attachment 3. **By initialing this paragraph, Grantee authorizes ACTA to insert the Dealership Sales Invoice submitted by Grantee into this Agreement as Attachment 3 after the Agreement becomes effective. _____ (Initials).**

D. Payment by Two-Party Check. **By initialing this paragraph, Grantee authorizes ACTA to issue a two-party check in the names and amount as shown in Attachment 1, Form E. _____ (Initials).**

E. Replacement Truck Financing. If Grantee shall have obtained, or shall obtain, a loan or other financing for any portion of the purchase price of a Replacement Truck identified in Attachment 1, Form E, of this Agreement, or if any loan or other obligation shall be secured by any interest in a Replacement Truck, then Grantee (i) shall provide a copy of such loan or financing documents to ACTA, and (ii) shall cause the lender, financier or secured party to (A) acknowledge ACTA's security interest in such Replacement Truck, (B) agree to give notice to ACTA of any default by Grantee in its representations, warranties or obligations with respect to such loan, financing or other obligation, and (C) agree to give notice to ACTA prior to releasing its security interest in such Replacement Truck (upon the release of such security interest, at ACTA's request, Grantee shall cause the "Alameda Corridor Transportation Authority" to be identified as lienholder on the certificate of title for such Replacement Truck and, following any such request, "Alameda Corridor Transportation Authority" shall continue to be so named as lienholder for the remaining term of this Agreement); and (iii) authorizes ACTA to pay (but with no obligation by ACTA to pay) each Grant directly to such lender, financier or secured party.

F. Post-Funding Documentation. Within sixty (60) days following ACTA's release of Grant funds to the Grantee, Grantee shall deliver to ACTA the following documents with respect to each Replacement Truck:

1. Copy of the Final Bill of Sale;
2. Certificate of Title;
3. Replacement Truck Registration;
4. Copy of Insurance Certificate or other evidence of insurance satisfactory to ACTA;
5. Copy of the federal Annual Vehicle Inspection Report conducted in accordance with Federal Motor Carrier Safety Regulations, 49 CFR 396, and conducted no longer than one month prior to the submission of the report; and
6. Copy of Loan or Financing Documents required under Section 2E, if any portion of the purchase price of the Replacement Truck was financed as indicated by Grantee pursuant to the Grant Application, in Attachment 1, Form G.

Grantee shall provide to ACTA such other documents and information as ACTA may reasonably request in order to release funds to Grantee and verify compliance with this Agreement.

G. Tax Reporting. Grantee understands that any payment Grantee receives to fund a Replacement Truck under this Agreement is subject to taxation and ACTA will issue an IRS Form 1099 to the Grantee and will report the applicable tax information to the California Franchise Tax Board and the federal Internal Revenue Service.

3. AGREEMENT TERM

This Agreement shall be effective upon execution by ACTA's Chief Executive Officer and shall remain in effect for forty-two (42) months, unless terminated earlier pursuant to the Agreement terms.

Shown below is an approximate timeline for Grantee and ACTA obligations under the Agreement:

Start: Agreement execution by both Parties, Agreement effective date set;

Months 1 and 2 (60 days): Grantee scraps Existing Truck and procures Replacement Truck, Anniversary Date set;

Months 3-38 (3 years): Grantee operates Replacement Truck and submits reports. ACTA monitors Grantee operations;

Months 39-42: Grantee submits final reporting materials. ACTA completes Agreement close-out administration.

4. OBLIGATIONS OF GRANTEE

A. Obtaining Replacement Truck. Grantee shall obtain title to a Replacement Truck and scrap the Existing Truck pursuant to Section 4(B) of this Agreement no later than sixty (60) days from the date of execution of this Agreement. Failure to comply with either of these requirements may result in ACTA declaring Grantee in default of this Agreement and proceeding with the default procedures in Section 9 of this Agreement.

B. Destruction of Existing Truck. Grantee shall select a participating dealer or dismantler appearing on the South Coast Air Quality Management District's ("AQMD's") approved Dismantler List ("List") and shall scrap the Existing Truck with the selected entity. The List may be found at http://www.aqmd.gov/tao/implementation/VIP_Dismantlers.pdf, which may be updated from time to time by AQMD. It shall be Grantee's obligation to confirm that the selected dealer/dismantler is on the List at time of scrapping. Grantee shall deliver each Existing Truck in the Truck Program to such dealer or dismantler for scrapping at or prior to the time Grantee has acquired title to the Replacement Truck. The engine block and frame of the Existing Truck must be physically destroyed in such a manner to eliminate the possibility of future operation. Engine blocks shall be punctured and the vehicle frame shall be dismantled, cut and/or demolished to render the equipment useless. Grantee shall notify ACTA in writing of the selected dealer or dismantler no less than three (3) days prior to scrapping the Existing Truck. Grantee shall also notify ACTA of the selected date and time for scrapping the Existing Truck. An ACTA representative shall attend and witness the scrapping of the Existing Truck and shall receive an original certificate evidencing the scrapping at that time.

C. Service Trips to San Pedro Bay Ports. During the term of this Agreement, (i) the Replacement Truck shall be operated 100 percent within the State of California and (ii) Grantee shall make no less than one hundred fifty (150) Service Trips with the Replacement Truck per year of the Agreement, totaling not less than four hundred fifty (450) Service Trips over the term of the Agreement and in compliance with the terms of this Agreement.

D. Annual Vehicle Miles Traveled. During the term of the Agreement and for each year thereof, Grantee shall drive the Replacement Truck no less than the Vehicle Miles Traveled specified in Attachment 1, Form A. The Vehicle Miles Traveled must be achieved on an annual basis over the term of the Agreement and in compliance with the terms of this Agreement.

E. Inspection of Replacement Truck and Records. Grantee agrees that, for the term of this Agreement, ACTA or its designated representative(s) shall be allowed to inspect the Replacement Truck and/or any records relating to the Replacement Truck. Grantee agrees that it shall maintain adequate records of each Replacement Truck in accordance with the terms of this Agreement. Grantee shall make records available to ACTA or its designated representative(s) at any time during the term of this Agreement and for the period specified in Section 12.

F. California Registration. During the term of this Agreement, each Replacement Truck shall have California base-plated registration. Dual plates, International Registration Plan (IRP), and any other out-of-state registrations are prohibited.

G. Reporting Requirements. Grantee shall comply with the following reporting requirements for the term of the Agreement.

1. Quarterly Reporting: Quarterly Reporting will commence three months from the Replacement Truck purchase date and Grantee shall submit the report online at <http://acta.org/truckbuyback> by the 5th day of each quarterly reporting period for the term of the Agreement;

- a. Odometer reading
- b. Number of Service Trips to the San Pedro Bay Ports

2. Annual Reporting: Annual Reports shall be due within thirty (30) days following each Anniversary Date. A sample Annual Report and Report Checklist is included hereto as Attachment 2. **By initialing this paragraph, Grantee authorizes ACTA to insert a revised Annual Report and Report Checklist specifically tailored for Grantee into this Agreement as Attachment 2 after the Agreement becomes effective. _____ (Initials).**

Grantee shall include with the Annual Report a statement certifying under penalty of perjury that the Replacement Truck was operated in accordance with this Agreement, and that all information in the Annual Report is true and accurate.

5. INSURANCE; MAINTENANCE AND EQUIPMENT WARRANTY

A. Grantee is responsible for securing and maintaining insurance for the Replacement Truck. Proof of insurance will be required as set forth in Section 2(F) of this Agreement.

B. During the term of this Agreement, Grantee is responsible for maintaining the Replacement Truck in good operating condition and according to manufacturer's recommendations and in such condition as to ensure the warranties on the Replacement Truck remain in effect for the term thereof.

6. INDEPENDENT CONTRACTOR

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

7. NO SALE, SUBLEASE OR ASSIGNMENT

Grantee may not assign, sell, lease, transfer, license, or subcontract any rights or obligations under this Agreement or in the Replacement Truck to a third party without the prior written consent of ACTA until this Agreement and all liabilities and obligations secured by it have been fully satisfied by Grantee. If the Grantee desires to sell, lease or otherwise dispose of any interest in the Replacement Truck for any reason prior to the end of the term of the Agreement, the Grantee shall notify ACTA in writing and any such sale, lease, or disposition shall be subject to the prior written consent for the transaction from ACTA.

8. SECURITY INTEREST

In order to secure the prompt payment and performance by Grantee of all its obligations hereunder, Grantee hereby grants to ACTA a continuing security interest in all of Grantee's right, title, and interests (whether now owned and existing or hereafter acquired or arising) in and to each Replacement Truck and all proceeds and products thereof and accessions thereto (collectively, the "Collateral"). Grantee shall comply with Section 2E regarding causing the Certificate of Title for any Replacement Truck to list "Alameda Corridor Transportation Authority" as a lienholder, hereby authorizing ACTA to file such financing statements, and take such other actions, as ACTA may require in order to perfect its security interests in the Collateral.

9. DEFAULT

The occurrence of any of the following shall constitute a default by the Grantee hereunder (each, a "Default"):

A. Any failure by Grantee within sixty (60) days of execution of the Agreement to (i) purchase a Replacement Truck, (ii) acquire title to the Replacement Truck, (iii) comply with Section 2(E) of this Agreement, (iv) obtain insurance on the Replacement Truck, (v) submit all required documentation including, but not limited to, bill of sale, vehicle registration and proof of insurance, and (vi) commence operations of the Replacement Truck in the San Pedro Bay Ports, all within sixty (60) days of execution of this Agreement;

B. Any failure by Grantee within sixty (60) days of execution of the Agreement to (i) scrap the Existing Truck as required by this Agreement and (ii) submit documentation evidencing said scrapping;

C. Any failure by Grantee to complete the required Minimum Annual Service Trips and/or Vehicle Miles Traveled during any Anniversary Date year of this Agreement as required by the Agreement;

D. Any failure by Grantee to pay amounts in full when due for failure to meet Replacement Truck minimum operational requirements as provided in Section 10(C) of the Agreement;

E. Any occurrence resulting in the Replacement Truck being declared a total loss, stolen or non-operational such that Grantee is unable to meet the performance requirements of the Agreement;

F. Any event where Grantee assigns, sells, leases, transfers, licenses, or subcontracts any rights or obligations under this Agreement or in any Replacement Truck to a third party without the prior written consent of ACTA until this Agreement and all liabilities and obligations secured by it have been fully satisfied by Grantee;

G. Any failure by Grantee to use the Grant funds to acquire the Replacement Truck in accordance with this Agreement, or any illegal or improper use of Grant funds provided hereunder;

H. Any failure by Grantee to maintain or submit documentation or reports as required by this Agreement or if Grantee submits any documentation or report that is fraudulent, materially incorrect or incomplete;

I. Any representation, warranty or statement made by Grantee herein or in connection herewith is false or misleading in any material respect;

J. Any default by Grantee under any loan or other obligation secured by any interest in any Replacement Truck;

K. Any failure of Grantee to complete or comply with any requirement under this Agreement not otherwise specified herein.

10. PROCEDURE AND REMEDIES FOR DEFAULT

A. Enforcement Procedures. The following procedures shall apply in the event ACTA issues a Notice of Default to Grantee:

1. ACTA's Chief Executive Officer or his/her designee may issue a Notice of Default to a Grantee whenever there is reason to believe that the Grantee has breached this Agreement or committed an event of Default as defined in Section 9, above.
2. A Notice of Default shall be in writing, signed by the Chief Executive Officer or his/her designee, state in detail the nature of the Default, state the cure period and terms of cure, the remedy that may be imposed if the Default is not cured within the time permitted and not properly contested as permitted herein, and shall be delivered by first class mail, overnight courier delivery or personal delivery to the

Grantee's address provided in Attachment 1, Form B, or any updated address provided by Grantee pursuant to this Agreement.

3. The Chief Executive Officer has authority to modify or waive remedies for Grantee's Default. The decision of the Chief Executive Officer, in his or her complete discretion, shall be final.

B. Remedies. Remedies for Grantee's Default, to be determined at the discretion of ACTA's Chief Executive Officer, include but are not limited to:

1. Recovery of any or all of the Grant funds provided hereunder, including as provided for in Section 10(C) below;
2. Suspension or cancellation of this Agreement (with no prejudice to any rights or remedies of ACTA with respect to any Defaults);
3. A ban on the Grantee's ability to participate in future grants or incentive programs of ACTA;
4. Repossession of each Replacement Truck; and
5. Such other rights and remedies that ACTA may have (as a secured party or otherwise) under applicable law or in equity.

C. Grant Review. If Grantee operates the Replacement Truck so that the Replacement Truck fails to make a minimum 150 Service Trips and/or minimum Vehicle Miles Traveled within any one-year Anniversary Date, ACTA shall conduct a Grant Agreement Review. ACTA will review all documentation provided by Grantee to make a determination as to whether the Grantee can achieve the minimum operation requirements of this Agreement. If Grantee fails to achieve the minimum number of Service Trips and/or the minimum Vehicle Miles Traveled within any one-year Anniversary Date, the following repayment schedule shall apply:

1. 150 Annual Service Trips – Repayment for Underachieved Annual Service Trips. Grantee shall repay ACTA, within thirty (30) days of written notice by ACTA, a pro rata amount calculated as the failed percentage of the 150 annual Service Trips times one third of the Grant received by Grantee for the Replacement Truck. For example, if a Grantee received a \$25,000 Grant and the Replacement Truck fails to make 30 of the minimum 150 Service Trips, then the failed percentage is 20 (30 divided by 150); 20 percent of \$8,333.33 (one-third of Grant) is \$1,666.66, which represents that amount owed for that year. Grantee is permitted until the end of the third Anniversary Date to achieve any outstanding annual Service Trips before full repayment will be required, as described in Section 10(C)(2), below.

2. 450 Service Trips Over Three Years – Repayment for all Underachieved Service Trips. If Grantee fails to make the required 450 Service Trips with the Replacement Truck by the end of the third Anniversary Date, Grantee shall repay ACTA, within thirty (30) days of written notice by ACTA, a pro rata amount calculated as the failed percentage of the 450 Service Trips times the Grant received by Grantee for the Replacement Truck, less any amounts Grantee previously paid for past annual underachievement of minimum annual Service Trips under Section 10(C)(1) above. For example, if Grantee received \$25,000 and the Replacement Truck failed to make 50 of the 450 Service Trips, then the failed percentage is 11 percent (50 divided by 450), and Grantee would be required to repay 11 percent of \$25,000, or \$2,750. If the Grantee previously paid \$1,666.66 for the first year's underachievement of Service Trips as described in Section 10(C)(1), above, then the net final amount due would be \$2,750 less the previously paid \$1,666.66 or \$1,083.34.

3. Minimum Annual Vehicle Miles Traveled – Repayment for Failure to Achieve Minimum Annual Requirements. If Grantee fails to operate the Replacement Truck for the minimum Vehicle Miles Traveled within any one-year Anniversary Date, Grantee shall repay ACTA, within thirty (30) days of written notice by ACTA, pursuant to the repayment requirements in Attachment 4. A sample repayment form is included at the time the Agreement is executed by the Parties. **By initialing this paragraph, Grantee authorizes ACTA to insert an Annual Vehicle Miles Traveled Repayment Requirements form specifically tailored for Grantee into this Agreement as Attachment 4 after the Agreement becomes effective. _____ (Initials).**

Grantee may petition ACTA's Chief Executive Director to waive, reduce or hold in abeyance amounts due by Grantee. The decision of the Executive Director, in his/her sole discretion, shall be final. While the Grantee's petition is pending, the remedies under this Agreement shall be stayed.

D. Grantee Repayment Obligations. In the event of a default, and unless ACTA's Chief Executive Officer has waived or held in abeyance any amounts due, ACTA shall provide written notice to Grantee of any amounts owed to ACTA pursuant to Section 10(C). Grantee shall remit payment in full to ACTA within thirty (30) days of said written notice being mailed by ACTA to Grantee.

E. No Waiver. In no event shall any payment by ACTA constitute a waiver by ACTA of any breach of this Agreement or any Default, which may then exist on the part of Grantee. Neither shall such payment impair or prejudice any remedy available to ACTA with respect to the breach or Default. The rights and remedies of ACTA under this Agreement shall be cumulative. No exercise by ACTA of one right or remedy shall be deemed an election. No delay by ACTA shall constitute a waiver, election, or acquiescence by it. A failure of ACTA 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.

F. Survival of Remedies and Repayment Obligations. All rights and remedies available to ACTA pursuant to this Agreement and all applicable laws, and any repayment obligations incurred by Grantee pursuant to this Agreement, shall survive the expiration or earlier termination of this Agreement.

11. INDEMNIFICATION

Except for the sole negligence or willful misconduct of ACTA, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Grantee undertakes and agrees to defend, indemnify and hold harmless ACTA, Caltrans and any of their Boards, Officers, Agents, Employees, Assigns, and Successors in Interest ("Indemnified Parties") 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 Indemnified Parties, 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 Grantee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner out of the operation of the Replacement Truck or by reason of any acts, errors, omissions, negligence or willful misconduct incident to the performance of this Agreement by Grantee or its subcontractors of any tier. Rights and remedies available to the Indemnified Parties under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

Grantee undertakes and agrees to indemnify and hold harmless the Indemnified Parties from and against any and 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 ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, including lost business revenue or lost business opportunities, which Grantee may incur arising as a result of any acts, errors, omissions, negligence or willful misconduct of any Replacement Truck Dealership, Replacement Truck manufacturer and/or any Existing Truck dealer/dismantler as may be selected and utilized by Grantee pursuant to this Agreement, and as may be a result of third party actions resulting in the Replacement Truck being stolen, declared a total loss or becoming non-operational at any time during the term of this Agreement.

12. RECORD KEEPING

Grantee shall maintain records sufficient to provide, on an annual basis, information regarding Service Trips, insurance, vehicle maintenance, Grant Application, Grant award, this Agreement, reporting requirements and any other available information that may be reasonably necessary to determine Grantee's compliance with

this Agreement for at least one (1) year after the later of satisfaction of all Grantee obligations hereunder for such Replacement Truck or termination of this Agreement. Records shall be readily available and accessible to ACTA or its designated representative upon request.

13. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, all notices to the Grantee shall be addressed to it at the Business Address set forth in Form B and all notices to ACTA shall be addressed to: ACTA Heim Bridge Mitigation Truck Program – Grant Administrator, c/o E2 ManageTech, Inc., 5001 Airport Plaza Drive, Suite 260, Long Beach, CA 90815. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

14. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

15. SEVERABILITY

It is understood that if a court holds a specific provision within this Agreement invalid, the remaining provisions of this Agreement continue in effect.

16. COMPLIANCE WITH APPLICABLE LAWS

Grantee shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of ACTA's Chief Executive Officer.

17. COUNTERPART EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute but one and the same agreement. Not less than two (2) counterpart originals of this Agreement shall be signed by each of the parties hereto, with one (1) such original to be delivered to, and retained by, Grantee and all other originals to be delivered to, and retained by, ACTA.

18. ENTIRE AGREEMENT; AMENDMENTS

This Agreement constitutes the entire Agreement between Grantee and ACTA with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No amendment to this Agreement shall be effective unless in writing and signed by ACTA and Grantee.

19. NO THIRD-PARTY BENEFICIARIES

This Agreement is being entered into solely for the benefit of Caltrans, ACTA and Grantee, and no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

20. EXHIBITS; ARTICLES

All Forms and 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.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives.

GRANTEE:

Date: _____

[GRANTEE NAME]

By: _____

Name:

Title:

ACTA:

Date: _____

ALAMEDA CORRIDOR TRANSPORTATION
AUTHORITY, a Joint Powers Authority

By: _____

John Doherty, Chief Executive Officer

APPROVED AS TO FORM

_____, 2014
MICHAEL N. FEUER, City Attorney

By: _____

Deputy City Attorney

List of Attachments:

- Attachment 1: Online Application Forms A-G
- Attachment 2: Annual Report and Report Checklist
- Attachment 3: Dealership Sales Invoice for Replacement Truck
- Attachment 4: Annual Vehicle Miles Traveled Repayment Requirements

ATTACHMENT 1

PRINTOUT OF ELECTRONIC APPLICATION FORMS A THROUGH F

ATTACHMENT 2

SAMPLE ANNUAL REPORT AND REPORT CHECKLIST

The Annual Report is required and must be submitted by the Grantee within thirty (30) days following each Anniversary Date. The Annual Report will consist of reporting the following information online:

Updated contact information

Odometer reading and photo of odometer uploaded

Completed Statement of Annual Miles Traveled and Number of Service Trips

Current Registration uploaded

Current Insurance uploaded

Maintenance records uploaded

Documentation supporting the number of Service Trips

ATTACHMENT 3

DEALERSHIP SALES INVOICE FOR REPLACEMENT TRUCK AND FORM G

ATTACHMENT 4

ANNUAL VEHICLE MILES TRAVELED REPAYMENT REQUIREMENTS

Grantee agrees to the repayment schedule outlined below should the Grantee fail to operate the Replacement Truck for the minimum Vehicle Miles Traveled (VMT) within any one-year Anniversary Date.

Table 1: Repayment Rate for Lost Emissions Reduction

Existing Engine Model (Engine Year)	Replacement Trucks	
	2007-2009 Engine Model (\$/mile)	2010-20013 Engine Model (\$/mile)
1986 or Older	0.45	0.61
1987 to 1990	0.45	0.61
1991 to 1993	0.36	0.52
1994 to 1997	0.35	0.51
1998 to 2002	0.34	0.50
2003 to 2006	0.16	0.32
2007 to 2009	Not Applicable	0.16
2010 or Newer	Not Applicable	Not Applicable

The Grantee has scrapped an Existing Truck with engine year model _____, and has replaced it with an engine year model _____; therefore, the repayment rate is set forth as \$_____ per mile not traveled to achieve minimum VMT.

For example, Grantee with scrapped Existing Truck year 1998 to 2002 and Replacement Truck of year 2010 to 2013 has a repayment mileage rate of \$0.50/mile. If this Grantee failed to drive 10,000 miles to meet the annual minimum VMT, then

$$\text{Penalty}_{\text{VMT}} = \text{Rate}_{\$/\text{mile}} \times \text{Miles not traveled}$$

$$\text{Penalty}_{\text{VMT}} = \underline{\$0.50/\text{mile}} \times 10,000 \text{ miles}$$

$$\text{Penalty}_{\text{VMT}} = \underline{\$5,000}$$