

AGREEMENT NO. \_\_\_\_\_

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
JOHNSON MATTHEY, 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 JOHNSON MATTHEY, INC., a Pennsylvania corporation, Stationary Emissions Control division, located at 400 Lapp Road, Malvern, PA 19355 ("GRANTEE").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") and the City of Long Beach Harbor Department created the Technology Advancement Program ("TAP") as part of the Clean Air Action Plan ("CAAP") in order to accelerate the verification or commercial availability of new, clean technologies that are applicable to the port industry and that result in significant reductions of diesel particulate matter, nitrogen oxides, sulfur oxides and other pollutants; and

WHEREAS, the TAP provides grant funding to port-related technology vendors in order to assist in identifying, evaluating and demonstrating new and emerging emissions reduction technologies and strategies that may result in new control measures, alternatives to existing strategies or as additional mitigation options under the CAAP; and

WHEREAS, the TAP Committee has reviewed and approved partial funding for GRANTEE'S proposal which is a demonstration project (the "Project") to verify the use of a Tier IV diesel particulate filter on the engines of a Union Pacific switcher locomotive, which may result in a 85% decrease in total diesel particulate matter (DPM) plus additional carbon monoxide (CO) and hydrocarbon (HC) reductions;

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:

Steve Clark, Sales Manager, North America  
Johnson Matthey, Inc.  
400 Lapp Road, Suite 200  
Malvern, PA 19355  
Tel: 484-320-2120  
Fax: 484-484-320-2152  
Email address: clarksd@jmusa.com

Kevin Maggay  
Marine Environmental Supervisor  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Tel: (310) 732-3947  
[Kmaggay@portla.org](mailto:Kmaggay@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 obtain CARB verification of the use of a Tier IV diesel particulate filter on the engines of Union Pacific switcher locomotive, which may result in a 85% decrease in total diesel particulate matter (DPM) plus additional carbon monoxide (CO) and hydrocarbon (HC) reduction. See Exhibit A.

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 A. Changes or modifications to Exhibit A 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.

## 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.

D. The parties agree that the City shall not act other than to administer the grant, TAP and CAAP, to provide compensation and reimbursement to Grantee and to take any other actions specifically contemplated by this Agreement; the City shall not repair, replace, modify or otherwise perform any maintenance or services on the work and materials provided by Grantee hereunder.

#### 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 later of Grantee and 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; or
4. The Agreement has been earlier terminated in accordance with Section VI below.

#### V. COMPENSATION

A. The grant award is calculated based upon the estimated expenses of the PROJECT as reported by GRANTEE. For the satisfactory performance of the work required by this Agreement, City shall reimburse GRANTEE an amount not-to-exceed One Hundred Fifty Thousand Dollars (\$150,000), and in accordance with the payment milestones in Exhibit A.

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 A. 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. 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. GRANTEE is not required to submit support for direct costs items of \$25 or less.

D. Reimbursement is contingent upon GRANTEE complying with the Scope of Work and meeting the milestones as set forth in Exhibit A.

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 expenses related to 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 materially 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 materially breached the Agreement. In the event that City determines that GRANTEE has materially breached the Agreement and fails cure such breach within (10) days after notice, or if the breach is such that it cannot be cured within ten (10) days, GRANTEE fails to commence curing

such breach within ten (10) days after notice or fails to complete cure within shortest time such breach is capable of being cured, 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. City shall provide Grantee immediate notice if the necessary funds are not appropriated for this Agreement by the Board for any fiscal year.

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. [INTENTIONALLY OMITTED]

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. Indemnity for General Liability

GRANTEE 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 third party claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines, 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 to the extent caused by the negligence or willful misconduct of GRANTEE, its board, officers, agents, employees or subcontractors in performance of this Agreement.

B. 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 reasonably expected to be in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the City's 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 with any and all reasonable orders or directions issued by the City under authority of any such law, statute, ordinance, rule or regulation that are related to GRANTEE's performance of the work hereunder.

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

Not Applicable.

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 remain the property of the GRANTEE. 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, except that the City shall keep not use, duplicate, or disclose any performance data, test results or any other information marked confidential or that is by its nature proprietary without GRANTEE's prior approval.

However, this limitation related to information marked confidential is subject to City's obligations under California Public Records Act. GRANTEE undertakes and agrees to defend, indemnify and hold harmless the City of Los Angeles and any of its

boards, officers, agents, and employees (collectively, the "City") from and against all suits, claims, and causes of action brought against the City for the City's refusal to disclose GRANTEE'S information marked confidential to any person making a request pursuant to the State of California Public Records Act (California Government Code Section 6250 et seq.) after GRANTEE is made aware of such request and refuses to give the City authority for such disclosure. GRANTEE's obligations herein include, but are not limited to, all reasonable attorney's fees (both in house and outside counsel), reasonable costs of litigation incurred by the City or its attorneys (including all actual, costs incurred by the City, not merely those costs recoverable by a prevailing party, and specifically including costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against the City, through and including any appellate proceedings. GRANTEE's obligations to the City under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to GRANTEE of the City's invoices for all fees and costs incurred by the City, as well as all damages or liability of any nature. GRANTEE shall receive prompt notice from the City of any (1) communication to the City challenging the City's refusal to disclose GRANTEE's information, and (2) any complaint or petition to the court challenging the City's refusal to disclose GRANTEE's information. Further should GRANTEE choose to intervene in any court action relating to the City's refusal to disclose GRANTEE's information, the City shall not oppose GRANTEE's motion to intervene.

#### 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 23-0411710. 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 B.

#### 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 C.

XIX. PROPRIETARY INFORMATION

Not applicable.

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 D.

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.

XXXII. LIMITATION OF LIABILITY

Neither party shall be liable to the other, under any theory of recovery, for any special, indirect, remote, punitive, incidental, speculative or consequential losses or damages, or loss of profits in connection with this Agreement. The parties expressly agree that under no circumstances shall the total aggregate liability of Grantee under this Agreement, under any theory of recovery, exceed the total compensation paid to Grantee as specified herein. The provisions of this Article XXXII shall prevail over any conflicting or inconsistent provisions set forth elsewhere herein or in any documents related to the Agreement, except that it shall not apply to liabilities to third parties under SECTION X, INDEMNIFICATION.

XXXIII. WARRANTIES

For the term of this Agreement, Grantee warrants that the installation has been performed in a workmanlike manner, and the materials are of good quality, provided, however, that GRANTEE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESSS OR IMPLIED, WITH RESPECT TO THE RESULTS OR OUTCOME OF THE DEMONSTRATION PROJECT HEREUNDER, AND EXCEPT AS PROVIDED IN THIS SECTION XXXIII, MAKES NO OTHER REPRESENTATION OR WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

JOHNSON MATTHEY, INC., Stationary Emissions Control Division

Date: 9/29/11

By Robert M. Talley

Robert M. Talley, President - Corporate,

Type/print Name and Title GENERAL COUNSEL

Attest David F. ... SECRETARY

DAVID F. ... DEPUTY GENERAL COUNSEL + ASSISTANT SECRETARY  
Type/print Name and Title

APPROVED AS TO FORM AND LEGALITY

10/11, 2011  
CARMEN A. TRUTANICH, City Attorney  
THOMAS A. RUSSELL, General Counsel

By [Signature]  
SIMON M. KANN, Deputy

Account#	<u>59965</u>	W.O. #	<u>78085</u>
Ctr/Div#	<u>0330</u>	Job Fac.#	<u>637-00</u>
Proj/Prog#	<u>000</u>		
Budget FY:		Amount:	
<u>2012/13</u>		<u>150,000.00</u>	
<u>2011/2012</u>		<u>0</u>	
TOTAL		<u>150,000.00</u>	

For Acct/Budget Div. Use Only

Verified by: [Signature]

Verified Funds Available: [Signature]

Date Approved: 10/6/2011

EXHIBIT A  
PROJECT SCOPE AND PAYMENT SCHEDULE  
TIER IV LOCOMOTIVE DPF PROJECT  
JOHNSON MATTHEY (GRANTEE)

Johnson Matthey (JM), as the technology demonstrator, will serve as the lead on project planning, which includes field testing, data collection, and reporting in preparation of CARB verification of the Tier IV PM DPF system. A barrier to entry of the JM retrofit in the commercial market is the lack of CARB verification. Successful demonstration of the JM switcher locomotive system, as meeting EPA Tier IV locomotive emissions standards, will ensure the durability testing data needed to fulfill requirements of the CARB verification application process.

The recommended TAP Grant amount is to be used solely for verification related expenses incurred from emissions testing, data gathering and analysis efforts, and formal reporting. JM is tasked with submission of the necessary documentation for CARB verification of the Tier IV DPM System in a locomotive application. CARB will reply, via letter correspondence, verifying the level of PM emission reduction. Upon completion of this task, which will be characterized by receipt of the CARB determination letter by Port staff, JM will receive total compensation not to exceed \$150,000.

## **EXHIBIT B**

### **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 office listed below, or log on to [www.lacity.org/finance](http://www.lacity.org/finance) to download the business tax registration application.

#### **MAIN OFFICE**

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

**EXHIBIT C**  
**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.

**EXHIBIT C**  
**AFFIRMATIVE ACTION PROGRAM PROVISIONS**

- 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 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.

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- 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 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;

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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;
  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

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imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## EXHIBIT D

### 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.

(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.

(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.