

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
TRANSPORTATION POWER, 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 Executive Director of the Harbor Department ("Executive Director"), and TRANSPORTATION POWER, INC., a California corporation, located at 13000 Danielson Street, Suite D, Poway, California 92064 ("Grantee").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") applied for and in February 2013 was awarded a grant of funds by the California Air Resources Board ("ARB") under its Air Quality Improvement Program ("AQIP"), Assembly Bill ("AB") 118, Advanced Technology Demonstration Project Solicitation; and

WHEREAS, in accepting the grant award the Department will enter into a Project Grant Agreement, Grant Number G12-AQIP-02 ("Grant Agreement") with the ARB, a copy of which is attached and incorporated hereto as Exhibit A; and

WHEREAS, the Grant Agreement provides funding for Grantee's Electric Yard Tractor Demonstration Project ("Project"), which will test two electric yard tractors during normal operations on a port terminal which, if the technology proves successful, will result in eliminating diesel particular matter from the operation of yard tractors; and

WHEREAS, the Department will be the grant administrator for the Project, including receipt of Grant funds from the ARB and disbursement of those funds to Grantee; and

WHEREAS, the Department has no obligation to make any financial contribution for the Project other than transmitting funds received pursuant to the Grant Agreement to Grantee and Grantee agrees to contribute matching funds in cash and in-kind services of at least One Million Dollars (\$1,000,000) as required by the Grant;

NOW, THEREFORE, in consideration of the forgoing recitals, the parties agree as follows:

I. AUTHORIZED REPRESENTATIVES TO RECEIVE NOTICES

A. The representatives of the respective parties who are authorized to receive notices for this Agreement are:

Mike Simon, President and CEO
Transportation Power, Inc.
13000 Danielson Street, Suite D
Poway, CA 92604
Tel: (858) 248-4255

mike@transpowerusa.com

Teresa Pisano
Environmental Specialist
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
Tel: (310) 732-3057
tpisano@portla.org

B. Formal notices, demands, requests and communications given by either party shall be made in writing to the authorized representatives set forth above.

C. If the name or address designated above is changed, written notice shall be given to the other party within five (5) working days of said change.

II. SERVICES TO BE PERFORMED BY GRANTEE

A. Grantee shall, to the satisfaction of the City, obtain those professional, expert and technical services and materials necessary to procure, integrate and test electric drive systems in two off-road yard tractors. See Exhibit B.

B. During the term of this Agreement, Grantee shall submit a written request to, and obtain written approval from, the Executive Director or his or her designee to change or modify the Scope of Work described in Exhibit B and to change or add to the proposed Project demonstration operator in Exhibit C. Changes or modifications to Exhibit B or Exhibit C that are not approved and accepted in writing by the Executive Director or his or her designee shall not be eligible for reimbursement and shall be considered a breach of this Agreement.

C. In the event of any discrepancies or conflict in terms between this Agreement's Scope of Work or Payment Milestones in Exhibit B and the Scope of Work or Payment Milestones in the Grant Agreement, the terms and provisions of the Grant Agreement shall prevail.

III. SERVICES TO BE PERFORMED BY CITY

A. City shall reimburse Grantee for Project costs incurred in accordance with the terms of this Agreement.

B. At any time during the term of this Agreement, and upon ten (10) days written notice to Grantee, City shall have the right to review Project documentation for the purpose of verifying that Project milestones have been completed and that the Project is being conducted in accordance with the terms of this Agreement.

C. Unless set forth herein, City shall not be obligated to provide assistance to Grantee to assure completion of Project as required herein.

IV. EFFECTIVE DATE AND TERM OF THE AGREEMENT

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

1. Two (2) 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 Grantee ten (10) days' written notice of its election to cancel and terminate this Agreement; or
3. Grantee has completed the Project and the City has made final payment pursuant to the requirements of the Agreement.

V. COMPENSATION

A. The grant award is calculated based upon the estimated expenses of the Project as reported by Grantee and as shown in the Grant Agreement. For the satisfactory performance of the work required by this Agreement, City shall reimburse Grantee an amount not-to-exceed One Million Dollars (\$1,000,000), and in accordance with the payment milestones in Exhibit B.

Expenses incurred above this amount shall not be reimbursed, unless the parties enter into a written amendment to this Agreement and the same is approved by Executive Director or the Board, in accordance with the Los Angeles City Charter.

B. Grantee shall submit itemized invoices in quadruplicate to City upon the completion of each task set corresponding to a payment milestone in Exhibit B. Each such invoice shall be signed by Grantee and shall include the following certification:

"I certify under penalty of perjury that the above bill is true and correct according to the terms of Agreement No. _____ and that payment has not been received.

(Grantee's Signature)

C. Grantee must include on the face of each itemized invoice submitted for payment its Los Angeles Business Tax Registration Certificate number. 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.

Grantee shall submit appropriate supporting documents with each invoice, including any supporting documents that may be required by the Grant Agreement. Such documents may include provider invoices, receipts, payrolls, and time sheets.

The City may require, and Grantee shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

D. Reimbursement is contingent upon Grantee complying with the Scope of Work and submission of reports in accordance with the requirements of this Agreement, and the approval of same by the Executive Director, or his or her designee, in accordance with the requirements of this Agreement.

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

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

VI. TERMINATION

A. City in its sole discretion may terminate and cancel all or any part of this Agreement for any reason upon giving to Grantee ten (10) days notice in writing of its election to cancel and terminate this Agreement. If such termination and cancellation occurs, Grantee shall be entitled to reimbursement for expenses incurred to the date of termination and for which reports and invoices have been submitted in accordance with the terms of this Agreement.

B. In the event that Grantee seeks early termination of this Agreement prior to the termination date for any reason, or no reason whatsoever, Grantee shall submit a written request to the City. Department staff shall submit Grantee's written request for early termination to the Board for review. In the event that City accepts Grantee's request for early termination, Grantee shall reimburse the City pursuant to Section VI.D of this Agreement.

C. In the event that facts available to the Department indicate that Grantee has breached any term of this Agreement prior to the end of the Agreement term, the Executive Director shall submit the reasons for the breach to the Board for its determination and concurrence that Grantee has breached the Agreement. In the event that City determines that Grantee has breached the Agreement, Grantee shall reimburse the City pursuant to Section VI.D of this Agreement.

D. In the event this Agreement is terminated pursuant to Sections VI.B or VI.C, Grantee shall reimburse City for all monies paid to the Grantee. City shall notify Grantee in writing the amount of money that Grantee owes to City and Grantee shall reimburse the City within sixty (60) days of said written notification.

E. 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. Grantee is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although Grantee is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, Grantee 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. Grantee 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.

VII. ACCEPTABILITY OF WORK

The City shall decide any and all questions that may arise as to the quality or acceptability of the work performed by Grantee under this Agreement, including errors and omissions, and as to the amount of reimbursement due to Grantee. Decisions shall be final, and the City shall have authority to enforce and make effective such decisions and orders with respect to the performance of this Agreement.

Grantee understands that no board member, officer, agent or employee of City has the authority to require work outside this Agreement other than is allowed by this Agreement.

VIII. EMISSION REDUCTION CREDITS (ERCs)

Where any Emission Reduction Credits may be generated by the Project, they shall belong to the City and cannot be used by Grantee for any purpose.

IX. ASSIGNMENT

Grantee shall not assign, sell, license or otherwise transfer this Agreement or any of the rights granted by this Agreement without the prior written consent of the City. Any attempted transfer or assignment without the prior written consent of the Cities shall be

void and confer no rights whatsoever upon a transferee or assignee. Any attempted transfer or assignment without the prior written consent of the Cities shall be considered a breach of this Agreement and the City may proceed with termination of the agreement under Section VI.

Any request for consent to an assignment shall be made in writing, accompanied by information relevant to the City's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to any modifications to the Project Scope of Work, if any. Grantee agrees to provide to the City such other or additional information and/or documentation pertaining to the requested consent as may be reasonably requested by the City.

X. INDEMNIFICATION AND INSURANCE

A. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Grantee undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest and the State of California and the Air Resources Board and its officers, employees, agents, representatives, and Successors in Interest (collectively "Indemnified Parties") from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the Indemnified Parties, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Grantee's employees and agents, or damage or destruction of any property of any party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Grantee or its subcontractors of any tier, including the Project demonstration operator shown in Exhibit C. Rights and remedies available to the Indemnified Parties under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Grantee's insurance documents. Grantee's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Grantee's behalf.

C. General Liability Insurance

Grantee 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 coverage 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 Grantee's normal limits of liability but not less than One Million Dollars (\$1,000,000) 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 Grantee. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Grantee'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 and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees and the State of California and the Air Resources Board and its officers, employees, and agents as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

D. Automobile Liability Insurance

Grantee shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability 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 Grantee's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees and the State of California and the Air Resources Board and its officers, employees, and agents as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

E. Workers' Compensation and Employer's Liability

Grantee 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 Grantee shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Grantee 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. Such Worker's Compensation and occupational disease requirements

shall include coverage for all employees of Grantee, and for all employees of any subcontractor or other vendor retained by Grantee.

F. Carrier Requirements

All insurance which Grantee 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. 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 Grantee.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Grantee shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> 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 Grantee 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 Grantee.

J. Right to Self-Insure

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

1. Grantee has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Grantee must have a formal resolution of its board of directors authorizing self-insurance.

2. Grantee 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.
3. Grantee agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Grantee agrees that any insurance carried by Department is excess of Grantee's self-insurance and will not contribute to it.
5. Grantee provides the name and address of its claims administrator.
6. Grantee submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Grantee 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.
8. Grantee has complied with all laws pertaining to self-insurance.

K. Accident Reports

Grantee 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 Grantee'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 Grantee, its officers or managing agents.

XI. COMPLIANCE WITH APPLICABLE LAWS

Grantee shall, at all times, in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, enacted and adopted by federal, state, regional, municipal or other governmental bodies, departments or offices thereof. In addition to the foregoing, Grantee shall comply immediately with any and all orders or directions issued by the City under authority of any such law, statute, ordinance, rule or regulation.

XII. INDEPENDENT CONTRACTOR

Grantee in the performance of the work required by this Agreement is an independent contractor and not an agent or employee of the City. Grantee 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.

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 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. The parties 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. TRADEMARKS, COPYRIGHTS AND PATENTS

Grantee agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, costs, 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 Grantee in the performance of this Agreement.

XV. OWNERSHIP OF DOCUMENTS

All data, documents, reports or other materials, copies of working papers which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement shall become the property of the City. The City reserves the right to use, duplicate, disclose in whole or in part in any manner for any purpose whatsoever all said data, documents, reports or other materials, and to authorize others to do so.

XVI. 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. Grantee declares that its authorized Taxpayer Identification Number (TIN) is 27-3558766. No payments will be made under this Agreement without a valid TIN.

XVII. 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.

XVIII. AFFIRMATIVE ACTION

Grantee, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, natural 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 the Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit E.

XIX. PROPRIETARY INFORMATION

Grantee 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.

XX. 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 3, 1999, agreeing to adopt the provisions of the 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. Grantee shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate the Agreement and otherwise pursue legal remedies that may be available.

XXI. WAGE AND EARNING ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

Grantee and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for Grantee and/or subcontractor's employees.

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

XXII. 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 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. Grantee shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any Agreement with Grantee and pursue any and all other legal remedies that may be available. See Exhibit F.

XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tideland 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. Grantee agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXIV. GOVERNING LAW AND 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.

XXV. INTEGRATION

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

XXVI. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXVII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXVIII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXIX. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXX. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXI. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the

terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

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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 its
Board of Harbor Commissioners

Date: _____

By _____
Executive Director

Attest: _____
Secretary

TRANSPORTATION POWER, INC.

Date: 6/14/13

By [Signature]

Michael Simon, President & CEO
Type/print Name and Title

Attest: [Signature]

James Burns VP & CSO
Type/print Name and Title

APPROVED AS TO FORM

_____, 2013
CARMEN A. TRUTANICH, City Attorney

By _____
HEATHER M. McCLOSKEY, Deputy

Account#	W.O. #
Ctr/Div#	Job Fac.#
Proj/Prog#	
Budget FY:	Amount:
TOTAL	
For Acct/Budget/Div. Use Only	
Verified by:	
Verified Funds Available:	
Date Approved:	