

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
YUSEN TERMINALS LLC

THIS AGREEMENT ("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 YUSEN TERMINALS LLC, a limited liability company ("YTI") whose address is 701 New Dock Street, Terminal Island, CA 90731. City and YTI shall be referred to herein as the "Parties."

RECITALS

The Parties desire to enter into this Agreement for YTI's demonstration of certain zero emissions cargo handling equipment, with reference to the following facts:

A. YTI is a tenant of the Harbor Department at Berths 212-224 ("Premises") at the Port of Los Angeles ("POLA"), pursuant to Permit No. 692 dated October 27, 1990, as amended ("Permit"). The Permit expires on September 26, 2026. The Parties' negotiations for a possible successor permit remain pending.

B. On November 7, 2014, the Board approved Board Resolution No. 14-7721 to (1) certify the Berths 212-224 [YTI] Container Terminal Improvements Project Final Environmental Impact Report ("EIR"); and (2) adopt the Mitigation Monitoring and Reporting Program for the Berths 212-224 [YTI] Container Terminal Improvements Project ("MMRP"); and (3) approve the project to construct various improvements to the Premises, including deepening berths, installation of sheet piles, expanding the on-dock rail facilities, various cranes improvements, and backland surface improvements, as assessed in the EIR.

C. On December 18, 2014, the Board approved Resolution No. 14-7737 to approve the 11th Amendment to Permit No. 692 with YTI, which added certain "City Improvements" to be constructed by City, and incorporating the MMRP and requiring YTI's compliance thereto.

D. The MMRP contains the following Lease Measure No. LM AQ-4:

"LM AQ-4: Zero or Near-Zero Emissions Demonstration Project. The tenant will participate in a demonstration project lasting three years to investigate the feasibility of using two zero emission or near-zero emission yard tractors on the YTI Terminal. LAHD shall provide the equipment to be tested and any necessary infrastructure, including charging stations, as part of the project."

E. The purpose of this Agreement is to set forth the respective obligations of the parties to satisfy this LM-AQ-4 Demonstration Project ("Project").

F. YTI will be responsible for performing, over three (3) years, demonstration of two (2) battery electric terminal yard tractors described as follows: one (1) MAFI Terminal Tractor Type 7 230e (the "MAFI Tractor"), and one (1) TICO Pro-Spotter 4x2 Terminal Tractor (the TICO Tractor"), collectively referred to herein as the "Equipment," at its Permit Premises, pursuant to the terms of this Agreement.

G. The Harbor Department has agreed to (i) install electric battery charging infrastructure for the Equipment needed to charge the battery electric power source to operate the Equipment, (ii) reimburse YTI for the three (3) years of Equipment lease payments, (iii) provide the administrative oversight for the Project, including receiving YTI's demonstration reports, and (iv) reimburse YTI for costs incurred by YTI to maintain, repair or replace the Infrastructure over the three (3) year demonstration period, if not covered by the one-year Infrastructure warranty, all the foregoing at an estimated cost of One Million Five Hundred Thousand Dollars (\$1,500,000).

YTI experienced unanticipated delays in procuring the demonstration Equipment, including previously planned equipment being withdrawn from the market by its manufacturer at the last minute before its intended lease. As a result, the Parties have planned for contingencies in the event that the full 3-year Project cannot be completed prior to the expiration of the Permit 692, if Equipment delivery date is delayed to a date in 2024. The Parties shall endeavor to complete the full 3-year demonstration within the term of YTI's rights to use the Premises, under the Permit, or a successor permit or other entitlement. This issue has been handled in the Section III B Term, Exhibit A Scope of Work and Exhibit B Compensation – Equipment Lease and Other Cost Reimbursement.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

I. YTI RESPONSIBILITIES

A. Scope of Work. YTI shall perform the demonstration Project consistent with Exhibit A – Scope of Work ("Scope of Work") attached hereto made a part of this Agreement.

B. Modifications. During the term of this Agreement, YTI 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, which approval shall not be unreasonably withheld. 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.

C. As provided for in Exhibits A and B, YTI shall furnish the (i) labor to operate the Equipment and prepare Project reports, (ii) leased Equipment, (iii) electricity to power the Equipment using the Port-installed infrastructure, (iv) all maintenance, parts, and repairs needed to operate the Equipment; and (v) technology needed to integrate the Equipment with YTI's terminal operations.

D. YTI acknowledges and agrees that any services it performs outside this Agreement are performed as a volunteer, and shall not be compensable under this Agreement.

E. YTI shall be subject to, and perform the Project in accordance with, the terms and conditions set forth in this Agreement. Obligations under this Agreement, whether undertaken by YTI or its subcontractors, are and shall be the responsibility of YTI. YTI acknowledges and agrees that this Agreement creates no rights in its subcontractors with respect to City and that obligations that may be owed to its subcontractors including, but not limited to, the obligation to pay subcontractors for services performed, are those of YTI alone.

II. CITY RESPONSIBILITIES ("City Responsibilities")

A. City Responsibilities. The City Responsibilities in this Agreement relate only to this Agreement's Project to demonstrate the Equipment, which are separate and apart from the responsibilities for the City Improvements under the Permit's 11th Amendment.

B. Reimbursement of YTI's Equipment Lease Payments. City shall reimburse YTI for Equipment lease costs after YTI payment, an amount estimated at Six Hundred Seventy Eight Thousand Eight Hundred Sixty Six Dollars (\$678,866), in accordance with the terms of Exhibit B of this Agreement.

C. Infrastructure. By June 30, 2024, City shall, at City's cost, purchase and install one (1) standard CCS-1 battery charging infrastructure unit with two (2) charging connections at the Premises and any other infrastructure necessary to charge the battery electric power source to operate the Equipment ("Infrastructure"). Each charging connection shall supply charging capacity recommended by the Equipment manufacturer as necessary to operate the Equipment. City shall reimburse YTI for costs to maintain, repair or replace the Infrastructure over the three-year demonstration period, if not covered by the one-year Infrastructure warranty, in accordance with the terms of Exhibit B of this Agreement. City and YTI will coordinate regarding the installation of the Infrastructure; however, YTI shall specify its location preference to the Chief Harbor Engineer for issuance of the Engineer's permit, for joint decision by the Parties of the final location for the installation of the Infrastructure within the Premises. This Infrastructure shall remain at the Premises for the Premises tenant's use after the conclusion of the Project.

D. Demonstration Project Administrative Oversight. The Project Manager of the Harbor Department Environmental Management Division shall oversee day-to-day Project coordination, including coordination with YTI for City's infrastructure installation at the Premises, regular check-ins, and receiving and reviewing YTI's demonstration reports.

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

As set forth in Exhibit A Scope of Work, the Project Manager shall periodically meet with YTI staff managing the Project to discuss the progress of Project milestones and that the Project is being conducted in accordance with the terms of this Agreement.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

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

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

1. If the Permit terminates on September 30, 2026 without an extension to its term, successor permit, or other form of agreement that would permit YTI to operate on the premises, this Agreement shall terminate on September 30, 2026. If, however, the parties agree to enter into a successor permit, or other legal agreement pursuant to which YTI continues to operate on the premises, this Agreement will terminate on the earlier of (a) sixty (60) days after YTI's submission of the Final Report and the Port's final payment of all Agreement reimbursements; or (b) such other date upon which YTI ceases to operate on the premises.
2. Funding under the Agreement is no longer available for any reason. City shall provide at least ten (10) days' written notice to YTI with the effective termination date. YTI shall (i) be entitled to reimbursement for expenses incurred in accordance with this Agreement prior to the termination effective date, (ii) be entitled to reimbursement for Equipment Lease Early Termination Costs arising from YTI's early termination of the Equipment Lease agreement(s) in accordance with Exhibit B, and (iii) remain responsible for complying with its reporting and recordkeeping requirements in Exhibit A for the demonstration activity prior to the termination effective date. The Department shall satisfy its obligations to perform the MMRP LM AQ-4 measure through alternate means, if the Board terminates this Agreement; or

3. The Board, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to YTI ten (10) days' notice in writing of its election to cancel and terminate this Agreement. YTI shall (i) be entitled to reimbursement for expenses incurred in accordance with this Agreement prior to the termination effective date, (ii) be entitled to reimbursement for Equipment Lease Early Termination Costs arising from YTI's early termination of the Equipment Lease agreement(s) in accordance with Exhibit B, and (iii) remain responsible for complying with its reporting and recordkeeping requirements on Exhibit A for the demonstration activity prior to the termination effective date. The Department shall satisfy its obligations to perform the MMRP LM AQ-4 measure through alternate means, if the Board terminates this Agreement; or
4. YTI, in its sole discretion, terminates and cancels all or any part of this Agreement for any reason consistent with Exhibit A, upon giving to City ten (10) days' notice in writing of its election to cancel and terminate this Agreement. The Agreement shall be terminated as of the effective termination date, but YTI shall (i) be entitled to reimbursement for expenses incurred in accordance with this Agreement prior to the termination effective date, and (ii) remain responsible for complying with its reporting and recordkeeping requirements on Exhibit A for the demonstration activity prior to the termination effective date. YTI shall satisfy its Permit 11th Amendment obligations to perform the MMRP LM AQ-4 measure through alternate means, if YTI terminates this Agreement.

IV. REIMBURSEMENT AND PAYMENT

A. As reimbursement for the Project as required by this Agreement, City shall reimburse YTI for Equipment lease costs in the amount set forth in Exhibit B and/or other reimbursable costs as provided for in Exhibit B. YTI agrees that timing requirements of the Project may obligate YTI to make expenditures for the Project prior to reimbursement by City. The parties also acknowledge and agree that the City shall not be obligated to reimburse YTI for expenditures made for the Project unless and until payment has been authorized and approved by the City's payment procedures.

B. The approximate amount to be reimbursed to YTI pursuant to this Agreement is: Equipment Lease costs estimated at Six Hundred Seventy Eight Thousand Eight Hundred Sixty Six Dollars (\$678,866) and/or other reimbursable costs under Exhibit B, as set forth in Exhibit B.

C. For all Agreement reimbursements listed in Exhibit B hereunder, YTI shall submit documentation and invoices to City on a monthly basis, following the effective date of this Agreement for Equipment Lease Costs paid by YTI during the preceding month. Each such invoice shall be signed by YTI and shall include the following certification:

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


(YTI's Signature)

D. YTI must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate ("BTRC") number, required by Los Angeles Municipal Code Section 21.09 et seq. See <https://finance.lacity.org/how-register-btrc>. 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.

E. YTI shall submit appropriate supporting documents with each invoice. Such documents may include invoices, and proof of lease payment. The City may require, and YTI shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit.

F. For payment and processing, all invoices should be e-mailed to the Project Manager at Lochsner@portla.org with a hardcopy sent to the following address:

Environmental Management Division
Harbor Department, City of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90733
Attn: Lisa Ochsner

V. EMISSION REDUCTION CREDITS

Any emissions reduction credits generated by the work performed pursuant to this Agreement cannot be used or claimed by YTI or its subcontractors for any purpose.

VI. RECORDKEEPING AND AUDIT RIGHTS

A. YTI shall keep and maintain full, complete and accurate books of accounts and records of the services it performs under this Agreement in accordance with generally-accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to reimbursement for such services as are otherwise compensable hereunder. Such books and records shall be maintained by YTI for a period of three (3) years after completion of services to be performed under this Agreement, as required by the Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever period is longest.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of YTI and subcontractors arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by YTI, subcontractors or any individual or entity acting for or on behalf of a YTI or a subcontractor, and (c) without regard to whether such writings have previously been provided to City. YTI shall be responsible for obtaining access to and providing writings of its subcontractors. YTI shall provide City, at its sole cost and expense, a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the YTI's office or facilities which are engaged in the performance of the Scope of Work. YTI shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. YTI's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

VII. INDEPENDENT CONTRACTOR

YTI and any of its subcontractors are independent contractors and not agents or employees of City in the performance of the work required by this Agreement. YTI shall not represent itself as an agent or employee of the City and no Subcontractor shall have power to bind the City in contract or otherwise.

VIII. INDEMNIFICATION AND INSURANCE

The parties acknowledge and agree that for the purpose of insurance and indemnification with respect to YTI in favor of City under this Agreement, the terms and conditions for Indemnity and Insurance under Permit No. 692, including any subsequent amendments and successive agreements or permits, shall in all cases apply to this Agreement to the extent that incidents giving rise to claims of indemnity and defense under this Agreement are caused solely by YTI's negligence or willful misconduct in performing the work set forth in Exhibit A.

The City shall relieve, indemnify, protect, defend and save harmless YTI and any and all of its boards, officers, agents and employees from any and all claims, demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property including property owned by or under the care and custody of YTI, and for civil fines and penalties, that may arise from or be caused directly or indirectly solely by the City's negligence or willful misconduct in performing the work set forth in this Agreement.

In addition to the Insurance provided under Permit No. 692, YTI shall provide the following:

- (1) Workers' Compensation and Employer's Liability

YTI 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 YTI 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. YTI 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 YTI, and for all employees of any subcontractor or other vendor retained by each Subcontractor.

IX. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the YTI ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. See ARTICLE III.B. TERM OF AGREEMENT.

X. PERSONAL SERVICE AGREEMENT

A. During the term hereof, YTI agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the Project or this Agreement.

B. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that YTI may permit subcontractor(s) to perform portions of the Scope of Work in accordance with Article I. All subcontractors whom YTI utilizes, however, shall be deemed to be its agents. A subcontractors' performance of the Scope of Work shall not be deemed to release YTI from its obligations under this Agreement or to impose any obligation on the City to such subcontractor(s) or give the subcontractor(s) any rights against the City.

XI. AFFIRMATIVE ACTION

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

XII. CONFLICT OF INTEREST

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

During the term of this Agreement, YTI shall inform the Department in writing when YTI, or any of its subcontractors, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by YTI to the Department within thirty (30) days of the employment or hiring of the individual.

XIII. COMPLIANCE WITH APPLICABLE LAWS

YTI shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations.

XIV. GOVERNING LAW / VENUE

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

XV. PROPRIETARY INFORMATION

The Demonstration Reports furnished in connection with this Agreement and work product produced by YTI, its officers, agents, employees, or subcontractors, is the property of City, and the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City and contemplated by this Agreement. Upon City's request, YTI, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license to

use such Reports reasonably satisfactory to the City. It is expressly understood and agreed that, as between City and YTI, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

XVI. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by YTI relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by any YTI or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, YTI is required to safeguard such information from access by unauthorized personnel. The Parties understand that the Demonstration Reports may be incorporated in cargo handling equipment technology feasibility reports by the City or other state and regional air agencies, and once published and in the public domain, YTI may consider the information no longer confidential.

XVII. NOTICES

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

XVIII. 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. YTI declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

XIX. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended,

and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. YTI agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XX. 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. YTI 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.**

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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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


Dated: _____


By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

YUSEN TERMINALS LLC,
a limited liability company

Dated: 6/12/23

By 
Alan McEvoy President & CEO
Print/Type Name and Title

Attest 
Ken Fletcher - General Manager SSE
Print/Type Name and Title

APPROVED AS TO FORM AND LEGALITY

June 22, 2023
HYDÉE FELDSTEIN SOTO, City Attorney
Steven Y. Otera, General Counsel

By 
Joy M. Crose, Assistant General Counsel

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
YUSEN TERMINALS LLC

FUNDS AVAILABLE STAMP

| | | | |
|--------------------------------------|---------------|---|--|
| Account# | 59190 | W.O. # | |
| Ctr/Div# | 0330 | Job Fac.# | |
| Proj/Prog# | 000 | | |
| Budget FY: | | Amount: | |
| 2023/24 | | 0.00 | |
| 2024/25 | | 300,000 | |
| 2025/26 | | 400,000 | |
| 2026/27 | | 400,000 | |
| 2027/28 | | 400,000 | |
| TOTAL | | 1,500,000 | |
| For Acct/Budget Div. Use Only | | | |
| Verified by: | Erin O'Malley | <small>Digitally signed by Erin O'Malley Date: 2023.06.21 12:39:38 -07'07</small> | |
| Verified Funds Available: | <i>Frank</i> | <small>Digitally signed by Frank Liu Date: 2023.06.21 11:42:52-07'00</small> | |
| Date Approved: | 6/21/23 | | |

EXHIBIT A

SCOPE OF WORK

1. Project. This Scope of Work provides the details of what YTI shall do to carry out its Project responsibilities. Pursuant to the 11th Amendment to Permit No 692, YTI agreed to perform the mitigation in the Mitigation Monitoring and Reporting Program for the Berths 212 - 224 [YTI] Container Terminal Improvements Project ("MMRP"). The MMRP includes the following lease measure, which is the "Project" of this Agreement.

"LM AQ-4: Zero or Near-Zero Emissions Demonstration Project. The tenant will participate in a demonstration project lasting three years to investigate the feasibility of using two zero emission or near-zero emission yard tractors on the YTI Terminal. LAHD shall provide the equipment to be tested and any necessary infrastructure, including charging stations, as part of the project."

2. Equipment Demonstration. YTI is responsible for performing, over three years, demonstration of its terminal usage of two (2) battery electric zero emission terminal yard tractors selected by YTI, one manufactured by TICO known as the "2024 TICO Pro-Spotter Electric 4x2 Off-Road Tractor" as quoted in the May 1, 2023 TICO Quotation (the "TICO Tractor") and the other manufactured by MAFI known as "Terminal Tractor Type T 230e" as quoted in the February 14, 2023 Quotation No. 1121199 (the "MAFI Tractor")(collectively, the "Equipment") at its Permit Premises, pursuant to the terms of this Agreement. YTI shall use the Equipment to perform cargo handling activities in the ordinary course of business at the YTI terminal on the Premises, and reporting to City its experience using the Equipment in Demonstration Reports as described below in Section 9.
 - Equipment Problem Conditions or Failure: if YTI experiences performance problems of the Equipment YTI shall work with the Equipment dealer and/or manufacturer ("Equipment Provider") to resolve the problems. If the problems are the technical/operational performance of Equipment not caused by YTI negligence or willful misconduct, and do not resolve after six months of diligent efforts by YTI to obtain solutions from the Equipment Provider, it may be considered an "Equipment Failure". YTI is leasing the TICO Tractor as a prototype model under a "Prototype Equipment Trial Lease" that offers a 3-year warranty. YTI is leasing the MAFI Tractor under the MAFI Transport-Systeme standard warranty of 12 months or 2000 hours, whichever occurs first.
 - In the case of an Equipment Failure, YTI shall use reasonable efforts to replace the Equipment and complete the demonstration.
 - YTI shall not terminate or cancel this Agreement under Article III, Section 4 in event of Equipment Failure, as such a result is considered a Valuable part of the demonstration of the Equipment. As such, YTI shall document the experience of such Equipment Failure and its impact on YTI's operations to the Equipment Supplier, and in its Demonstration Reports.

- The possibility exists for one or both of the Equipment units to be delivered in 2024, in which event less than three full years would be available time to complete the Demonstration Project within the original Permit term.
 - The physical demonstration Project tasks must be completed on the Premises within the term of YTI's rights to use the Premises, under the Permit, or a successor permit or other entitlement agreed by the Parties. The Reporting tasks, including the Final Report, may be completed by YTI up to 60 days beyond the final date of YTI's Premises occupancy, if the permit or other entitlement term expires. The Parties agree that nothing herein shall extend the Permit expiration date of September 30, 2026, or require a successor permit or other entitlement, including allowance of such additional time beyond the Permit expiration date for YTI to complete the Final Report and the Port to make final reimbursement payments;
 - If the parties have not satisfied their contractual obligations prior to the Agreement's termination date as provided in Section III.B.1.,
 - YTI's sole remaining obligation shall be to comply with its reporting and recordkeeping requirements in Exhibit A for demonstration activity prior to the termination effective date, including a Final Report through such activity.
 - The Port shall reimburse YTI for expenses incurred in accordance with this Agreement prior to the termination date and the Equipment Lease Early Termination Costs arising from YTI's early termination lease agreement(s) in accordance with Exhibit B.
 - The Parties shall hold each other harmless from any claims or liability in event of Equipment Failure, provided the Parties satisfy their payment obligations under Exhibit B.
3. Equipment Lease. YTI shall lease the Equipment from its selected equipment lease vendor, CHG-MERIDIAN for the MAFI Tractor and TICO Manufacturing for the TICO Tractor (each a "Lessor," or collectively "Lessors"), pursuant to each Lessor's equipment lease agreement (each a "Lease," or collectively "Leases"). Each Lease term shall be for 36 months and financial terms set forth on the MAFI Tractor Quote dated May 4, 2023 and the TICO Tractor Quote dated May 1, 2023 respectively. YTI shall be solely responsible for making Lease rental payments directly to both Lessors, and complying with all terms of the Leases as required by Lessors, and City shall have no obligations directly to Lessors. City's reimbursement obligations to YTI are set forth in Section II.B. and Exhibit B of the Agreement. YTI shall deliver a copy of the final executed Equipment Leases to the Project Manager within 30 days of its execution.
4. Other YTI-Delivered Components. In addition to the leased Equipment, YTI will supply the (i) labor to operate the Equipment and prepare Project reports, (ii) electricity to power the Equipment using the Port-installed infrastructure, (iii) maintenance, parts, and repairs needed to operate the Equipment, if not covered under Kalmar's three-year warranty; and (iv) technology needed to integrate the Equipment with YTI's terminal operations.

5. Demonstration Site Limitation. The Project site is limited to the Permit Premises only, and the Equipment shall not be moved to or used in any other location.
6. Equipment Obligations. YTI is obligated to maintain the Equipment in good condition, reasonable wear and tear excepted, and in accordance with original equipment manufacturer (OEM) guidelines. YTI is responsible, at its own expense, to maintain, repair or replace the Equipment or any component thereof during the Term of this Agreement, and as covered under warranty by MAFI Transport-Systeme and TICO Manufacturing .
7. Equipment Disposition. Upon completion of the Project, YTI is responsible for returning the Equipment to the Lessor, or as stipulated in the Lease. Alternatively, YTI may, at its sole cost, elect to purchase the Equipment on Lessor's sale terms, or make additional lease payments directly to the Equipment dealer or Lessor, with no responsibility or liability of the Harbor Department.
8. Infrastructure Obligations. YTI is responsible for the ongoing maintenance of the battery charging infrastructure (Infrastructure) after installation at the Premises. The Harbor Department is responsible for the initial installation of the battery charging infrastructure as set forth in Section II.B. of the Agreement. Repairs or replacement of the Infrastructure will be covered under the Infrastructure manufacturer's warranty for the one-year warranty period. After the warranty period expires, repairs and replacement shall be the responsibility of YTI; except any repairs or replacement required by the Harbor Department's workmanship in its initial installation shall be the responsibility of the Harbor Department. City shall reimburse YTI for costs incurred by YTI to maintain, repair or replace the Infrastructure or any component thereof during the term of the Agreement consistent with Exhibit B.
9. Demonstration Reports. YTI shall report on its operational experience demonstrating the Equipment in its day-to-day cargo handling operations as a marine cargo terminal, as set forth below.
 - A. Periodic Check-ins. During the three-year Project demonstration period, the Project Manager of the Harbor Department Environmental Management Division shall oversee day-to-day Project coordination, including regular check-ins with YTI that may involve meetings, teleconferences, and/or site visits on reasonable notice, to monitor overall progress.
 - B. Semi-Annual Written Reports. During the three-year Project demonstration period, YTI shall provide semi-annual monitoring reports regarding equipment performance and experience, maintenance events, and a final report per Section C below, with recommendations for future implementation in terminal operations. The semi-annual report shall be in narrative format and sent electronically to the Environmental Management Division Project Manager

within 30 days following the end date of the reporting period. The semi-annual report shall include, but not be limited to, the following:

- Provide hours of operation for each demonstration unit, which shall be gathered on a monthly basis. Each semi-annual period should include operation of a minimum of 624 hours per unit.
- Provide electric power consumed by the demonstration units, which shall be gathered on a monthly basis. Data collected shall include average operation time between charges, relevant battery state of charge information and associated time to charge the batteries, and average power output per charge event from the chargers to the demonstration units.
- Documentation of all routine and non-routine maintenance conducted on the units during the demonstration period.
- Documentation of monthly electricity costs for each of the demonstration units.
- Documentation of equipment defects or failure. Inoperable equipment is not required to meet data collection reporting requirements listed above during downtime.
- Provide the start and end dates of the reporting period covered in the annual report.

C. Final Report. The final report shall be submitted in narrative format and sent electronically to the Environmental Management Division Project Manager within 60 days upon completion of the demonstration project or by no later than September 30, 2026. The final report shall include, but not be limited to, the following:

- Operational and technical performance of demonstration units in terminal operations.
- Training activities tracked during the demonstration project.
- Safety considerations during operation.
- Overall feasibility of demonstration units including duty cycle, maneuverability, range, initial time between charges, and charger/equipment performance.
- Economic viability for future implementation in terminal operations.
- Equipment defects or failure, including activities or events resulting in inoperable equipment.

EXHIBIT B

COMPENSATION – EQUIPMENT LEASE AND OTHER COST REIMBURSEMENT

In Section II.B., City has agreed to reimburse YTI for the Equipment Lease payments made to Lessors by YTI, [and other cost components] as set forth in this Exhibit B.

1. City has agreed to reimburse YTI for its Equipment Lease costs in the estimated range below, based on the CHG-MERIDIAN Quote for the MAFI Tractor dated May 4, 2023 and the TICO Manufacturing Quote for the TICO Tractor dated May 1, 2023, which terms the parties agree are subject to adjustment, based upon the financial terms (finance rates) available at the time that the final lease documents are executed. The current estimated financial terms are as follows. In the event interest rates cause financial terms to exceed the estimated range, City will reimburse YTI for all lease costs based upon execution of final lease documents.
 - TICO Pro-Spotter Electric 4x2 Off-Road Tractor Finance Amount of \$366,840
 - MAFI Terminal Tractor Type T 230e Finance Amount of \$312,026
 - Term 36 months
 - Finance Rate to be determined, but currently estimated to range between 7% and 12%
 - Monthly Payment currently estimated to range between \$8,667 to \$9,690
 - **Estimated Total Monthly Payment for two (2) units: \$18,357**
 - **ESTIMATED TOTAL REIMBURSABLE PAYMENTS FOR THE 36 MONTHS LEASE: \$678,866 (rounded to nearest whole dollar)**
2. YTI shall deliver a copy of the final executed Equipment Leases to the Project's Program Manager within 30 days after full execution. YTI shall promptly notify the Program Manager when the Equipment has been delivered.
3. YTI is solely responsible for compliance with all terms of the Equipment Leases including, without limitation, directly paying the Lessors all Lease payments. YTI shall follow the payment requirements of Article IV to receive reimbursement from City.
4. If the parties have not satisfied their contractual obligations prior to the Agreement's termination date as provided in Section III.B.1.,
 - YTI's sole remaining obligation shall be to comply with its reporting and recordkeeping requirements in Exhibit A for demonstration activity prior to the termination effective date, including a Final Report through such activity.

- The Port shall reimburse YTI for expenses incurred in accordance with this Agreement prior to the termination date and the Equipment Lease Early Termination Costs arising from YTI's early termination lease agreement(s) in accordance with Exhibit B.
5. In the event City terminates this Agreement pursuant to Article III section B.2. or B.3., and if YTI pays Equipment Lease early termination costs to Equipment Lessor, as disclosed to City prior to execution of this Agreement ("Equipment Lease Early Termination Costs"), then City shall reimburse YTI the full amount of Equipment Lease Early Termination Costs paid by YTI to Equipment Lessor, which will be based on the following:

True Lease Option: Early payoff or return will be the sum on the remaining lease payments, fees (misc. early termination charges etc.) and taxes, and all costs associated with returning the equipment (inspection, costs to bring the equipment to the condition required by the lease, and shipping to a return location).
 6. In the event YTI terminates this Agreement pursuant to Article III, Section B.4. then YTI shall solely pay all Lease Termination Costs and shall not be entitled to any reimbursement from City.
 7. City's Infrastructure installation obligation is set forth in Section II.C and shall be self-funded, with no payments to YTI.
 8. Other reimbursement by City to YTI:
 - A. Infrastructure Maintenance, Repair and/or Replacement Costs. City shall reimburse YTI for actual costs reasonably incurred by YTI to (i) maintain the Infrastructure; and (ii) repair or replacement costs that are not covered by the Infrastructure manufacturer's warranty or otherwise paid for by the Infrastructure manufacturer during the term of this Agreement. City shall not be responsible for repair or replacement costs arising from YTI's negligence or willful misconduct.

EXHIBIT - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The 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 DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

J. Nothing contained in City Contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

- (a) Recruit and make efforts to obtain employees through:
 - (i) Advertising employment opportunities in minority and other community news media or other publications.
 - (ii) Notifying minority, women and other community organizations of employment opportunities.
 - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
 - (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
 - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
 - (vi) Validating all job specifications, selection requirements, tests, etc.
 - (vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.
 - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
- (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
- (d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.
- (e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.
- (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the Contractor, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Contractor's, Subcontractor's or supplier's geographical area for such work;
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.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Contract with the City.