

SETTLEMENT AGREEMENT AND GENERAL RELEASE BY AND BETWEEN CALIFORNIA TRANSLoad SERVICES, LLC AND THE CITY OF LOS ANGELES

This Settlement Agreement and General Release ("Agreement") is made and entered into as of this ___ day of January, 2019, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board,") and California Transload Services, LLC a Delaware limited liability company ("CTS").

RECITALS

WHEREAS, Section 600 *et seq.* of the Charter of the City of Los Angeles ("Charter"), created the Harbor Department, a Proprietary Department of the City of Los Angeles ("Harbor Department"), a municipal corporation as set forth in Sections 100 and 101 of the Charter of the City of Los Angeles ("City");

WHEREAS, City and CTS are hereinafter collectively referred to as the "Parties" or individually referred to as a "Party;"

WHEREAS, in October 2017, in connection with the sale of substantially all of the assets of California Cartage Company ("CCC") to CTS and CTS Affiliates (as hereinafter defined), CCC assigned to CTS that certain license agreement issued by the BNSF Railway Company ("License") for use and occupancy of approximately 85 acres of land in Wilmington, California within the area defined as the "Harbor District" in the Charter;

WHEREAS, in September 2018, pursuant to an order of the California Court of Appeal, entitlements including the License issued to facilitate development of the Southern California International Gateway were set aside by Board and the City Council of City ("Council");

WHEREAS, Harbor Department and CTS entered into a letter agreement dated August 16, 2018 pursuant to which the Parties entered into a tenancy at will for CTS' occupancy of the Premises ("Tenancy at Will");

WHEREAS, in light of the set aside of the License, on September 20, 2018, Board approved Revocable Permit No. 18-08 ("RP 18-08") entitling CTS to use and occupy the 85 acres noted above, which were described with particularity therein ("Premises");

WHEREAS, on September 28, 2018, pursuant to Section 245 of Charter, Council vetoed Board's approval of RP 18-08;

WHEREAS, on October 12, 2018, pursuant to the veto of Board's approval of RP 18-08 by Council, Harbor Department delivered to CTS a notice entitled "Thirty-Day Notice to Terminate," terminating CTS' tenancy of the Premises as of November 11, 2018;

WHEREAS, various disputes arose prior to the effective date of this Agreement between the Parties concerning the veto of Board's approval of RP 18-08, the Tenancy at Will, the status of CTS' rights to occupy the Premises, the use and operation of the Premises by CTS and CTS Affiliates, and the circumstances, terms and conditions under which CTS might continue to use and occupy the Premises ("the Disputes"), which Disputes expressly do not include: (i) matters arising from or related to the allegations or circumstances underlying Case Nos.

BC689320, BC689321, BC689322 filed in the Superior Court of Los Angeles County; or (ii) any matter involving CTS investigated and/or pursued by the People of the State of California or by the City of Los Angeles Office of Wage Standards, which matters the Parties acknowledge and agree are outside the scope of the settlement set forth in this Agreement;

WHEREAS, in connection with and as consideration for resolving the Disputes, Harbor Department and CTS have agreed to enter into a Permit ("the Permit") pursuant to which CTS may occupy and use the Premises in accordance with the terms of the Permit;

WHEREAS, the Parties have agreed to fully and finally resolve the Disputes, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereto agree as follows.

TERMS

1. Incorporation of Recitals. The recitals to this Agreement, above, are hereby incorporated herein and made a part hereof.

2. Releases.

(A) CTS forever releases and discharges City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all of CTS's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision which exist as of the effective date of this Agreement that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with the Disputes (collectively referred to as "CTS Claims"); provided, however, that nothing in this Agreement shall release, nullify, waive, or otherwise limit any counterclaims or defenses that CTS may have in connection with (i) the allegations or circumstances underlying Case Nos. BC689320, BC689321, BC689322 filed in the Superior Court of Los Angeles County; or (ii) any matter involving CTS investigated and/or pursued by People of the State of California or by the City of Los Angeles Office of Wage Standards, which matters the Parties acknowledge and agree are outside the scope of the settlement set forth in this Agreement.

(B) The City, a municipal corporation, acting by and through its Board, forever releases and discharges CTS and CTS's former, present and future boards, officers, directors, representatives, agents, departments, subsidiaries, CTS Affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all

rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision which exist as of the effective date of this Agreement that are held by Harbor Department and/or City and based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with the Disputes (collectively referred to as "City Claims"). The release by Harbor Department of City Claims also extends to entities that CTS controls, is controlled by, or is under common control with CTS ("CTS Affiliates") and does not include any matter involving CTS investigated and/or pursued by the City of Los Angeles Office of Wage Standards, which the Parties acknowledge and agree are outside the scope of the settlement set forth in this Agreement. As used herein, "control" means the possession, directly or indirectly, of the power to direct or cause the direction or management of an entity, whether through the ownership of voting securities, by contract or otherwise, and "controlling" or "controlled" shall have meanings correlative thereto. City does not possess, and expressly disclaims, any authority to settle and/or release any claims brought on behalf of the People of the State of California. Accordingly, as the Parties acknowledge and agree, the release in this Section 2(B) does not include any present or future matters, claims, actions, charges, investigations, etc., whether civil or criminal, brought on behalf of the People of the State of California by any government agency, including but not limited to the City Attorney of Los Angeles. Specifically, the release in this Section 2(B) does not include any matters arising from or related to the allegations or circumstances underlying Case Nos. BC689320, BC689321, BC689322 filed in the Superior Court of Los Angeles County.

3. Waiver of Section 1542. There is a risk that subsequent to the execution of this Agreement, a Party will discover, incur or suffer loss, damages or injuries which are in some way related to the matters released but which are unknown or unanticipated at the time that this Agreement is executed. Each Party assumes this risk and understands that THIS AGREEMENT SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED RESULTS OF, OR RELATED TO, THE MATTERS RELEASED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED. Each Party expressly acknowledges that each is familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each Party understands and acknowledges the significance and consequence of this specific waiver of section 1542. Having the opportunity to consult with legal counsel, each Party expressly waives and relinquishes any and all rights and benefits which each Party may have under section 1542 of the Civil Code to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of this Agreement.

4. Vacation and Surrender of Premises. In order to mitigate the effects upon its employees of its cessation of operations at the Premises and the termination of their employment, in addition to and not as a substitute for wages due and owing for services performed, which wages CTS shall fully pay, CTS shall pay its employees (including jointly

employed employees) the entirety of the total sum of One Million Three Hundred Forty Thousand Nine Hundred and Thirty One Dollars (\$1,340,931), inclusive of the employer's share of employment taxes on such payment ("Total Sum"). The Total Sum, which is in addition to wages otherwise due employees for services performed or any other amounts required to be paid in accordance with applicable law, shall be allocated by CTS among CTS' employees (including jointly employed employees) according to criteria to be determined by CTS in its sole and absolute discretion. Employees who are eligible to receive a portion of the Total Sum according to CTS' criteria shall be required to execute a general release of CTS, CTS Affiliates, Harbor Department, and City, as a condition of payment. CTS shall disburse the Total Sum on or before the Termination Date (as defined in the Permit) and within thirty (30) days after the Termination Date, CTS shall confirm in writing to the Executive Director of the Harbor Department ("Executive Director") that it has done so and shall deliver copies of all such releases to Executive Director.

5. Costs and Fees. The Parties agree that they will each bear their own costs and fees incurred arising out of or related to the Disputes, except for any costs or fees incurred relating to or arising out of enforcement of this Agreement.

6. Disputed Claims. In entering into this Agreement, or otherwise acting hereunder, no Party admits the claims or defenses of the other which are released herein. Each Party disputes such claims and defenses. This Agreement is in compromise of the disputed claims between the Parties and shall never be treated as an admission of liability by any Party, court, arbitrator(s), mediator(s), or dispute resolution panel.

7. Advice of Counsel and Voluntary Execution. Each Party has freely and voluntarily read and executed this Agreement. Each Party has had this Agreement, its meaning, effect, significance and consequences fully explained to them by their attorneys of choice and acknowledge that they fully understand the meaning, effect, significance and consequences thereof.

8. Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of the predecessors, successors, assigns, heirs and personal representatives of each Party hereto. Each Party hereto represents and warrants to each other Party that no assignment or transfer of any interest, claim or cause of action which is the subject of this Agreement, or the proceeds of any such interest, claim or cause of action, has been made by or from any such Party. The Parties intend that this Agreement fully and finally resolve the Disputes. Accordingly, CTS shall indemnify, defend and hold harmless City from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever which are asserted by CTS Affiliates, which arise from or are related to the Disputes and which are asserted after the effective date of this Agreement.

9. Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign this Agreement. By execution of this Agreement, each Party represents and warrants that this Agreement has been duly authorized by all necessary action by it. No other person, corporation, partnership or other entity shall have any rights hereunder as a third party beneficiary or otherwise.

10. 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.

11. Titles and Captions. The Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section 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.

12. Advice of Counsel and Voluntary Execution. Each Party has freely and voluntarily read and executed this Agreement. Each Party has been advised to consult with its attorney prior to executing this Agreement. Each Party has done so. The Parties have had this Agreement and its meaning, effect, significance and consequences fully explained to them by their attorneys of choice and acknowledge that they fully understand the meaning, effect, significance and consequences thereof.

13. 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 set forth in Charter, the Los Angeles City Administrative Code, or elsewhere.

14. 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.

15. Governing Law/Venue. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. The proper venue for any dispute arising out of this Agreement shall be the Superior Court of California, County of Los Angeles.

16. 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 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.

17. Attorney's Fees. In the event of any action or proceeding brought by either Party against the other under this Agreement, the prevailing party shall be entitled to recover its attorneys' fees, if any, and costs in such amount as the court may adjudge reasonable.

18. Integrated Agreement. 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 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.**

19. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one Agreement to be effective on the date first above written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

CITY OF LOS ANGELES HARBOR DEPARTMENT,
by its Board of Harbor Commissioners

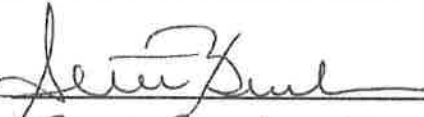
Dated: _____


By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

CALIFORNIA TRANSLOAD SERVICES, LLC.

Dated: 1/16/19

By: 
Scott Brucker, Sr VP & General Counsel
(Print/Type Name and Title)

Attest: 
THOMAS J. LYNCH, Sr. VP FINANCE
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY
_____, 2019

MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By _____
STEVEN Y. OTERA, Deputy