DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
NOTIFICATION OF ASSISTANCE
(GRANT AGREEMENT)

GRANT NUMBER: DTMA1G10011

Grant Agreement dated as of _____ between the United States of America, Department of Transportation, Maritime Administration (the "Agency") and the Virginia Port Authority (the "Grantee" or "grantee").

TITLE: James River Container Expansion

EFFECTIVE DATE: September 30, 2010

PROJECT PERIOD: September 30, 2010 – July 31, 2011

AUTHORITY: This Grant Agreement is entered into pursuant to the authority established in Section 3515, titled America's Short Sea Transportation Grants for the Development of Marine highways contained in the National Defense Authorization Act of 2010 (NDAA 2010).

CFDA NUMBER: 20.816

MAXIMUM FEDERAL OBLIGATION: $1,100,000

CURRENT FEDERAL OBLIGATION: $1,100,000

OBLIGATION DATE:

APPROPRIATION DATA: 2010-70101750PE-1PR1G10011-00001510000-25305-61006600

GRANTEE: Virginia Port Authority
600 World Trade Center
Norfolk, VA 23510-1679

AGENCY NAME: DOT/Maritime Administration
Office of Acquisition, MAR380
1200 New Jersey Avenue, SE, W28201
Washington, D. C. 20590

SECTION A
GRANT INFORMATION SCHEDULE

This Grant Agreement sets forth the terms and conditions of the Agency's grant of certain funds in support of Grantee's project as indicated in Section B.

1. **Terms and Conditions**. By acceptance of this Grant Agreement, Grantee certifies that it will perform all activities and projects as set forth in this Grant Agreement, comply with all terms and conditions of this Grant Agreement and perform all activities and projects as described in the Section B, Statement of Work. The Agency reserves the right to de-obligate funds obligated under this Grant Agreement (or to require the return of such funds) in the event a Grantee breaches or otherwise fails to perform under any of the Grant requirements.

2. **Grant Term**. The funding and performance period of this Grant Agreement shall be completed by July 31, 2011. The Agency reserves the right, subject to agreement by the Grantee, to extend the term of this Grant Agreement.

3. **Order of Precedence**. Inconsistencies or conflicts in the terms and conditions of this Grant Agreement shall be resolved in the following order of precedence:

   (a) Legislative Authority
   (b) The Grant Schedule (Section A)
   (c) Scope and Purpose and Statement of Work (Section B)
   (d) Performance Measures (Section C)
   (e) The General Terms and Conditions (Section D)

4. **Assurances.** By its execution hereof, the Grantee hereby provides the Grants Officer with the assurances and certifications in conjunction with this Grant Agreement which are attached to this Grant Agreement as additional exhibits and made a part hereof by this reference, and shall comply with such assurances and certifications until the termination or expiration of this Grant Agreement. The Grantee shall also cause any contractor or subcontractor to execute the required certifications attached hereto and made a part hereof, and shall submit such assurances to the grants officer. These certifications are material representations of fact upon which reliance is placed hereunder.

5. **Audit**. The Comptroller General and the Inspector General of the Department of Transportation, as well as any Agency designated audit agency/entity, shall have direct access to records and information of Grantee and its contractors and subcontractors to determine and ensure accountability of federal funds. Audits will be conducted in accordance with OMB Circular A-133.

6. **Funding**. The maximum obligation of this Grant Agreement is $3,340,000 (the "Grant Funds"). The Administrator's obligation to pay or reimburse any costs hereunder is subject to the availability of funds, and nothing in this Grant Agreement will be interpreted to require obligations or payments by the Federal Government in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).

7. **National Environmental Policy Act (NEPA) Requirement** The Grantee may not draw down funds or incur expenses under this Grant Agreement unless and until the NEPA process has been completed, and approved by the Agency with a determination of whether further review, documentation, and/or mitigation measures are required; and the Grantee has satisfied any requirements contained in the Agency's determination. Once these conditions have been successfully completed, the Agency will then notify the Grantee that the review is complete. At that time, the distribution and expenditure of Marine Highway Grant funds may be authorized pursuant to paragraphs 11 and 13 of this Section (A).

8. **Project Performance.** The performance of the Project shall be as indicated in Section B.

9. **Budget**.

   8. 1 The Grant Funds are the maximum amount for which the Agency is obligated to pay Grantee for costs incurred under this Grant Agreement.

   8.2 Any changes to the budget for this Grant Agreement are subject to agreement between Grantee and the Grants Officer. Except for pre-approved re-budgeting as set forth in Section C of this Grant Agreement ("Changes"), Grantee shall provide the Agency with any changes to the proposed budget for review and approval.

10. **Debarment and Suspension**. 49 CFR 18.35 covers sub-awards to debarred and suspended parties. Grantee and Grantee's contractors and the contractor's subcontractors must not make award or permit any award at any tier to any party

which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.

11. **Payment Schedule.** The Agency will provide funds to cover agreed-to, allocable costs related to each Phase. Requests for funding to pay for approved costs shall be in accordance with paragraph 13 of this Section (A). The "Eligible Costs" for each Phase shall be specifically allocated to the activities described in Section B of this Grant Agreement. The Grantee will not proceed with any performance until the Grants Officer provides a Notice to Proceed. Information for Electronic Funds Transfer (EFT):

DUNS NUMBER	**TIN**	**EIN**
010039857	54-6001785	

12. **Payment Office**. The office responsible for making payments under this Grant Agreement is as follows: maradinvoices@faa.gov

13. **Disbursement Procedures**. Requests for disbursement of the Grant Funds shall be handled as follows:

    12.1 The Grantee shall submit to the Agency on a periodic basis a request for Grant Funds for Eligible Costs incurred during such period ("Disbursement Request"). The Disbursement Request shall be submitted on Standard form 270 for this Grant Agreement. Each Disbursement Request shall include as an attachment the invoices from any contractor and subcontractor, at any tier, as appropriate, for the payment of eligible costs that in aggregate equal the sum of funds requested.

    12.2 The Agency shall review the Disbursement Request to confirm that (i) the costs represent Eligible Costs, (ii) such request has the appropriate supporting documentation, and (iii) such request has been duly certified by Grantee. If the Agency has a concern with respect to the completeness and/or accuracy of the Disbursement Request, it shall notify the Grantee of such issue and Grantee shall provide the Agency with such additional information as the Agency requests.

14. **Reports**. The following reports must be submitted to the Agency by Grantee:

Annual Audit Reports. An annual audit relating to the use of Grant Funds shall be completed within 120 days after the end of each calendar year.

Status Reports. Written reports shall display the type of report, the period covered by the report, the name and the Grant Number:

a. The Quarterly Status Reports. Grantee shall keep the Agency informed of activities during the reporting period, accomplishments/progress made, planned activities for the next period, and a listing of any supplies and/or equipment purchased during the reporting period. In addition, the report shall include an explanation for any deviation from the projected budget and timeline. Quarterly status reports shall also contain, at a minimum, the following: (1) a statement as to whether Grantee has used the Grant Funds consistent with the terms contemplated in the Grant Agreement; (2) if applicable, a description of the budgeted activities not procured by Grantee; (3) if applicable, the rationale for Grantee's failure to procure the budgeted activities; (4) if applicable, explanation as to how and when Grantee intends to accomplish the purposes of the Grant Agreement; and (5), a budget summary showing funds expended since commencement, anticipated expenditures for the next reporting period and expenditures compared to overall budget.

b. Special Status Report. Grantee shall inform the Agency as soon as events occur that may adversely impact the Grantee's ability to timely complete performance under this Grant Agreement.

c. Final Status Report. This report, due upon full disbursement of the Grant Funds, shall document the completion status of the Project, and the economic impact on the Richmond-Hampton Roads region resulting from the receipt of the Grant Funds in terms of additional employment, increase in the sale of goods/services etc.

d. Performance Measures. Upon completion of the project for which the Grant is awarded, Grantee agrees to provide the information outlined in Section B of this Grant Agreement as described therein.

Project Milestones. Project Milestones shall be established through mutual agreement that will form the basis for appropriate grant payments upon meeting such milestones.

First Reporting Deadline is: March 31, 2011.

15. **REPORTS DISTRIBUTION AND CORRESPONDENCE**. The Grantee shall make distribution of all Status and Financial Reports as follows:

Addressee	Reports & Correspondence	Submission Due Date
Grants Officer	**Annual Audit Report**	Within 30 days of audit ordering
Grants Officer's Technical Representative	**Status Reports** -Quarterly	-10 days following the end of each Fiscal Quarter
	-Special Status	-As needed
	-Final Status	-Within 60 days of completion of the project
Grants Officer	**Financial Report** SF 425	Monthly

16. **Equipment and Supplies**. Title, use, and disposition of equipment and/or supplies purchased by Grantee with Grant Funds remain with Grantee.

17. **Site Visits**. The Grants Officer, or authorized representatives, has the right at all reasonable times to make site visits to review the project's accomplishments and to provide technical assistance as may be required. Grantee shall provide all reasonable facilities/assistance for the safety and convenience of Agency representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as to not unduly interfere with or delay the work.

18. **Representatives**.

Name	Title	Office Address	Telephone/E-Mail/Fax
Delores Bryant	Grants Officer	1200 New Jersey Ave SE, MAR-380,W28-201 Washington DC 20590	P: 202-366-2660 F: 202-366-3237 Delores.Bryant@dot.gov

Lauren Brand	Grants Officer Technical Representative	1200 New Jersey Ave SE, MAR-510 Washington DC 20590	P:202-366-9595 F:202-366-3237 Lauren.Brand@dot.gov
Frank Mach	Gateway Field Officer Representative	Maritime Administration Mid Atlantic Gateway 7737 Hampton Blvd. Bldg 19, Suite 300 Norfolk,VA 23505	P-757-322-5800 F-757-322-5856 Frank.Mach@dot.gov

19. **Obligations of the Parties.**

Grantee. Grantee has full responsibility for the performance of the effort supported by the Grant Funds, and the terms and conditions specified in this Grant Agreement. Grantee shall supervise and manage all activities or projects, which are its responsibilities under this Grant Agreement, in a sound and efficient manner, and in accordance with sound commercial practices pursuant to the terms, conditions and specifications of this Grant Agreement. Grantee is responsible for managing the day-to-day activities and functions for which it is responsible. Grantee must monitor all of such activities to assure compliance with the Project specifications, the supporting budget, and all applicable state and local laws and regulations, including procurement rules. Grantee must monitor all such activities to assure compliance with applicable laws to ensure that the Project goals are being achieved.

Agency. The Agency shall pay Grantee the agreed cost to perform activities/project(s) under this Grant Agreement. Where Grantee has failed to satisfactorily perform its obligations under this Grant Agreement, the Agency shall provide Grantee with a written statement describing in detail the deficient performance, and provide a reasonable time to cure the deficiency. Nothing in such written statement shall be construed to conflict with or alter any right or remedy by either party as contained this Grant Agreement. Except as otherwise provided herein, whenever the terms of this Grant Agreement call for approval by the Agency, the Grants Officer will endeavor to act on all approval requests within thirty (30) calendar days of receipt. If approval is not granted within said time period, the Grants Officer shall provide a written statement to Grantee specifying a projected decision date.

SECTION B
STATEMENT OF WORK

Marine Highway Grant James River Container Expansion Terms and Conditions

A **Scope**: The purpose of this grant is to implement several components of the James River Container Expansion Marine Highway Project formally designated by the Secretary of Transportation under America's Marine Highway Program. This grant will be used to implement two key components of the project; to expand and improve the existing container-on-barge service operating on the James River between Richmond and Norfolk International Terminal (NIT) in Virginia, and to commence a Marine Highway container shuttle service between NIT, the APM Terminal in Portsmouth, the Portsmouth Marine Terminal (PMT) and the Newport News Marine Terminal (NNMT). Combined grant and recipient funding will accomplish the following:

1. Pursuant to an Operating Agreement between James River Barge Line ("JRBL") and the Virginia Port Authority ("VPA"), JRBL will purchase the existing barge currently employed in the Norfolk-Richmond service. JRBL will in addition, purchase, modify and/or construct another barge (approximately 200 TEU capacity). Purchase of these barges will reduce the overall per-container cost of the operation by eliminating lease expenses as an operational cost. The barges will be dedicated exclusively to the transshipment of containers between the VPA's marine terminals in Hampton Roads, and between the VPA's marine terminals and the Port of Richmond. The VPA and its operating affiliate, Virginia International Terminals, Inc., will provide marketing support to the service and will continue to absorb all terminal fees associated with the barge operation as it does currently with rail and truck cargo movements.

2. The Operating Agreement will provide that the barges will be dedicated to transporting containers in the M-64 Express Marine Highway. Purchase may be in the form of new construction or an existing barge with modifications for containers, whichever is most cost effective in the long term. In conjunction with this acquisition, VPA will establish a barge terminal within the NIT to more efficiently manage barge loading, unloading and staging of containers for the barge services for both the Richmond-NIT and inter-terminal shuttle service. Both barges may be employed in either or both of the services to allow for maximum utilization and efficiency of operations. In the event JRBL terminates its transshipment of containers in these services, the Operating Agreement will provide for the return of the barges to VPA custody/ownership.

3. All vessels and terminals directly engaged in this Marine Highway service will employ environmentally sustainable practices to the maximum extent possible. At a minimum, vessels will use ultra low sulfur diesel or bio-diesel if at all possible. All partners will enroll in EPA SmartWay program to ensure visibility of sustainability measures and enhance marketing opportunities.

B. Schedule: The below schedule is contingent upon completion of NEPA analysis.

#	Component	Start Date	Completion Date (NLT)	Remarks
1	Purchase of existing barge currently in service.	1 Jan 2011	15 Feb 2011	VPA to provide marketing support and absorb VIT fees.
2	Construct or Purchase second barge. Modify as necessary	31 Jan 2011	1 April 2011	VPA will establish barge terminal at NIT.

C. Budget:

Marine Highway Grant Amount: Not to exceed $1,100,000

Matching non-Federal funds: No less than $400,000

Total Project Budget: $1,500,000

Project Component Funding Plan

#	Component	Grant	Match (Form)	Amount
1	Purchase of existing barge	$400,000	$100,000 (Cash Equity)	$500,000
2	Construct or Purchase second barge	$700,000	$300,000 (Cash Equity)	$1,000,000
	Totals:	**$1,100,000**	**$400,000**	**1,500,000**
	Percentages:	**73.3**	**26.7**	**100**

SECTION C
PERFORMANCE MEASURES

The Grantee agrees to (i) collect the data necessary to track and report on each of the performance measures identified in the Performance Measure Table contained in this section of this Grant Agreement, including volume of freight (in TEU) moved each way between the terminals in Richmond and Norfolk International Terminal (NIT), and the four terminals to be served by the inter-terminal shuttle. In addition, grantee agrees to calculate, and report emissions generated and fuel consumed by the Marine Highway service and resulting savings over the landside alternatives, and (ii) report the results of such data collection to the Government. Grantee should include the data collected for each measure in each required report. Reports must be submitted for each performance measure following project completion at the intervals, and for the time periods, specified in the Performance Measure Table included herein. Reports must include a narrative discussion detailing project successes and/or the influence of external factors on project expectations. The final report must include an *ex post* examination of project effectiveness and a comprehensive "lessons learned" analysis of the project.

Study Area: The proposed James River Container Expansion includes the water routes between the ports of Richmond and Norfolk (NIT), VA and between the four terminals in the Hampton Roads area, specifically NIT, NNMT, APM and PMT.

Reporting: Recipient will compile inputs from all required parties and submit to the grantor as described herein. Semi-Annual reports should measure and report data as described in Table 1 below for the duration of the Measurement Period. Grantee need not include any analysis in addition to the described data. Semi-Annual report due dates are as follows:

Reporting Period	Due
January - June	August 1st
July – December	February 1st

Table 1: Performance Measure Table

Measure	Description of Measure	Measurement Period
1. Congestion and Emissions Benefits - Richmond Virginia to Norfolk International Terminals (NIT). Assumes freight moving by water would otherwise move on Highways) – Measured in truck-miles saved and emissions/VMT difference between trucking and Marine Highway Service.		
1a. **Congestion**: Volume of Freight (in TEU) moved by water between the ports.	This measure will facilitate computation of the number of truck miles moved by water – and therefore how many truck miles are removed from the roads. Measure is total number of truck miles (1 truck = 2 TEU) affected by the service expansion. Using known emissions and mileage factors, benefits in congestion, emissions and energy savings can easily be extrapolated.	**Before (Baseline) Measurement:** Use number of trucks removed and resulting emission savings per month based on an average of the 12 months preceding the grant award. **After (Performance) Measurement:** Semi-Annual reports for a period of 3 years, the first period of which will commence upon commissioning of the second barge (component 2 in the statement of work).
1b. **Emissions**: Emissions Generated and fuel consumed by Marine Highway Service between Richmond and NIT.	This measure will quantify the emissions and fuel consumed by the Marine Highway service, which – when subtracted from the above figures (total truck miles eliminated) – will result in the net savings in emissions and energy consumption due to the Marine Highway service between Richmond and NIT. Vessel consumption (reports) and emissions (data) will be made available by the vessel operator.	
2. Congestion and Emissions Benefits – Inter-Terminal Shuttle between NIT, NNMT, APM and PMT. Assumes freight moving by water would otherwise move on Highways) – Measured in truck-miles saved and emissions/VMT difference between trucking and Marine Highway Service.		
2a. Congestion: Volume of Freight (in TEU) moved by water between the four terminals.	This measure will facilitate computation of the number of containers moved between the terminals and the resulting truck miles saved from local roads. Measure is the number of containers moved by water between specific terminal pairs (six pair options) and the road miles each pairing represents if transported by truck. This will allow computation of total number of truck miles (1 truck = 2 TEU) affected by the shuttle service. Using known emissions and mileage factors, benefits in congestion, emissions and energy savings can easily be extrapolated.	**Before (Baseline) Measurement:** No figures are required because there is currently no shuttle in place. **After (Performance) Measurement:** Semi-Annual reports for a period of 3 years, the first period of which will commence upon commissioning of the

2b. **Emissions**: Emissions Generated and fuel consumed by Marine Highway Service between the four terminals.	This measure will quantify the emissions and fuel consumed by the Marine Highway service, which – when subtracted from the above figures (total truck miles eliminated) – will result in the net savings in emissions and energy consumption due to the Marine Highway service between Richmond and NIT. Vessel consumption (reports) and emissions (data) will be made available by the vessel operator.	second barge (component 2 in the statement of work).

SECTION D
GENERAL TERMS AND CONDITIONS

1. **Federal Statutes**. Federal Statutes take precedence over all terms and conditions of this section of the Grant Agreement.

2. **Administration and Cost Principles.** Applicable to this award, and incorporated herein by reference are the requirements of the following Office of Management (OMB) circulars as of the effective date of the award: OMB Circular A-102: "Grants and Cooperative Agreements with State and Local Governments"; OMB Circular A-87: "Cost Principles for State, Local and Indian Tribal Governments; and A-133: "Audits of States, Local Governments and Non-Profit Organizations."

3. **Federal Regulations.** By entering into this Grant Agreement, and by accepting the Grant Funds, Grantee confirms that it will comply with all applicable provisions of 49 CFR Part 18 -- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments -- which are hereby incorporated by reference.

4. **National Policy Requirements.** By accepting this award, and by accepting funds under this award, Grantee covenants that it will comply with applicable provisions of the following national policy requirements (as applicable) with respect to the prohibition of discrimination:

(a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.)

(b) On the basis of age, in the Age Discrimination Act of 175 (42 U.S.C. §6101, et seq.)

(c) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)

(d) On the basis of disability, see Americans with Disability Act of 1993

5. **Retention and Examination of Records.** Retention and access requirements for records shall be in accordance with 49 CFR § 18.42.

6. **Changes.**

a. Budget Changes. Grantee is permitted to re-budget within the approved direct cost budget to meet unanticipated requirements, and may make limited program changes to the approved project, and shall advise the Grants Officer within ten (10) days of making such change.

b. Programmatic Changes. In addition to any requests for revisions of Grantee Statement of Work or Specification (regardless of whether there is an associated budget change requiring approval), the following changes require prior written approval from the Grants Officer:

(i) Need to extend the period of availability of funds.

(ii) Extensions of the term of this Grant Agreement, provided that Grantee notifies the Grants Officer in writing, at least ten (10) calendar days before the Grant Agreement expiration date. The Agency may approve extensions (not to exceed one year each), provided all of the following conditions are met: (1) the extension does not require additional Agency funding; (2) the extension does not involve any change in the approved objectives or scope of the project; and (3) the extension is not being exercised solely to use unobligated balances.

7. **Modification of Grant.** The only method by which this Grant Agreement can be modified is through a formal written modification signed by the Grants Officer. No other communications, whether oral or in writing, shall be binding on the parties.

8. **Enforcement and Termination for Convenience.** The Agency's remedies for noncompliance are set forth in the 49 CFR § 18.43. Except as provided for herein this grant may be terminated in whole or in part only as set forth in 49 CFR Section 18.44.

9. **Disputes and Alternative Dispute Resolution.** Disputes between the Grantee and any sub-grantee or contractor shall be handled in accordance with the requirements of 49 C.F.R. § 18.36(b) (12). Disputes between the Grantee and the Agency shall initially be decided by the Grants Officer. In the event the Grantee disagrees with the decision by the Grants Officer, the decision may be appealed to the Agency using procedures agreed to between the Grants Officer and the Grantee. Any decision by the Agency is a final decision.

10. **Copyrights.** The Agency reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under this Grant Agreement, any subgrant, or contract under the Grant Agreement or a subgrant; and (b)

any rights or copyright to which Grantee, a subgrantee, or contractor purchases ownership with Grant Funds.

11. **Security**. Grantee shall not be granted access to any classified information relating to the Grant Agreement. If security restrictions apply to certain aspects of the proposed effort, Grantee will be so informed. In the event that Grantee's performance of the grant-funded projects involves work that may need classification, or involve access to or storage of any classified data, the Agency shall make the decision on the need to classify or require such access or storage within 30 days after receipt of a written notice from Grantee.

12. **Acknowledgement of Sponsorship**. Grantee agrees that in the release of information relating to this Grant Agreement, such release shall include a statement to the effect that (a) the effort is/was sponsored by the Department of Transportation, (b) the content of the information does not necessarily reflect the position or policy of the Administrator; and (c) that no official endorsement should be inferred. "Information" includes news releases, articles, manuscripts, brochures, advertisements, speeches, trade association proceedings, symposia, electronic media, etc.

13. **Procurement**. Grantee shall follow the same policies and procedures it uses for procurements from its non-federal funds and shall ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations.

14. **Flow-Down Provisions**. All contracts awarded by Grantee that are funded by Grant Funds, including small purchases, shall contain the following provisions, if applicable:

    Equal Employment Opportunity. All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

    Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work,

to give up any part of the compensation to which he is otherwise entitled. Grantee shall report all suspected or reported violations to the Federal awarding agency.

Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7). When required by Federal program legislation, all construction contracts awarded by Grantee and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. Grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. Grantee shall report all suspected or reported violations to the Federal awarding agency.

Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and Grantee in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Debarment and Suspension (E.O.s 12549 and 12689). No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 CFR part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Lobbying. Prohibitions. 1. 31 U.S.C. 1352 (Act) prohibits a contractor, grantee, any subcontractor, or subgrantee (Recipient) of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: (a) the awarding of any Federal contract; (b) the making of any Federal grant; (c) the making of any Federal loan;(d) the entering into of any cooperative agreement; (e) or the modification of any Federal contract, grant, loan, or cooperative agreement. (2) The Act also requires a Recipient to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement. (3) The prohibitions of the Act do not apply under the following conditions: (i) Agency and legislative liaison by own employees.

Each person who requests or each Recipient of Federal contract, grant, loan or cooperative agreement of $100,000 or more shall file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Grantee.

15. **Allowability of Costs**. Allowability of costs shall be in accordance with OMB Circular A-87.

16. **Officials not to Benefit**. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Grant Agreement, or to any benefit arising from it.

17. **Change of Circumstances**. Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this Grant Agreement.

18. **Liability and Indemnity**. The Agency and Grantee will not be responsible for, and Grantee will require all contractors and subcontractors to defend, indemnify, reimburse, and hold harmless the Agency and Grantee for, from, and against all liability to persons which may be attributable or incident to negligence or breach of this Grant Agreement by any of Grantee's contractors, subcontractors, agents, employees, contractors, assigns, or the invitees of any of them. It is Grantee's responsibility to obtain and maintain, or to cause its contractors and subcontractors to obtain and maintain, for the period of performance under this Grant Agreement, all insurance coverage as required by local, state and federal regulations for the performance of this project. 19. **Environmental Protection**. By executing this Grant Agreement, or accepting funds under the Grant Agreement, Grantee assures that:

(a) Grantee agrees that its performance under this Grant Agreement will comply with all applicable Federal, State or local environmental laws and regulations, including but not limited to: the requirements of the Clean Air Act (42 U.S.C. § 7401-7671q.), and Section 308 of the Federal Water Pollution Control Act (33. U.S.C. § 1318), the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. § 6901, et seq); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, 42 U.S.C. § 9601, et seq), and the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. § 9601, et seq.), the Clean Water Act (33 U.S.C. 1251-1387).

(a) Grantee will comply with all existing environmental permits, and will cooperate with the Agency in preparation of future environmental permits, as permitted by law, required for Grantee's compliance under this Grant Agreement.

(b) The Agency's rights under this Grant Agreement specifically include the right for Agency officials to inspect for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Agency is responsible for enforcing

them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

20. **Protection of Threatened and Endangered Species and Natural Habitat.** Grantee agrees that its performance under this Agreement will comply with all applicable Federal State and local laws and regulations related to the protection of threatened and endangered species and natural habitat, if any, included but not limited to the requirements of the Endangered Specifies Act of 1973 (16 U.S.C. § 1531, et seq). Grantee is aware of and understands its obligations to protect and conserve threatened and endangered species and to take all reasonable precautions to protect trees and natural habitat during the performance of the project.

21. **Hatch Act**. Grantee agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implement by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or in part with Federal funds.

22. **Fraud Waste and Abuse.** The Department of Transportation Inspector General maintains a toll free telephone number, 800-424-9071 nationwide, or 202-366-1461 for the Washington DC are, for receiving information concerning fraud, waste or abuse under grants. Such records are kept confidential, and callers may decline to give their names if they choose to remain anonymous.

23. **Small Business and Small Disadvantaged Business Opportunities**. It is a national policy to place a fair share of purchases with small, minority, and woman-owned business firms. The Department of Transportation is strongly committed to the objectives of this policy and encourages all Recipients of its Grants to take affirmative steps to ensure such fairness. In particular, Recipients should:

(a) Place small, minority, and woman-owned business firms on bidders' mailing lists;

(b) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;

(c) When feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms;

(d) Use the assistance of the Small Business Administration and the Office of Small and Disadvantaged Business Utilization, Department of Transportation, and similar state and local offices, where they exist.

24. **Protection of Confidential Business Information:** Any information submitted in conjunction with this agreement, including reporting, that the grantee considers to be a trade secret or confidential commercial or financial information, should be highlighted in the following manner: (1) Note on the front page of any document containing this information that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA. Note: We understand that there may be new guidance in the terminology concerning this provision. Request legal confirm/edit.

25. **Buy American.** Use of American Iron, Steel, and Manufactured Goods.
(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--
(1) applying subsection (a) would be inconsistent with the public interest;
(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

26. **Preference for Privately Owned Commercial U.S. Flag Vessels, 48 C.F.R.Subpart 52.247-64:**

a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 requires that Federal departments and agencies shall transport in privately owned U.S.-

flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

i) The Contracting Officer, and

ii) The: Office of Cargo Preference, Maritime Administration, 1200 New Jersey Avenue, SE, Washington DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information: Sponsoring U.S. Government agency; name of vessel; vessel flag of registry; date of loading; port of loading; port of final discharge; description of commodity; gross weight in pounds and cubic feet if available; and total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the: Office of Costs and Rates, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington DC 20590, phone: (202) 366-4610.

This Agreement may be executed and delivered in counterparts as well as by facsimile or e-mail, each of which, when so executed and delivered, shall be an original, but such counterpart together shall constitute but one and the same instrument and Agreement.

This Agreement is entered into between the United States of America, represented by the Agency, and the Recipient, Grantee as defined on page 1 pursuant to and under U.S. Federal law.

The parties to this Grant Agreement shall execute it by signing in the spaces provided below, as evidence and in acknowledgment of their intention to observe all the provisions hereof.

FOR THE GRANTEE:

(Signature)

J.J. Keever
Sr. Deputy Executive Director
September 28, 2010

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION:

(Signature)

David T. Matsuda
(Name & Title) Maritime Administrator
(Date) September 30, 2010