

THIRD AMENDMENT TO AGREEMENT NO. 17-3533  
BETWEEN THE CITY OF LOS ANGELES AND  
EVERPORT TERMINAL SERVICES INC.  
BYD MOTORS LLC  
TAYLOR MACHINE WORKS, INC.

THIS THIRD AMENDMENT to Agreement No. 17-3533 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 EVERPORT TERMINAL SERVICES INC., BYD MOTORS LLC, and TAYLOR MACHINE WORKS, INC. as follows:

1. Section III (B) (1) is amended to read:  
  
"1. October 31, 2023; or"
2. Exhibit A Attachment A-1 "Schedule of Products and Due Dates" is removed in its entirety and replaced with a revised Exhibit A Attachment A-1 "Schedule of Products and Due Dates" (ARV-16-026-04) which is attached hereto and made a part of the Agreement.
3. Exhibit C-1 "Special Terms and Conditions ARV-16-024 Amendment 4" in Exhibit A of the Agreement which is attached hereto is made a part of the Agreement.
4. The Parties agree that Subrecipients shall not be responsible for the payment of any liquidated damages that may be assessed by the California Energy Commission pursuant to Paragraph 4 in Exhibit C-1.
5. Unless otherwise expressly indicated, capitalized terms not defined herein shall have the meanings ascribed thereto in the Agreement.
6. Except as amended herein, all remaining terms and conditions of Agreement No. 17-3533 shall remain in full force and effect.
7. The effective date of this Third Amendment shall be upon execution by the Executive Director after authorization of the Board and approval by City Council as required by Charter Section 373 and Administrative Code Section 10.5.

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IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Agreement No. 17-3533 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

EVERPORT TERMINAL SERVICES INC.

Dated: 2/3/23

By \_\_\_\_\_  
*[Signature]*  
Ray Nunez - President  
(Print/type name and title)

Attest \_\_\_\_\_  
*[Signature]*  
DENIS DELGADO - SVP  
(Print/type name and title)

BYD MOTORS LLC

Dated: \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
(Print/type name and title)

Attest \_\_\_\_\_  
\_\_\_\_\_  
(Print/type name and title)

Signatures continue on next page.

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Agreement No. 17-3533 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

EVERPORT TERMINAL SERVICES INC.

Dated: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Print/type name and title)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Print/type name and title)

BYD MOTORS LLC

Dated: 2/2/2023

By \_\_\_\_\_  
DocuSigned by:  
*Patrick Duan*  
DB3FD2914BD8461...  
Patrick Duan Senior VP, Operations

\_\_\_\_\_  
(Print/type name and title)

Attest \_\_\_\_\_  
DocuSigned by:  
*John Zhuang*  
25F82AB10DB8450  
John Zhuang General Counsel

\_\_\_\_\_  
(Print/type name and title)

Signatures continue on next page.

TAYLOR MACHINE WORKS, INC.

Dated: 2-3-23

By Brittney Luke  
Brittney Luke, CFO  
(Print/type name and title)

Attest

  
SPENCER POPE, Product Manager  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

February 3, 2023  
HYDEE FELDSTEIN SOTO, City Attorney  
Steven Y. Otera, General Counsel

By Heather M. McCloskey  
Heather M. McCloskey, Deputy

## Exhibit A Attachment A-1

### Schedule of Products and Due Dates

*Agreement Term: 06/15/2017 - 10/31/2023*

<b>Task Number</b>	<b>Task Name</b>	<b>Product(s)</b>	<b>Due Date</b>
<b>1</b>	<b>Administration</b>		
<b>1.1</b>	<b>Attend Kick-off Meeting</b>		
		Updated Schedule of Products	6/15/2017
		Updated List of Match Funds	6/15/2017
		Updated List of Permits	6/15/2017
		Kick-Off Meeting Agenda (CEC)	6/15/2017
<b>1.2</b>	<b>Critical Project Review Meetings</b>		
	1st CPR Meeting	CPR Report Written determination (CEC)	10/31/2018 10/31/2018
	2nd CPR Meeting	CPR Report Written determination (CEC)	10/24/2019 10/24/2019
<b>1.3</b>	<b>Final Meeting</b>		<b><u>10/15/2023</u></b>
		Written documentation of meeting agreements	<b><u>8/16/2023</u></b>
		Schedule for completing closeout activities	<b><u>8/16/2023</u></b>
<b>1.4</b>	<b>Monthly Progress Reports</b>		
		Monthly Progress Reports	The 10th calendar day of each month during the approved term of this Agreement
<b>1.5</b>	<b>Final Report</b>		
		Final Outline of the Final Report	12/5/2020
		Draft Final Report (no less than 60 days before the end term of the agreement)	<b><u>7/31/2023</u></b>
		Final Report	<b><u>08/31/2023</u></b>
<b>1.6</b>	<b>Identify and Obtain Match Funds</b>		
		A letter regarding match funds or stating that no match funds are provided	7/14/2017
		Copy(ies) of each match fund commitment letter(s) (if applicable)	7/14/2017
		Letter(s) for new match funds (if applicable)	Within 10 days of identifying new match funds
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying reduced funds

**Exhibit A**  
**Attachment A-1**

<b>1.7 Identify and Obtain Required Permits</b>	Letter documenting the permits or stating that no permits are required	9/15/2017
	A copy of each approved permit (if applicable)	Within 10 days of receiving each permit
	Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
	Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in schedule for obtaining permits
<b>1.8 Obtain and Execute Subcontracts</b>	Letter describing the subcontracts needed, or stating that no subcontracts are required	9/15/2017
	Draft subcontracts	15 days prior to the scheduled execution date
	Final subcontracts	Within 10 days of execution
<b>2 PLAN, DESIGN, BUILD AND DEMONSTRATE FIVE ADVANCED CARGO HANDLING EQUIPMENT, INCLUDING ZERO-EMISION TOP HANDLERS AND YARD TRACTORS</b>	Top Handler Equipment Summary Report	1/4/2021
	Yard Tractor Equipment Summary Report	<u>2/28/2022</u>
	Construction Summary Report	<u>6/30/2022</u>
<b>3 PLAN, DESIGN AND CONSTRUCT CHARGING INFRASTRUCTURE</b>	Construction Summary Report	<u>6/30/2022</u>
<b>4 DATA COLLECTION AND ANALYSIS</b>	Top Handler Data collection information and analysis will be provided in the final report (Task 1.5)	8/30/2021
	Yard Tractor Data collection information and analysis will be provided in the final report (Task 1.5)	<u>7/31/2023</u>

**Exhibit C-1**  
**Special Terms and Conditions**  
**ARV-16-026 Amendment 04**

1. Tasks
  - a. The Recipient agrees to complete all tasks described in Exhibit A, Scope of Work, by October 31, 2023, including but not limited to:
    - i. A 12-month demonstration of the yard tractors and Cavotec Smart Plug-In System (SPS) and a 12-month data collection period that shall be completed by May 31, 2023.
    - ii. Provide monthly progress reports throughout the Agreement term.
    - iii. Submit all project deliverables by the due dates listed in Exhibit A-1 Schedule of Products and Due Dates.
    - iv. Fulfill the match share requirements of this Agreement.
  - b. The California Energy Commission (CEC) retains all rights and remedies should the Recipient fail to complete all tasks described in Exhibit A, Scope of Work, or otherwise fail to satisfy all terms and conditions of this Agreement.
2. The Recipient agrees to submit the Draft Final Report by July 31, 2023, and the Final Report by August 31, 2023.
3. Reimbursement Deadline
  - a. The CEC has legal restrictions on how long the funds encumbered in this Agreement are available to spend under this Agreement. Recipient acknowledges that the funding under Agreement ARV-16-026 liquidates (i.e., is no longer available for disbursement from the CEC) on June 30, 2023.
  - b. The Recipient agrees that all CEC-reimbursable expenditures must be incurred prior to March 31, 2023, even though the end date of the Agreement extends beyond this date. Expenditures incurred after March 31, 2023 may not be reimbursed by the CEC, but may count towards the Recipient's match fund commitment if incurred prior to the end date of this Agreement.
  - c. The Recipient agrees that all invoices (including request(s) to release retention) will be properly documented and submitted to the CEC on or before March 31, 2023, in accordance with the terms and conditions of this Agreement in order to be eligible for payment. Failure to do so may result in the CEC not being able to process payment requests prior to the funding liquidation deadline. Failure by Recipient to submit invoices documented in

accordance with the terms and conditions of this Agreement according to the above schedule may, in addition to any other rights and remedies available to the CEC, result in payment not being issued for those invoices.

4. Liquidated Damages

- a. Due to the Recipient's delays in performing tasks described in Exhibit A, Scope of Work for this Agreement, the Recipient will be unable to perform all project work, and incur allowable expenses in relation to that work, before the June 30, 2023 liquidation date.
  - b. Recipient has asked the CEC to extend the agreement end date beyond the June 30, 2023 liquidation date to October 31, 2023 and pay all Agreement funds, including release of retention, before all project work is scheduled to be complete. Typically, the CEC withholds some or all retention until the end of the Agreement to help ensure grantees fully perform. In this case, requests to release retention must be received by March 31, 2023 to be payable due to the liquidation deadlines, but the Recipient is scheduled to complete work by October 31, 2023.
  - c. The Recipient acknowledges that damages are likely to result if the CEC pays all Agreement funds, including retention, to the Recipient and the Recipient does not fully complete all tasks described in Exhibit A, Scope of Work, including but not limited to 12 months of demonstration and data collection, and that those damages may be difficult to prove.
  - d. Therefore, the Recipient and the CEC agree that the payment of liquidated damages in an amount equal to ten (10) percent of the total Agreement funds disbursed as of the end date of the Agreement would reasonably compensate the CEC for any actual damages sustained, and not be a penalty, if the Recipient does not fully complete all tasks described in Exhibit A, Scope of Work, and satisfy all terms and conditions of this Agreement.
  - e. Without eliminating or modifying any rights and remedies available to the CEC, the Recipient, upon CEC's written request, agrees to pay the CEC ten (10) percent of the total Agreement funds disbursed as of the end date of the Agreement, if the Recipient does not fully complete all tasks described in Exhibit A, Scope of Work, and satisfy all terms and conditions of this Agreement.
5. These Special Terms and Conditions shall be in addition to, and not in lieu of, the other terms and conditions to Agreement ARV-16-026, including those relating to the CEC's right and remedies thereunder. In case of a conflict, the Special Terms and Conditions contained in this Exhibit C-1 will govern over other provisions in this Agreement.



6. The Special Terms and Conditions contained in this Exhibit C-1 survive the completion or termination date of this Agreement for any reason.
7. The CEC retains all rights and remedies should the Recipient fail to complete all tasks or otherwise breach this Agreement.