

CMMS Vendor Evaluation Form

Vendor/Organization: _____

Criteria	Weight	Score (1 to 10)	Weighted Score
Company Qualifications & Experience Profile of Firm Similar Project Experience Staffing and support References	20		
Capability of Software Functions/State of the Art Meet POLA needs Planning and budgeting Work and asset management Ease of Use/Ability to Modify	40		
Project Understanding & Approach Knowledge of City and Port Industry Understanding Port's Needs Use in Similar Operations Knowledge of Management Technology Innovative Approach Schedule	20		
Technology and Linkage Linking Technology Mapping Interfaces Ability to Upload/Populate Report and Output Retrieval GIS integration, linkage and bidirection Open Architecture	20		
Cost - USE ONLY AFTER SHORT LIST			
TOTAL			

 Reviewer _____
 Checked By _____

 Date _____
 Date _____

TRANSMITTAL NO. 2

**Computerized Maintenance Management System (CMMS) for the Port of Los Angeles
Construction and Maintenance Division**

Proposal Evaluations and Rankings

COMPANY NAME	Evaluator 1		Evaluator 2		Evaluator 3		Evaluator 4		Evaluator 5		Evaluator 6		Combined		Final Ranking
	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score		
MaintStar, Inc.	800	1	820	1	860	1	760	1	720	1	960	1	4920	82%	1
CitiTech	720	3	580	6	780	4	700	2	640	3	900	2	4320	72%	2
gbaMS	700	5	540	7	740	9	700	2	600	5	760	6	4040	67%	3
Accela	700	5	780	2	800	3	680	5	620	4	860	3	4440	74%	
Cartegraph	720	3	740	3	740	9	600	9	660	2	800	4	4260	71%	
TCS America	760	2	600	5	820	2	620	8	560	6	700	8	4060	68%	
TAIC	700	5	380	11	760	7	680	5	500	10	780	5	3800	63%	
eCIFM Solutions	580	8	640	4	780	4	580	12	520	8	580	11	3680	61%	
Assetpoint	540	10	440	8	760	7	700	2	480	11	680	7	3600	60%	
CFI	560	9	320	12	780	4	600	9	540	7	640	9	3440	57%	
CHAMPS	540	10	400	10	660	12	640	7	440	12	600	10	3280	55%	
Mass Group	380	12	420	9	680	11	600	9	500	10	560	12	3140	52%	
Autonomy	300	13	280	13	500	13	520	13	380	13	480	13	2460	41%	

Note 1: MaintStar was the unanimous Rank #1 by the Selection Committee.

Note 2: Percentage is based on combined points divided by total possible points (6,000).

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
MAINTSTAR, INC.

THIS AGREEMENT is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and MAINTSTAR, INC., a California corporation, 28 Hammond, Suite D, Irvine, CA 92618 ("Consultant").

WHEREAS, City requires an efficient method of comprehensively planning, scheduling, tracking and monitoring Port assets and associated maintenance and regulatory requirements, including wharves, buildings, equipment, cranes, landscaping, etc.; and

WHEREAS, City requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the City in providing the Construction and Maintenance Division the tools to plan, manage, budget, and track costs of resources allocated or required for maintenance activities and needs; and

WHEREAS, Consultant possesses extensive experience in dealing with similar computerized maintenance management systems installations throughout Southern California and worldwide; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT & GRANT OF LICENSE

Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A, and as may be required and requested from time to time in writing by the Executive Director or his or her designee.

Consultant hereby grants to City a non-exclusive, fully transferrable, perpetual, irrevocable, worldwide license to utilize the software, materials and modules provided for in Exhibit A including without limitation all updates that are provided in accordance with Exhibit A. Conditioned on payment of Item 1 in Exhibit B, such license is fully paid up and royalty-free. Specifically and without limitation, City may continue to use the

system after expiration of this Agreement without any further monetary obligation to Consultant.

II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article IX (Termination) hereof.

III. TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

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

1. Three (3) years have lapsed from the effective date of this Agreement;
or
2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

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

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

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

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

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

V. COMPENSATION AND PAYMENT

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

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Five Hundred Thirty-Two Thousand, Five Hundred Ninety-Four Dollars (\$532,594).

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

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VII of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

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

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

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
PO Box 191
San Pedro, CA 90733-0191

VI. INDEPENDENT CONTRACTOR

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

VII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has

determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department ("Department"). See Exhibit D.

VIII. INDEMNIFICATION AND INSURANCE

A. Indemnity for General Liability

Except for the sole negligence or willful misconduct of City, Consultant shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Consultant, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Consultant's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Consultant shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

B. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of City, Consultant shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Consultant, its boards, officers, agents, employees, or subconsultants.

C. General Liability Insurance

Consultant shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall

provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit E.

D. Automobile Liability Insurance

Consultant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than Five Hundred Thousand Dollars (\$500,000.00) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its board, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit F.

E. Workers' Compensation

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 the Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. See Exhibit G.

F. Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

G. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

H. Copies of Policies

Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.

I. Modification of Coverage

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

J. 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 City's interests. The cost of such insurance will be deducted from the next payment due Consultant.

K. Right to Self-Insure

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

- a. 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.
- b. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

- c. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
- d. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
- e. Consultant provides the name and address of its claims administrator.
- f. 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.
- g. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
- h. Consultant has complied with all laws pertaining to self-insurance.

L. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

IX. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

X. PERSONAL SERVICE CONTRACT

During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

Consultant shall not divulge any information which is proprietary or confidential.

XI. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit H.

XII. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit I.

NOTE: Prior to being awarded a contract with the City, Consultant and all subconsultants must be registered with the Department's Contracts Management Database, e-DiversityXchange.

XIII. CONFLICT OF INTEREST

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

Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XIV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XV. 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.

XVI. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the City 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 City of any materials supplied by Consultant in the performance of this Agreement.

XVII. PROPRIETARY INFORMATION

The Consultant may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Department.

XVIII. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement 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.

XIX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Construction and Maintenance, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XX. 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 33-0151817. No payments will be made under this Agreement without a valid TIN.

XXI. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

XXII. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

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

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

XXIII. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit J.

XXIV. 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.

XXV. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

XXVI. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

XXVII. SOURCE CODE ESCROW

A. **Deposit.** No later than five (5) days after the Effective Date, Consultant and City shall enter into an Escrow Agreement, in the form attached as Exhibit K hereto, with such software source code escrow agent as may be reasonably required by the City (the "Escrow Agent") pursuant to which Escrow Agreement Consultant shall immediately deposit with such Escrow Agent one (1) copy of all existing annotated Source Code listings, flow charts, decision tables, schematics, drawings, specifications, documentation, design details, instruction to compile source code, and other related

documents which pertain to the Computerized Maintenance Management System (CMMS) (as described in Exhibit A, Scope of Work) and all technology necessary to understand the design, structure, and implementation of the CMMS and to maintain, support and build object code of the CMMS (including, but not limited to, any tools which may or not be commercially available) such that a third party programmer reasonably skilled in the language used in such materials could maintain and support the CMMS without further assistance or references to other materials (collectively, the "Escrow Materials"). Escrowed Materials shall also include without limitation, all revisions, updates, corrections, changes, modifications, amendments and enhancements to such materials regardless of whether Consultant upgrades or revised the software. Consultant shall keep Escrow Materials updated on no less frequent a basis than semi-annually, but shall update Escrow Materials within thirty (30) days of providing any software update to City.

B. License Grant. Consultant hereby grants to City a perpetual, irrevocable, non-exclusive, fully-transferrable, royalty-free, fully paid up, license with respect to the Escrow Materials (including without limitation all proprietary rights therein) to use, execute, copy and modify such Escrow Materials solely as reasonably necessary or desirable in order to exercise the City's rights under this Agreement or the Escrow Agreement. Notwithstanding anything to the contrary herein, however, City understands and agrees that it shall not exercise the license granted in this Section XXVII.B ("License Grant") with respect to the Escrow Materials unless and until the Escrow Materials are released to City pursuant to the Escrow Agreement.

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

THE CITY OF LOS ANGELES
by it Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest: _____
Secretary

MAINTSTAR, INC.

Dated: 2/13/09

Type Name:
Type Title:

By _____
DIMITRY PORETSKY
PRESIDENT

Type Name:
Type Title:

Attest _____
GAYLE L. BANKS
FINANCE

APPROVED AS TO FORM

2/9, 2009
ROCKARD J. DELGADILLO, City
Attorney

By

[Signature]
SIMON M. KANN, Deputy

Account #	13240	W.O. #	8211
Ctr/Div #	0510	Job Fac. #	636
Proj/Prog #	000		

Budget FY:	Amount:	
2008-09	\$394,447.25	349,544
2009-10	\$161,541.00	115,300
2010-11	\$113,991.00	67,750
TOTAL	\$669,979.25	532,594

For Acct/Budget Div. Use Only:

Verified by:

Verified Funds Available:

Date/Approved:

Exhibit A Scope of Work	Port of Los Angeles Computerized Maintenance Management System December 24, 2008 Page 1 of 12
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Scope of Work – Exhibit A

Overview

MaintStar Inc. offers the MaintStar Asset and Maintenance Management System as the solution for the Port of Los Angeles' Computerized Maintenance Management System (CMMS). The system is fully integrated with a Web-Based Service Request System. The Work Request System will handle requests from external users and from internal Port staff. MaintStar also has built-in Work Planning features. The system tracks work accomplished with activity-based annual goals and budget. This management tool is fully integrated with all modules of the system. The system has a variety of specialized modules for infrastructure assets management.

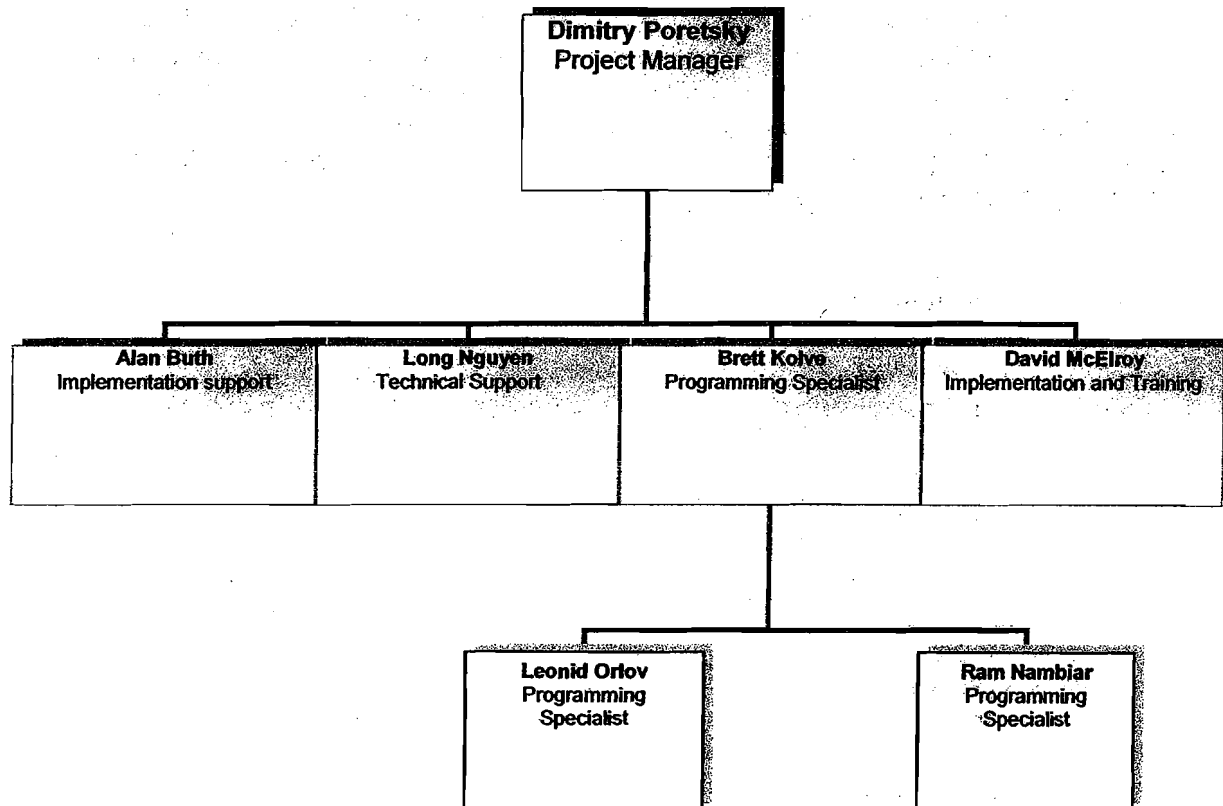
The following modules will be provided

1. Work Order and Preventative Maintenance (PM) Scheduling
2. Web-Based Work Requests
3. Work Planning
4. Inventory Control
5. Outside Contractors
6. Image Linkage to Work Orders and Assets
7. Report Writer and Query
8. Enterprise Security
9. Screens Customization
10. Fleet Maintenance
11. E-Mail Interface
12. GIS interface
13. Sewer Management
14. Water Management
15. Storm Management
16. Work Order Query

Exhibit A
Scope of Work

Port of Los Angeles
Computerized Maintenance Management System
December 24, 2008
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MaintStar Personnel Scheduled For the Port of Los Angeles Project



<p>Exhibit A Scope of Work</p>	<p>Port of Los Angeles Computerized Maintenance Management System December 24, 2008 Page 3 of 12</p>
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MaintStar Project Manager

MaintStar will provide an experienced Project Manager who will work closely with the Port's audit implementation consultant, currently LA Consulting (any reference in this Agreement to LA Consulting shall mean Port's audit implementation consultant whether or not it remains LA Consulting, another firm, or internal City personnel as chosen in the Port's sole discretion). MaintStar will deliver the following services:

1. A single source of contact for all project issues from the beginning of the project through project completion.
2. Management of an implementation plan in conjunction with LA Consulting, which will document all project goals, objectives and milestones.
3. Provide guidance and support to project staff for both MaintStar and the Port of Los Angeles.
4. Resolution of any scheduling or communication problems that may arise between MaintStar, LA Consulting and the Port.
5. Responsibility for all deliverables and customization as required by you and agreed upon by MaintStar.
6. Management from the onset to completion of all aspects of the project and overseeing of MaintStar personnel at each step of the project. Responsibility for the MaintStar professional staff at all times including (but not limited to) testing, implementation, support after acceptance of system and addressing all performance problems if they should occur during this project.

Port of Los Angeles Project Manager

The Port of Los Angeles must also designate a project manager from its management personnel. This individual must be someone who has a decided interest in the success of the project. This individual should also have the authority to make management and technical decisions to keep the project moving at a consistent pace. This individual must form a project team with representatives from the Division.

This team will meet with the MaintStar project manager, MaintStar implementation team members, and outside consultants on a regular basis. Both teams will work together to analyze the existing operation, data flow, business rules, and reporting requirements. The teams also will work together to analyze and prepare the existing data for conversion.

Responsibilities of Port of Los Angeles Project Manager

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1. Schedule regular meetings for review of project status.
2. Schedule hardware delivery.
3. Schedule installation dates and have IT personnel to be available to accompany the MaintStar installation team.
4. Provide clean set of existing assets and other related data for conversion to the new system.
5. Provide GIS files for analyzing and linkage to the MaintStar database.
6. Provide PM procedures and frequency of service for each type of asset.
7. Provide training facilities. This would include necessary space and computers for the class attendees, LCD projector for Instructor.
8. Coordinate necessary legal and financial documentation and approve payment schedule for the project.

Project Time Line – 6 Months

Due to a tight time line, MaintStar suggests that this project should be implemented using a single-phase approach. We will work closely with LA Consulting in order to keep this project moving at a fast pace. This project will be assigned the highest priority.

We expect to complete the project within 6 months.

Data Conversion

Data files for conversion are to be provided in Microsoft Excel format by LA Consulting. The provided data is to be clean, with no scrubbing or editing of the data required.

The following data will be converted:

1. Port equipment setup files
2. Fleet equipment setup files
3. Employee rates
4. Equipment rates
5. Vendors
6. Inventory Stock

No historical or PM data will be converted.

Work Plan setup data to be inputted manually by LA Consulting.

KICK OFF MEETING

The MaintStar Project Manager will conduct a kick off meeting with the Port of Los Angeles Project Manager, LA Consulting, and Managers of the Construction and

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Maintenance Division and IT staff to address the following items:

- Review of project scope and deliverables. It is essential that the initial phase of the project be developed with the requirements of the whole project in mind. We must therefore devise all data structure and coding in a way that will meet the needs of C&M.
- The Port of LA, with LA Consulting, will define the order that different C&M Divisions will be implemented. The time frame for this progress should be defined.
- A discussion with IT staff to address the following topics:
 - Tentative schedule for installation of the MaintStar software on the server, workstations and initiation of IIS Web services for Internet access.
 - Software licensing issues
 - System administrative training
 - Conversion and loading data into the MaintStar system

System Installation and Initial Configuration

The installation and full implementation of the MaintStar system will be a joint project of the Port of Los Angeles IT staff and the MaintStar technical team.

- The Port's IT personnel will accompany MaintStar staff members through all installation processes.
- The Port's IT personnel will need to have administrative rights and passwords available in order for the MaintStar technical team to complete the installation on the Port's hardware.

MaintStar Inc. will deliver the system with the modules and features agreed upon. Our staff will assist your I.T. staff with installation on your server and workstations. Our team will instruct your staff in proper maintenance and updating processes for MaintStar and establish a good foundation for the future.

We suggest establishing two software environments:

1. A "Test" base, which can be used for system testing, training and practice activities.
2. A "Live Production" database which will be used for all work when the system goes live.

<p align="center">Exhibit A Scope of Work</p>	<p align="right">Port of Los Angeles Computerized Maintenance Management System December 24, 2008 Page 6 of 12</p>
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The Live data can be mirrored to the test environment periodically as adjustments are made in the system. The test database will remain open even after the go live date to provide a work area for future testing and training.

- MaintStar technical staff will configure the e-mail interface.
- Profiles will be created and e-mail integration will be tested.
- The Web Service Request will be installed.
- Installations will be tested for connectivity and functionality.
- System manuals and other documentation will be delivered electronically at this time.

Operation Analysis and System Configuration

LA Consulting will conduct the following tasks:

- The LA Consulting Project Manager will meet with supervisors from each of the C&M divisions to analyze business rules, processes, and procedures.
- LA Consulting will conduct a detailed review of the setup files configuration for the day-to-day ease of data input as well as generating daily, monthly, quarterly, and annual reports. They will communicate this information back to MaintStar in order to facilitate the data conversion process to Maintstar for data loading in setup files.
- LA Consulting will define the type and amount of data for loading.

The following is just a small sample of the data structure that will be defined:
(Some setup data needs to be inputted manually by LA Consulting)

- Cost Centers and Management Divisions
- Activities and Programs
- Detailed descriptions of activities
- Resources availability
- List of equipment and equipment charges
- List of personnel and labor rates
- Asset ID systems such as cranes, buildings, wharves, trucks, generators, pumps, road segments, signs and other assets to be tracked.
- PM tasks, Templates coding

Exhibit A Scope of Work	Port of Los Angeles Computerized Maintenance Management System December 24, 2008 Page 7 of 12
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- Vendors
- Parts and Materials
- Work in progress coding
- Work order types
- Custom screen layouts
- Inspections
- The historical data conversion will be excluded from this project.

Data Import

Data import is to be completed jointly by LA Consulting and MaintStar.

After the business rules, data flow and initial file configuration has been established, MaintStar will now take a look at the existing data. There is a chance that this data may need to be cleaned first prior to transferring it to MaintStar. It is very important not to pollute the new system with junk. LA Consulting will be responsible for initial data cleanup prior to submitting it to MaintStar for data conversion.

MaintStar will analyze the data layout in the Port's existing tables and construct the data import routine.

The assets you have in your system will be imported directly into the MaintStar database. MaintStar's technical staff will assist the Port's staff and teach them about the GIS interface and how MaintStar imports and updates GIS data. After the data has been imported it will be analyzed and submitted to the Port for review. It is possible that the data conversion process will be refined and done again. MaintStar wants the Port to be completely satisfied with the converted data.

Other data

Undoubtedly there will be some data that is not available electronically. This data will have to be entered manually by LA Consulting staff.

Web-Based Service Request

LA Consulting and MaintStar will jointly complete the following tasks:

The MaintStar Web-Based Service Request System will be configured at this time. The system is exceedingly flexible, and can be used in many different ways.

All input screens can be totally modified as to what fields they contain, how the fields are arranged on the screens, which fields are required entry, and other aspects. You can configure drop down selection boxes for various problems. You can even create

different input screens for different groups of users. Multiple screens will be created for internal and external users. A variety of data will need to be converted and imported to the request system tables.

Request approvers and routing flow will be established. Request approvers will be recorded and approval escalation will be configured.

MaintStar will perform the data conversion of Streets, Customers and other setup information. The data, which is not electronically available, will be manually inputted by the Port and LA Consulting.

MaintStar will provide assistance in configuring system security, group's security and screen customization.

Once the screens are customized, the screen layout needs to be approved by the project manager and the POLA team.

The system will be tested for connectivity to the MaintStar database.

Work Planning Configuration by LA Consulting

- Hierarchical Division structure
- Activity descriptions and Programs
- Resource allocation to activities
- Annual Budget Plan

General Work Order System Set Up

These tasks to be completed by LA Consulting:

- Custom screen layout using Screen Customization Module.
- Necessary Attachment linkages can be established at this point.

Specialized Modules Work Order System Setup

These tasks are to be completed by LA Consulting and MaintStar:

- Custom screen layout using Screen Customization Module.
- Necessary Attachment linkages can be established at this point.

PM System Setup, PM Templates

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LA Consulting will create PM templates.

Inspections Setup

LA Consulting will complete this task.

TRAINING

The training will be tailored to meet the specific needs of the users. Depending on their placement into the user groups, an individual user may be attending one or more sessions.

The MaintStar trainer will provide fifteen (15) days of training sessions in 3 SESSIONS of 5 days each. If more than 3 sessions are required, the additional cost estimation for training and expenses will be provided.

An experienced trainer will be provided who will have the responsibility of making sure the end users fully understand the following:

- Work request creation, approval and turning into a work order
- Knowledgeable in system functionality relative to their daily assignments.
- Work order creation and control
- Work Planning concepts, and daily entries
- Inspection planning and inspection recording
- PM scheduling
- Standard and customized report capabilities.
- Provided with hands-on experience during the training process.
- Provided with personalized one-to-one training in any specific area as needed.

Port Responsibilities Related to Training Sessions

The Port is responsible for providing the following resources related to these trainings:

1. Scheduling and preparing facilities for software trainings and presentations as well as scheduling appropriate staff to attend these sessions.
2. Provide a LCD projector and other necessary equipment for these sessions.
3. The training computers should be Internet connected.

Inventory System

The parts and material inventories for the all Divisions can now be defined and entered and MaintStar will guide the Port in the process of the import and entry of parts and material inventory. MaintStar will work with the Port to define inventory coding and entry criteria. Determinations will be made for the following areas:

- Open or closed Inventory
- Stock ID structure
- Model numbering
- Warehouse locations
- Sub locations
- Parts Classes
- Vendor Identification
- Alternate vendor notation
- Minimum and Maximum quantities
- Parts quantity updating
- Receiving transactions
- Issuing transactions

If Inventory Stock data exists in an electronic format, MaintStar will import it for the Port. If Vendors files exist, we will link inventory stock information with Vendors file. All data submitted to be clean and require no scrubbing.

Fleet Operations

MaintStar will conduct system setup and setup files configuration and data conversion. (excluding PM and history). LA Consulting will provide data mapping to Maintstar.

Actual Go-Live Testing and Support Phase

Final system testing will now take place and the functionality and performance will be tuned for final approval. The transition will be a smooth one, and Port staff will be well-trained on a system that is user friendly.

The Port will get quick and clear answers for any questions that may arise at the Go-Live testing time or in the future from our expert technical support staff. The Port will probably have spoken with them or worked with them already during the installation and implementation process. They will be familiar with the Port's system installation and be ready to assist with any technical and application questions.

By following the logical and practical installation and implementation steps detailed above, it is now time to "turn the keys over to you."

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Project Completion

- The system is now fully implemented and all C&M Divisions are online.
- The project team will meet for a final recap of accomplishment and project finalization.
- The POLA project manager will now sign the project for acceptance of all deliverables.

MAINTSTAR ANNUAL SUPPORT:

The MaintStar Annual Support Agreement provides three services:

1. On-going support for technical issues.
2. Support for application usage questions after system training.
3. Annual updates to the system with further added features, functionality and support for new network, server and operating systems.

The MaintStar annual support payment is due upon completion of initial system installation.

The MaintStar support staff is available by phone and e-mail to help with any MaintStar related issue. They have extensive experience with the system and have been actively involved with the programmers in the development of the Water, Sewer and Web-based request modules of the system. Over 90% of support issues are satisfactorily completed in the first phone call from MaintStar clients.

The support staff uses web services to connect to a desktop when necessary. This tool allows MaintStar to show its desktop on a Port computer to demonstrate a function for or reverse the screen for MaintStar to see the system if MaintStar needs to look at Port data to solve the current problem.

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EXHIBIT B
COMPENSATION SCHEDULE
Port of Los Angeles Computerized Maintenance Management System (CMMS)

Item	Action	Payment
1	MaintStar shall be paid this amount after the installation of the MaintStar Asset and Maintenance Management System on the Port's server	\$ 170,000.00
	Sales Tax	\$ 15,725.00
	Total Payment	\$ 185,725.00
2	MaintStar shall be paid this Year 1 annual maintenance fee amount after the installation of the MaintStar Asset and Maintenance Management System on the Port's server (Non-taxable service)	\$ 39,500.00
3	MaintStar shall be paid this amount after the loading of data has been completed	\$ 97,500.00
	Sales Tax	\$ 9,018.75
	Total Payment	\$ 106,518.75
4	MaintStar shall be paid this amount following the completion of the first training session for Port employees on the MaintStar Asset and Maintenance Management System (Non-taxable service)	\$ 21,000.00
5	MaintStar shall be paid this amount following the completion of the second training session for Port employees on the MaintStar Asset and Maintenance Management System (Non-taxable service)	\$ 7,000.00
6	MaintStar shall be paid this amount following the completion of the third training session for Port employees on the MaintStar Asset and Maintenance Management System (Non-taxable service)	\$ 7,000.00
7	MaintStar shall be paid this amount following the set-up of the GIS integration function (Non-taxable service)	\$ 5,000.00
8	MaintStar shall be paid a total not to exceed this amount for travel costs associated with the MaintStar Asset and Maintenance Management System trainer coming on site at the Port in three five day training sessions. Only MaintStar's actual costs will be reimbursed hereunder. (Non-taxable service)	\$ 8,500.00
9	MaintStar shall provide supplemental Information Technology hardware support for this project at a rate not to exceed \$150.00 per hour as requested by the Port. This is to be utilized only if Port IT is not available to provide internal project support. (Non-taxable service)	\$ 10,800.00
10	MaintStar shall be paid this amount for the conversion of existing Port data, excluding historical data	\$ -
11	Any custom programming agreed to by MaintStar and the Port will be paid to MaintStar at a rate not to exceed \$150.00 per hour.	

**EXHIBIT B
COMPENSATION SCHEDULE**

Port of Los Angeles Computerized Maintenance Management System (CMMS)

12	Contingency amount. This includes payment for custom programming, additional data conversion, additional travel and training costs beyond the three sessions provided for above, and unanticipated costs associated with additional modules, functionalities, or system changes requested by the Port that exceed this agreement's scope of work. The do not exceed amount for this item is calculated at ten percent of the total first year costs, excluding travel and supplemental IT support from MaintStar. This amount is to be available for expenditure in any of the three years of the contract.	\$ 7,000.00
	Total Maximum Expenditures for the First Year of this agreement:	\$ 398,043.75
13	MaintStar shall be paid this Year 2 annual maintenance fee amount one year after the payment of the Year 1 annual maintenance fee	\$ 39,500.00
	(Non-taxable service)	
14	MaintStar shall be paid a total not to exceed this amount for site visits during the second year of the agreement. Only MaintStar's actual costs will be reimbursed hereunder.	\$ 9,500.00
	(Non-taxable service)	
15	MaintStar shall provide supplemental Information Technology hardware support for this project at a rate not to exceed \$150.00 per hour as requested by the Port. This is to be utilized only if Port IT is not available to provide internal project support.	\$ 10,800.00
	(Non-taxable service)	
16	Contingency amount. This includes payment for custom programming, additional data conversion, additional travel and training costs beyond the three sessions provided for above, and unanticipated costs associated with additional modules, functionalities, or system changes requested by the Port that exceed this agreement's scope of work. The do not exceed amount for this item is calculated at ten percent of the total first year costs, excluding travel and supplemental IT support from MaintStar. This amount is to be available for expenditure in any of the three years of the contract.	\$ 7,000.00
	Total Maximum Expenditures for the Second Year of this agreement:	\$ 66,800.00
17	MaintStar shall be paid this Year 3 annual maintenance fee amount one year after the payment of the Year 2 annual maintenance fee	\$ 49,950.00
	(Non-taxable service)	
18	MaintStar shall provide supplemental Information Technology hardware support for this project at a rate not to exceed \$150.00 per hour as requested by the Port. This is to be utilized only if Port IT is not available to provide internal project support.	\$ 10,800.00
	(Non-taxable service)	
19	Contingency amount. This includes payment for custom programming, additional data conversion, additional travel and training costs beyond the three sessions provided for above, and unanticipated costs associated with additional modules, functionalities, or system changes requested by the Port that exceed this agreement's scope of work. The do not exceed amount for this item is calculated at ten percent of the total first year costs, excluding travel and supplemental IT support from MaintStar. This amount is to be available for expenditure in any of the three years of the contract.	\$ 7,000.00

EXHIBIT B
COMPENSATION SCHEDULE
Port of Los Angeles Computerized Maintenance Management System (CMMS)

	Total Maximum Expenditures for the Third Year of this agreement:	\$ 67,750.00
	Total Maximum Expenditures for Entire Three-Year Agreement:	\$ 532,593.75

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		
Original Proposed Subcontractor Percentage	SBE	MBE
	WBE	OBE
	DBE	

N/A

				PROPOSED		ACTUALS		
	Name of Subcontractor	Type of Work Performed	Group SBE/MBE/WBE/OBE/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 C

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

EXHIBIT D

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles, Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance, has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the nearest office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

MAIN OFFICE

LA City Hall	201 N. Main Street, Rm. 101	(213) 626-9271
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BRANCH OFFICES

Van Nuys Civic Center	14401 Erwin Mall	(818) 756-8531
W. LA City Hall	1828 Sawtelle Blvd.	(310) 575-8888
Hollywood Office	6501 Fountain Ave.	(213) 485-3935
San Pedro City Hall	638 S. Beacon St., Rm. 303	(310) 732-4537
Westchester Municipal Bldg.	7166 Manchester, Rm. 9	(213) 473-6750
Watts City Hall	10221 Compton Ave., Rm. 202	(213) 473-5109

City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
GENERAL LIABILITY - ADDITIONAL INSURED ENDORSEMENT

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insured's with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I, _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>		<p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <hr/> <p>Includes (check as applicable):</p> <table style="width: 100%;"><tr><td><input type="checkbox"/> Broad Form Property Damage</td><td><input type="checkbox"/> Contractual Liability</td></tr><tr><td><input type="checkbox"/> Personal Injury</td><td><input type="checkbox"/> Owned Automobiles</td></tr><tr><td><input type="checkbox"/> Independent Contractors</td><td><input type="checkbox"/> Non-Owned Automobiles</td></tr><tr><td><input type="checkbox"/> Premises-Operations</td><td><input type="checkbox"/> Hired Automobiles</td></tr><tr><td><input type="checkbox"/> Explosion-Collapse Hazard</td><td><input type="checkbox"/> Fire Legal Liability</td></tr><tr><td><input type="checkbox"/> Underground Hazard</td><td><input type="checkbox"/> _____</td></tr><tr><td><input type="checkbox"/> Products/Completed Operations</td><td><input type="checkbox"/> _____</td></tr></table>		<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles	<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Non-Owned Automobiles	<input type="checkbox"/> Premises-Operations	<input type="checkbox"/> Hired Automobiles	<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability	<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____	<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____
<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability																
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles																
<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Non-Owned Automobiles																
<input type="checkbox"/> Premises-Operations	<input type="checkbox"/> Hired Automobiles																
<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability																
<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____																
<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____																
<p>Type of Coverage _____</p> <p>Limits of Liability _____</p> <p>From _____ To _____</p> <p style="text-align: center;">□ Per Claim □ Per Occurrence</p>		<p>Policy Period _____</p> <p>□ Deductible \$ _____</p> <p>□ Self-insured Retention \$ _____</p> <p>For _____ (Coverage)</p> <p>□ Per Claim □ Per Occurrence</p>															

Other Conditions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

EXHIBIT E

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
AUTO LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insureds with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I, _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>		<p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <p>Includes (check as applicable): <input type="checkbox"/> All Autos</p> <p><input type="checkbox"/> Owned Automobile <input type="checkbox"/> Hired Automobile</p> <p><input type="checkbox"/> Non-owned Automobile <input type="checkbox"/> _____</p>	
<p>Type of Coverage</p>	<p>Limits of Liability</p> <p>From _____ To _____</p> <p><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p>	<p>Policy Period</p> <p><input type="checkbox"/> Deductible \$ _____</p> <p><input type="checkbox"/> Self-insured Retention \$ _____</p> <p>For _____ (Coverage)</p> <p><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p>	

Other Conditions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

EXHIBIT F

City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
WORKERS' COMPENSATION / EMPLOYER'S LIABILITY - SPECIAL ENDORSEMENT

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured unless checked below in which case only the following specific agreements with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

2. **CANCELLATION NOTICE.** With respect to the interests of the City of Los Angeles Harbor Department, this insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>	<p>Includes (check as applicable):</p> <p><input type="checkbox"/> Broad Form All States Endorsement</p> <p><input type="checkbox"/> Voluntary Compensation Endorsement</p> <p><input type="checkbox"/> United States Longshoremens and Harbor Workers Compensation Act</p> <p><input type="checkbox"/> Jones Act</p> <p><input type="checkbox"/> Other Continental Shelf Endorsement</p> <p><input type="checkbox"/> Waiver of Subrogation</p> <p><input type="checkbox"/> Employer's Liability</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>									
<table style="width: 100%;"><thead><tr><th style="text-align: left;">Type of Coverage</th><th style="text-align: left;">Limits of Liability</th><th style="text-align: left;">Policy Period</th></tr></thead><tbody><tr><td><i>Workers' Compensation</i></td><td><i>Statutory</i></td><td>From _____</td></tr><tr><td><i>Employer's Liability</i></td><td></td><td>To _____</td></tr></tbody></table>		Type of Coverage	Limits of Liability	Policy Period	<i>Workers' Compensation</i>	<i>Statutory</i>	From _____	<i>Employer's Liability</i>		To _____
Type of Coverage	Limits of Liability	Policy Period								
<i>Workers' Compensation</i>	<i>Statutory</i>	From _____								
<i>Employer's Liability</i>		To _____								

Other Provisions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

EXHIBIT G

ACORD. CERTIFICATE OF LIABILITY INSURANCE		OF ID ED MAINT-1	DATE (MM/DD/YYYY) 07/23/08
PRODUCER Dempsey Insurance, Inc. 3639 Atlantic Avenue Long Beach CA 90807 Phone: 562-427-5491 Fax: 562-427-4065		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Maintstar, Inc. & Bender Engineering Inc. 28 Hammond Unit D Irvine CA 92618		INSURERS AFFORDING COVERAGE INSURER A: Federal Insurance Co. INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

RISK ADJUST LTR INSG	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG	35790788	08/15/08	08/15/09	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMBOP AGG \$ 2,000,000
A X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	73517904	08/15/08	08/15/09	COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				NO STATE- TORY LIMITS <input type="checkbox"/> 10H- SR E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*10 DAY NOTICE APPLIES FOR NON PAYMENT OF PREMIUM CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED PRIMARY & NON CONTRIBUTORY WORDAGE APPLIES

CERTIFICATE HOLDER CITY OF LOS ANGELES LOS ANGELES HARBOR DEPT. RISK MANAGEMENT 425 S. PALOS VERDES ST. SAN PEDRO CA 90731	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Richard C. Dempsey <i>Richard C. Dempsey</i>
--	--

**STATE
COMPENSATION
INSURANCE
FUND**

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 12-16-2008

GROUP:
POLICY NUMBER: 1381040-2008
CERTIFICATE ID: 88
CERTIFICATE EXPIRES: 10-01-2009
10-01-2008/10-01-2009CITY OF LOS ANGELES
RISK MANAGEMENT
425 S PALOS VERDES ST
SAN PEDRO CA 90731-3309

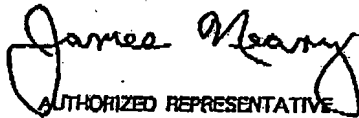
SG

This is to certify that we have issued a valid Workers' Compensation Insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.


AUTHORIZED REPRESENTATIVE
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1800 - DIMINTRY PORETSKY PRES TRES SEC - EXCLUDED.

ENDORSEMENT #2005 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 10-01-2004 IS
ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

MAINTSTAR (A CORP)
28 HAMMOND ST E D
IRVINE CA 92618

SG

[DCD,CN]

AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding

AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

AFFIRMATIVE ACTION PROGRAM PROVISIONS

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;

AFFIRMATIVE ACTION PROGRAM PROVISIONS

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 I

SMALL BUSINESS DEVELOPMENT PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Port of Los Angeles in a manner that reflects the diversity of the City of Los Angeles. The Port of Los Angeles Small Business Development Program (SBDP or the "Program") was created to provide additional opportunities for small businesses to participate in any and all contracts. An overall Department goal of 25% has been established for the Program. The specific goal or requirement for each contract to be let 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, small business entities (SBEs), women-owned businesses (WBEs), and minority-owned businesses (MBEs). The Program will allow the Port to target more effectively small business participation (including MBEs and WBEs). It is also the intent of the Department to make it easier for small businesses to participate in Port contracts by providing education and assistance on how to do business with the City, including, but not limited to, insuring that payments to small businesses are processed in a timely manner.

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.

The SBDP is a results-oriented program, requiring contractors who receive contracts from the Port 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%. Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement.

The Consultant shall not substitute an SBE firm without obtaining prior written 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 Contract Description Form. The Contract Description Form, when signed, will signify the Consultant's intent to comply with the Small Business Requirement. In addition, prior to being awarded a contract with the City, Consultant and all subconsultant's must be registered with the Department's Contract Management Database, *e-DiversityXchange*.

**EXHIBIT C
AFFIDAVIT**

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

MAINTSTAR

Name of Firm

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

Please indicate the ownership of your company: ☒ SBE ☐ 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 Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- An OBE (Other Business Enterprise) is any enterprise that is not a MBE or WBE.

Signature [Signature] Title PRESIDENT

Printed Name DIMITRY POBETSKY Date Signed 12/17/08

NOTARY

On this _____ day of _____, 20____, before me appeared

to me personally known, who being duly sworn, did execute the
Name

foregoing affidavit, and did state that he/she was properly authorized by _____

Name of Firm

to execute the affidavit and did so act and deed.

SEAL

Notary Public _____

Commission Expires _____



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of ORANGE

On 12/17/08 before me, MANJIT ASRANI, NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared ZINOVY DIMITRY PORETSKY

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

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

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

Exhibit C, Affidavit
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 1 Document Date 12/17/08

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

☐ Individual (s)

☒ Corporate Officer

(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☐ Trustee(s)

☐ Other

02/03/2009 11:30 3434307020 CONTRACT

Contract Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: Computerized Maintenance Management System (CMMS)
Business Name: MAINTSTAR Award Total: \$ _____
Owner's Ethnicity: Am. or Lat. Gender M Group: SBE MBE WBE OBE (Please check all that apply)
Address: 36 HAMMOND, UNIT D
City/State/Zip: IRVINE, CA 92618
Telephone: (949) 458-7560 FAX: (949) 458-7626
Contact Person/Title: Dimitry Poretsky PRESIDENT
Email Address: dpt@maintstar.com

SUBCONTRACTOR

Business Name: N/A Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE (Please check all that apply)
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: N/A Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE (Please check all that apply)
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

D. Poretsky
Authorized Representative of Prime Contractor

02/03/09
Date

Contract Description Form

SUBCONTRACTOR

Business Name: N/A Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE ((Please check all that apply))
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

SUBCONTRACTOR

Business Name: N/A Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE ((Please check all that apply))
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

SUBCONTRACTOR

Business Name: N/A Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE ((Please check all that apply))
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

Authorized Representative of Prime Contractor

Date

EXHIBIT J

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.

EXHIBIT J

(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.

EXHIBIT J

(f) Mandatory Contract Provisions Pertaining to Equal Benefits.
Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

Exhibit K

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is entered into among and the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), MAINTSTAR, INC., a California corporation, 28 Hammond, Suite D, Irvine, CA 92618 ("Consultant"), and _____ having a place of business at _____ ("Escrow Agent").

Recitals

Concurrent with the execution of this Escrow Agreement the City and Consultant are entering into an Agreement for a Computerized Maintenance Management System (CMMS) (the "License Agreement") pursuant to which Consultant has licensed to the City the right to use certain software (as defined in the License Agreement) and related documentation (hereinafter "Software"). The License Agreement requires Consultant and the City to enter into an escrow agreement which provides for Consultant's deposit of certain escrow materials with an escrow agent, and, under certain circumstances for release of such escrow materials to the City.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Agreement

1. **DEFINITION OF ESCROW MATERIALS.** The Escrow Materials to be stored by the Escrow Agent consist of one (1) copy of all existing annotated Source Code listings, flow charts, decision tables, schematics, drawings, specifications, documentation, design details, instruction to compile source code, and other related documents which pertain to the Software and all technology necessary to understand the design, structure, and implementation of the Software and to maintain, support and build Object Code of the Software (including, but not limited to, any tools which may or not be commercially available) such that a third party programmer reasonably skilled in the language used in such materials could maintain and support the Software without further assistance or references to other materials (collectively, the "Escrow Materials"). Escrowed Materials shall also include without limitation, all revisions, updates, corrections, changes, modifications, amendments and enhancements to such materials regardless of whether Consultant upgrades or revised the software.

2. **DEPOSIT.** Within five (5) days of Consultant's completion of installation of the CMMS on City's computer system in accordance with the License Agreement, Exhibit A, Scope of Work, , Consultant shall deliver to the Escrow Agent a sealed package certified by an authorized officer of Consultant to contain a complete set of the Escrow Materials as defined in SECTION 1 ("DEFINITION OF

ESCROW MATERIALS") of this Escrow Agreement, for such accepted Software (a "Deposit"). In addition to the foregoing, no less than semi-annually and, additionally, within thirty (30) days of providing any software updates to the City, Consultant shall deliver all updated Escrow Material to the Escrow Agent.

3. **RECEIPT BY ESCROW AGENT.** Consultant shall furnish to the Escrow Agent a packing list in triplicate describing each Deposit made hereunder. The Escrow Agent shall issue a receipt for all Escrow Materials received and forward copies of such receipts and packing lists to both the City and Consultant.

4. **STORAGE OF MATERIALS; INSPECTION.** The Escrow Agent shall establish under its control a receptacle for the purpose of storing the Escrow Materials in safekeeping in an appropriate physical facility and shall allow the inspection of the Escrow Materials by the City to confirm that the deposit is complete and will compile into the same version of the object code of the software accepted by the City pursuant under the License Agreement. Any such inspection shall be in the presence of an authorized representative of Escrow Agent. The City shall provide Consultant with ten (10) days' notice of any requested inspection and Consultant shall have the right to attend such inspection, at its option. Access to the Escrow Materials shall be permitted to authorized representatives of Escrow Agent to the extent necessary for Escrow Agent to perform its obligations pursuant to this Escrow Agreement.

5. **RECORDS.** Escrow Agent agrees to keep complete written records of the activities undertaken, and materials prepared and delivered to Escrow Agent, pursuant to this Escrow Agreement. Consultant or the City shall be entitled at reasonable times, during normal business hours, and upon reasonable notice to Escrow Agent, during the term of this Escrow Agreement to inspect the records of Escrow Agent with respect to the Escrow Materials.

6. **TERM.** This Escrow Agreement shall be perpetual and shall not terminate upon termination of the License Agreement.

7. **DEFAULT BY CONSULTANT.** The following events shall constitute events of default by Consultant which give the City the right to receive a single copy of the Escrow Materials from the Escrow Agent pursuant to **SECTION 8** ("DELIVERY OF ESCROW MATERIALS TO THE CITY") of this Escrow Agreement:

(a) Consultant breaches any warranty of the License Agreement or fails to meet its obligations pursuant to the License Agreement for more than ten (10) days.

(b) Consultant becomes insolvent, or files or has filed against it any proceeding in bankruptcy or for reorganization under any federal bankruptcy law or similar state law, or has any receiver appointed for all or a substantial part of Consultant's assets or business, or makes any assignment for the benefit of its creditors, or enters into any other proceeding for debt relief,

(c) Consultant ceases to do business or institutes any proceedings for the liquidation or winding up of its business or for the termination of its corporate charter;

(d) Consultant ceases to be actively engaged in its usual line of business; or

(e) Consultant ceases to license, maintain, or support the Software.

8. **DELIVERY OF ESCROW MATERIALS TO THE CITY.** Escrow Agent agrees, and is hereby specifically authorized, to provide the Escrow Materials to the City immediately upon written notice by the City (a "Default Notice") that one or more of the default events defined in **SECTION 7** of this Escrow Agreement ("DEFAULT BY CONSULTANT") has occurred.

9. **BANKRUPTCY.** Consultant and the City acknowledge that this Escrow Agreement is an "agreement supplementary to" the License Agreement as provided in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). Consultant acknowledges that if Consultant, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects the License Agreement or this Escrow Agreement, the City may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to Consultant or the Bankruptcy Trustee, Consultant or such Bankruptcy Trustee shall not interfere with the rights of the City as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Escrow Materials.

10. **LICENSE GRANT FOR USE OF ESCROW MATERIALS CONFIDENTIALITY; LIABILITY FOR DISCLOSURE.** In the event that the City obtains the Escrow Materials pursuant to the terms hereof, the City agrees that it will disclose the Escrow Materials only to employees and consultants of the City who have a need-to-know and need access to the Escrow Materials to perform their duties. The City may make a reasonable number of copies of the Escrow Materials for backup and archival purposes.

11. **DELIVERY SITE.** Delivery of the Escrow Materials to the City, or return of the Escrow Materials to Consultant, shall be at the offices of the Escrow Agent at _____, unless special delivery instructions concerning delivery elsewhere are furnished to the Escrow Agent by the party authorized hereunder to receive the Escrow Materials.

12. **OBLIGATIONS OF ESCROW AGENT.** The Escrow Agent shall be responsible only for the acceptance, storage, and delivery of the Escrow Materials in accordance with the terms of this Escrow Agreement and for the exercise of due diligence in accordance with the high level of care accorded fiduciary obligations; shall have no obligation or responsibility to verify or determine that the Escrow

Materials deposited with Escrow Agent by Consultant do, in fact, consist of those items which Consultant is obligated to deliver under this Escrow Agreement; shall bear no responsibility whatsoever to determine the existence, relevance, completeness, currency, or accuracy of the Escrow Materials; and shall be entitled to act in good faith reliance upon any written instruction, instrument, or signature believed in good faith to be genuine and to assume in good faith that any person purporting to give any writing, notice, advice, or written instruction in connection with, or relating to, this Escrow Agreement has been duly authorized to do so.

In the event that Escrow Agent is, for any reason, uncertain of its obligation to deliver the Escrow Materials to the City pursuant to **SECTION 8 ("DELIVERY OF ESCROW MATERIALS TO THE CITY")** of this Escrow Agreement, it shall deliver such materials and it shall initiate an arbitration pursuant to **SECTION 13 ("ARBITRATION")** of this Escrow Agreement to resolve such uncertainty. In the event the arbitrator determines that the Escrow Materials should not have been delivered to the City, the City shall return the original Escrow Materials to the Escrow Agent and certify in writing that it has destroyed any copies of such Escrow Materials. Except as expressly provided in this Escrow Agreement, Escrow Agent agrees that it will not divulge or disclose or otherwise make available to third parties whatsoever, or make any use whatsoever, of the Escrow Materials, or any information deposited with it by Consultant in connection with this Escrow Agreement, without the express prior written consent of Consultant.

13. ARBITRATION. Subsequent to the Escrow Agent's delivery of the Escrow Materials to the City pursuant to **SECTION 8 ("DELIVERY OF ESCROW MATERIALS TO THE CITY")** of this Escrow Agreement, if any dispute arises concerning the delivery of the Escrow Materials to the City by Escrow Agent, such dispute shall be settled by arbitration before a single arbitrator selected in accordance with the rules of the American Arbitration Association, to take place in Los Angeles County, California, within thirty (30) days following the City's delivery of a Default Notice to Escrow Agent pursuant to **SECTION 8 ("DELIVERY OF ESCROW MATERIALS TO THE CITY")** of this Escrow Agreement, in accordance with the then-prevailing rules of the American Arbitration Association. No discovery will be permitted. The arbitrator shall be instructed to render his or her award in writing within fifteen (15) days after the end of the hearing, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

14. INDEMNITY. Consultant and the City jointly and severally agree to defend and indemnify Escrow Agent and to hold Escrow Agent harmless from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages, costs, charges, penalties, counsel fees, and any other expense of any other nature, including, without limitation, settlement costs incurred by Escrow Agent on account of any good faith act or omission of Escrow Agent, in respect of, or with regard to, this Escrow Agreement except as to the obligations of Escrow Agent specified in

SECTION 4 ("STORAGE OF MATERIALS; INSPECTION") and **SECTION 12** ("OBLIGATIONS OF ESCROW AGENT") of this Escrow Agreement.

15. COMPENSATION. The Escrow Agent shall be compensated as set forth on **Schedule 1 ("Fee Schedule")** attached hereto. The fees set forth in **Schedule 1 ("Fee Schedule")** are for Escrow Agent's ordinary services as escrow holder. In the event Escrow Agent is required to perform any additional or extraordinary services as a result of being escrow holder, including intervention in any litigation or proceeding, Escrow Agent shall receive, upon prior written approval of the parties responsible for payment of Escrow Agent's expenses, reasonable compensation for such services and be reimbursed for such costs incurred, including reasonable attorneys' fees. All costs and expenses for establishing and maintaining the escrow including but not limited to Escrow Agent's compensation and expenses shall be equally split between City and Consultant.

16. DISCHARGE OF ESCROW AGENT. Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation to Consultant and the City specifying a date when such resignation shall take effect, which date shall be at least sixty (60) days after the date of receipt of such notice. Prior to the effective date of such resignation, with the prior written consent of the City, which shall not be unreasonably withheld, Consultant shall arrange for the services of a new escrow agent, and Consultant and the City agree to execute and deliver another escrow agreement with such new escrow agent having substantially the same terms as this Escrow Agreement. Upon Consultant notifying Escrow Agent of the name and address of the new escrow agent, Escrow Agent agrees to forward the Escrow Materials to such new escrow agent.

17. MODIFICATION. These escrow instructions are irrevocable except as they may be revoked or modified by written consent of the City, Consultant and the Escrow Agent, jointly.

18. GOVERNING LAW. This Escrow Agreement shall be construed and interpreted in accordance with the laws of the State of California.

19. NOTICES. All notices required by this Escrow Agreement shall be sufficiently given:

- (a) upon delivery, if given in person with a signed receipt;
- (b) if given by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or
- (c) if given by registered or certified mail (air mail if international), postage prepaid, return receipt requested, five days after deposit in the mail in accordance with the provisions hereof. All such notices shall be addressed as follows:

If to the City:

CITY OF LOS ANGELES

Executive Director
Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731

With a Copy To:

City Attorney's Office
425 South Palos Verdes Street
San Pedro, CA 90731

If to the Consultant:

If to Escrow Agent:

or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this **SECTION 19 ("NOTICES")**.

20. SEVERABILITY. In the event that any provision of this Escrow Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court or arbitration decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

21. WAIVER. The failure of any party hereto to require performance by another party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provision hereof by any other party be taken or held to be a waiver of the provision itself.

22. COUNTERPARTS. This Escrow Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

23. SURVIVAL. The following provisions shall survive any termination of this Escrow Agreement or partial termination of this Agreement with respect to a

portion of the Escrow Materials delivered pursuant to SECTION 8 ("DELIVERY OF ESCROW MATERIALS TO THE CITY"): SECTION 10 ("LICENSE GRANT FOR USE OF ESCROW MATERIALS; CONFIDENTIALITY; LIABILITY FOR DISCLOSURE"), SECTION 13 ("ARBITRATION"), SECTION 14 ("INDEMNITY"), SECTION 18 ("GOVERNING LAW"), SECTION 19 ("NOTICES"), SECTION 20 ("SEVERABILITY"), SECTION 21 ("WAIVER"), SECTION 22 ("COUNTERPARTS") and SECTION 24 ("ENTIRE AGREEMENT") of this Escrow Agreement.

24. ENTIRE AGREEMENT. This Escrow Agreement, together with any schedule hereto, and the License Agreement, constitute the entire agreement between the parties with respect to the subject matter hereof. This Escrow Agreement supersedes oral, written or other communications concerning the subject matter of this Escrow Agreement, and shall not be altered, amended, or modified except in a writing signed by the duly authorized officers of each party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date and year hereinafter written.

CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners

By:

Geraldine Knatz, Executive Director
Los Angeles Harbor Department

Date: _____

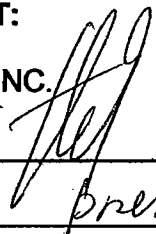
CONSULTANT:

MAINTSTAR, INC.

By: _____

Title: _____

Date: _____


president
01/28/09

ESCROW AGENT:

[NAME]

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

_____, 2009

ROCKARD J. DELGADILLO,
City Attorney

By _____
(Deputy/Assistant)

**SCHEDULE 1 TO EXHIBIT C
FEE SCHEDULE**

**[TO BE NEGOTIATED WITH ESCROW AGENT. HOWEVER, FEES FOR
RECEIVING AND HOLDING ESCROW MATERIALS TO BE PAID BY
MAINTSTAR, FEES FOR ACTUAL DELIVERY OF ESCROWED MATERIALS
TO PORT UPON DEFAULT TO BE PAID BY PORT]**