

**CARGO HANDLING EQUIPMENT FLEET MODERNIZATION INCENTIVE PROGRAM - PHASE II
AGREEMENT BETWEEN**

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

AND “ _____ ”

TENANT’s name

This agreement (“Agreement”), dated as of _____, 20____ is between The Port Authority of New York and New Jersey (“Authority” or “Port Authority”), a body corporate and politic, created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office at 4 World Trade Center, 150 Greenwich Street, New York, New York 10007 (“Port Authority”) and

_____, having an office at _____
TENANT’s name TENANT’s corporate address

WHEREAS, the Port Authority has developed and wishes to promote for the Port of New York and New Jersey a Clean Air Strategy (“Strategy”) that identifies and takes actions to reduce emissions of air pollutants and greenhouse gases from all port-related sources; and

WHEREAS, cargo handling equipment (“CHE”) utilized by tenants at the Port Authority’s marine terminal facilities in New Jersey has been identified as generating a significant portion of emissions at those facilities; and

WHEREAS, those terminals are located within an area designated by the U.S. Environmental Protection Agency (“EPA”) as a non-attainment area for Nitrogen Oxides (NOx); and

WHEREAS, the Port Authority has been awarded \$2.0 million in federal Congestion Mitigation and Air Quality Improvement (CMAQ) grant funding for the purpose of a Cargo Handling Equipment Fleet Modernization Incentive Program – Phase II (“Program”); and

WHEREAS, the Port Authority has established the CHE Program to provide an incentive to tenants at the Port Authority’s marine terminal facilities in New Jersey for the early retirement and replacement of older tiered CHE through the purchase of new Tier IV emission CHE or new alternative powered CHE, (including but not limited to diesel-electric and diesel-hydraulic hybrids and all-electric or compressed natural gas (CNG) /liquefied natural gas (LNG) units that meet Tier IV standard or that meet the most recent Federal EPA on-road and/or off-road air emissions standards); and

WHEREAS, the replacement of approximately 100 pieces of older CHE with new and cleaner models is expected to result in significant emission reductions of NOx, Particulate Matter and CO₂; and

WHEREAS, the Port Authority believes that modernization of CHE with new and more efficient equipment would also enhance marine terminal productivity; and

WHEREAS, TENANT is an entity who leases property on a Port Authority facility; and

WHEREAS, TENANT wishes to participate in the Program in accordance with the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Port Authority and TENANT (each, individually, a "Party" and collectively, the "Parties") agree as follows:

1. To be eligible for reimbursement as provided for herein, TENANT must purchase new CHE (1) that meets Tier IV emission standards or (2) that meets or exceeds the most recent Federal EPA on-road or off-road air emission standards or (3) that is new alternative powered CHE.
2. The TENANT shall submit via E-mail to the Port Authority (jtalkiew@panynj.gov) for approval a detailed list of the desired CHE that it wishes to purchase and a detailed list of the equipment to be replaced (Attachment A). Upon review of the list, the Port Authority will notify TENANT in writing which if any pieces of CHE the Port Authority approves for reimbursement. Reimbursement amounts shall be up to 20 percent of the TENANT's costs, not to exceed an amount of \$20,000 per unit, with all remaining costs to be funded by the TENANT.
3. TENANT acknowledges that this Program is open to all Port Authority Marine Terminal Tenants in New Jersey and that approval for any requested reimbursement will be on a sequential approval basis, until the Port Authority's \$2.0 CMAQ award has been committed. Under the sequential approval basis, the Port Authority will approve no Tenant's application unless and until (1) Tenant has submitted to the Port Authority, by email, a fully-completed (in the Port Authority's sole judgment) Attachment "(A)" to this Agreement AND (2) the Port Authority has approved in its entirety the TENANT's submittals, as required by Paragraph 5 below. The Port Authority will make Reimbursements based on the order in which it receives correct and complete submittals from TENANTS, as required in Paragraph 5 below, provided that one or more applications may be granted only in part due to depletion of funding.
4. TENANT must verify to the Port Authority that the old piece of CHE has been destroyed by drilling a hole through the engine block and providing the Port Authority with photographic proof of such action.
5. TENANT shall submit to the Port Authority (jtalkiew@panynj.gov) (1) a copy of the seller's invoice demonstrating the actual purchase price of the new CHE, (2) documentation that the invoice has been paid, (3) written verification that the old piece of CHE was destroyed as described above and (4) written verification that the new CHE meets the

Tier IV standard or the most recent on- or off-road air emission standards or alternative powered equipment as described above. Upon its receipt and approval of the required submittals, the Port Authority will reimburse TENANT for up to twenty percent (20%) of the Purchase price, not to exceed an amount of \$20,000 per unit, with all remaining costs to be funded by the TENANT.

6. The TENANT shall ensure that the replacement equipment acquired through the program remains operating at Port Authority Marine Terminals in New Jersey for a period of five (5) years from the date of receipt of the replacement equipment. The TENANT, on an annual basis from the purchase date, shall certify in writing to the Port Authority that the new CHE is operating at Port Authority Marine Terminals in New Jersey and shall provide required data, using attachment B. In the event that the TENANT willingly fails to service the Port Authority Marine Terminals with the replacement equipment during the five-year period for any reason other than as set forth below, the TENANT shall be considered in default of this Agreement and the Port Authority may terminate this Agreement and revoke the TENANT's participation in the Program and/or in any future similar program and/or the Port Authority may require that the TENANT make proportional repayment to the Port Authority of the money paid to the TENANT under this Agreement. In the case of TENANT's default, the partial and proportional repayment of the Port Authority's CHE reimbursement funding for each replacement CHE unit no longer operating on a Port Authority Marine Terminal shall be made by the TENANT in accordance with the following schedule:

Amount Paid by Port Authority: _____	
Default Year:	Amount Reimbursed:
Year 1	Amount paid by Port Authority x 1.00
Year 2	Amount paid by Port Authority x 0.75
Year 3	Amount paid by Port Authority x 0.50
Year 4	Amount paid by Port Authority x 0.25

Should the TENANT claim that mitigating factors beyond its control were the cause of any default, the Port Authority will take those factors into account when deciding whether to terminate this Agreement and/or whether to require the default repayment.

In the event that the equipment purchased through this Program is, in the Port Authority's opinion, verifiably destroyed due to uncontrollable circumstances, such as an equipment crash or a natural disaster, such equipment shall be considered a completed project and the TENANT's five-

year obligation to service the Port Authority Marine Terminals shall be deemed fulfilled.

7. TENANT acknowledges and agrees that the Port Authority's role with respect to the Program is limited to providing the funds designated herein. The Port Authority shall not be responsible or liable in any respect for the operation of the equipment or for any injury, death or property damage that may arise or result from the operation of the CHE. TENANT shall indemnify and hold harmless the Port Authority from and against any claim arising from the negligence or intentional wrongdoing of TENANT in carrying out this Agreement or raised by any third party.
8. This Agreement shall take effect upon the date of this Agreement as first stated above and shall remain in effect for a period of five (5) years from the date of receipt of the replacement equipment. This Agreement may be amended, in writing, at any time through mutual agreement by both Parties.
9. TENANT shall set up and maintain in accordance with generally accepted accounting practice principles during the term of this Agreement and any extensions thereof, and for three years after the final payment and/or expiration, termination or revocation thereof, records and books of account recording all transactions of TENANT in any way connected with or related to this Agreement, including but not limited to records and books of account reflecting the cost of CHE reimbursed hereunder, which records and books of account shall be physically kept at all times within the Port District.
10. TENANT shall permit during ordinary business hours during the term of this Agreement, including any extensions thereof, and for three years thereafter, any and all examinations and audits by the officers, employees and/or representatives of the Port Authority and the State of New Jersey of such examinations and audits, including any records and books of account. However, if within the aforesaid three-year period the Port Authority has notified TENANT in writing of a pending claim by the Port Authority under or in connection with this Agreement and to which any of the aforesaid records and documents relate, either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.
11. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by TENANT with any liability, or held personally liable to TENANT under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

IN WITNESS WHEREOF, the Parties hereto, agreeing to be legally bound hereby, have caused this Agreement to be executed as of the date first written above.

**THE PORT AUTHORITY OF
NEW YORK & NEW JERSEY**

(TENANTS NAME)

BY: _____

Patrick J. Foye

BY: _____

(Print name)_____

Title: Executive Director

Title: _____

Date: _____

Date: _____