

SETTLEMENT AND RELEASE AGREEMENT AMENDING PERMIT 893

This Settlement and Release Agreement Amending Permit 893 (“Agreement”) is made and entered into as of February 6, 2012 (“Agreement Date”) by and between the Pacific Maritime Association, a California corporation whose principal place of business is located at 555 Market Street, Third Floor, San Francisco, CA 94105 (“Tenant”), and the City of Los Angeles, a municipal corporation (“City”) acting by and through its Board of Harbor Commissioners (“Board”).

The City and Tenant are collectively referred to in this Agreement as the “Parties”. Capitalized terms not defined in this Agreement shall have the meaning set forth in Permit 893.

RECITALS

WHEREAS, effective in May 2011, the City granted Permit 893 to Tenant for the purpose of construction and operation of a union dispatch hall facility upon the Premises as set forth in Permit 893;

WHEREAS, Sections 6.25 and 7.1.1 of Permit 893 call for Tenant, at its sole cost and expense, to conduct certain “remediation of the contaminated soil and/or groundwater encountered during Tenant’s construction of the Improvements;”

WHEREAS, on October 12, 2011, the California Regional Water Quality Control Board, Los Angeles Region (“RWQCB”) issued a letter addressed to Mr. Christopher Cannon, Director of Environmental Management for the City’s Harbor Department, instructing the City to, among other things: i) provide the well closure status of certain abandoned oil wellheads located at the Premises and to submit a plan to search and assess soils within the oil wellheads not located during past geophysical investigation; ii)

provide a plan to investigate and mitigate soil vapor issues at the Premises; iii) provide a work plan for additional soil characterization to support development of a conceptual site model for contaminated soil at the Premises; iv) provide a work plan to install groundwater monitoring wells to assess site-specific hydrogeology and groundwater quality beneath the Premises to develop a complete groundwater conceptual site model; v) develop a cleanup goal for each contaminant detected at the Premises; vi) enter into an oversight cost reimbursement agreement with the RWQCB;

WHEREAS, there is disagreement, dispute and controversy with reference to the respective obligations of the Tenant and the City to address Pre-existing Contamination of the soil and/or groundwater on the Premises and there is further doubt, disagreement, uncertainty and confusion as to the nature and extent of such Pre-existing Contamination and the amount of resulting liability, if any (collectively, "Permit 893 Pre-existing Contamination Disputes");

WHEREAS, after further investigation, and following arm's length negotiations and advice by their respective legal counsel, the Parties desire to amend and clarify certain provisions of Permit 893 to set forth their respective obligations with regard to Pre-existing Contamination of the Premises;

NOW, THEREFORE, in consideration of the foregoing Recitals, and in exchange for the promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date. Subject to the execution and delivery of this Agreement by Tenant and the City, this Agreement shall be deemed effective as of the Agreement

Date; provided, however, if this Agreement is not executed and delivered by Tenant and City on or before April 30, 2012, this Agreement shall be null and void.

2. Allocation of Responsibility for Pre-Existing Contamination.

Notwithstanding anything to the contrary in Permit 893, including without limitation Sections 6.25 and 7.1.1 of Permit 893, the Parties have negotiated and agree upon the following allocation of responsibility for Pre-existing Contamination at the Premises.

a. Soil Contamination. Tenant shall be responsible for investigating and remediating Pre-existing Contamination in soil and soil gas at the Premises as follows:

i. Subject to the termination rights in this Paragraph 2(a)(i) and Paragraph 2(a)(v) below, Tenant, at its sole cost and expense, shall conduct any additional assessment of Pre-existing Contamination in soil and soil gas at the Premises and prepare any necessary work plans and/or remedial action plans and/or soil management plans, and written modifications thereto, required by the RWQCB to address Pre-existing Contamination in soil and soil gas at the Premises (the "Soil Plans"). Tenant shall provide a draft of any Soil Plans to the City prior to submittal to the RWQCB. City shall have thirty (30) calendar days from receipt of a Soil Plan to review and approve or disapprove of such Soil Plan. City's approval of any Soil Plan shall not be unreasonably withheld. If City does not disapprove of a Soil Plan in writing to Tenant within thirty (30) calendar days of receipt of such Soil Plan, the Soil Plan shall be deemed approved by City. The Parties shall make a good faith effort to reach agreement on the content of the Soil Plans. In the event that the Parties cannot agree on the content of a Soil Plan, the Parties shall follow the procedures set forth in Paragraph 4 below. If

after following the procedures set forth in Paragraph 4 below, the Parties cannot agree on the content of a Soil Plan, the Tenant shall not submit the Soil Plan to the RWQCB, and Tenant, in its sole and absolute discretion, may terminate Permit 893 by written notice to City without further action of City, Board, City Council or Subtenant, and any sublease issued under Permit 893 shall also automatically terminate. Upon providing a termination notice pursuant to this Paragraph 2(a)(i), neither Tenant nor City shall have any further obligations or liabilities under Permit 893 or this Agreement, except those obligations that survive the expiration or earlier termination of this Agreement or Permit 893; provided, however, that under no circumstances shall Tenant have any further obligation or liabilities with regard to Pre-existing Contamination or to restore the Premises pursuant to Section 11 of Permit 893. Upon termination pursuant to this Paragraph 2(a)(i) and prior to Tenant's commencement of physical remediation on the Premises, City releases and forever discharges and covenants not to sue Tenant, and its members, officers, board, employees, agents and attorneys, from all liabilities, claims and causes of action, whether known or unknown of whatever nature whether in contract, statutes, equity, or common law, arising out of Pre-existing Contamination at the Premises and the obligations to address same as may be set forth in either Permit 893 or this Agreement, except to the extent such claims arise from the negligence or willful misconduct of Tenant, or its employees or agents.

ii. Subject to the termination rights in Paragraphs 2(a)(i) above and 2(a)(v) below, and the limitations in Paragraph 2(a)(viii) and 2(a)(ix) below, Tenant, at its sole cost and expense, shall investigate and remove, remediate, mitigate and/or otherwise respond to Pre-existing Contamination in soil and soil gas on the

Premises to the satisfaction of the RWQCB and the City (the "Soil Work"), and pay all applicable RWQCB oversight costs related thereto. City's review of the Soil Work shall be limited to a review that the Soil Plans approved by City have been implemented to City's satisfaction, which review shall not be unreasonable withheld or delayed.

iii. In fulfilling its responsibilities under this Paragraph 2(a), Tenant shall have the right, in its sole and absolute discretion, to hire consultants and attorneys and to make decisions regarding whether and how to challenge any requirements of the RWQCB related to the Soil Work. Tenant shall obtain any permits necessary for the performance of the Soil Work and prepare any manifests or waste profiles necessary for the disposal of soil generated as a result of the Soil Work. All permits, manifests and waste profiles necessary for the Soil Work shall list Tenant as the permittee or generator and shall be signed by or on behalf of Tenant.

iv. City and Tenant hereby acknowledge that soil cleanup levels consistent with the levels developed by the RWQCB in April 2008 for use at the Former GATX Marine Terminal at Berth 171-173 (Amendment to: Revised Cleanup and Abatement Order No. R4-2008-0006) are acceptable to the City and Tenant for the Soil Work. City shall assist Tenant in seeking to have the RWQCB approve of such cleanup levels for the Soil Work. City, at no cost or expense to Tenant, shall provide Tenant with a report of any additional environmental investigation conducted by or on behalf of City on the Premises since May 2011.

v. The Parties agree that the estimated cost to remove soil impacted with total petroleum hydrocarbons (TPH) on the Premises using the cleanup levels referenced in Paragraph 2(a)(iv) above and the estimated costs and expenses to

prepare a focused risk assessment to evaluate Pre-existing Contamination in soil gas on the Premises is approximately \$633,700.00. Upon approval of a remedial action plan and/or soil management plan for the Soil Work by the RWQCB, Tenant shall revise the estimate of the costs and expenses to perform the Soil Work pursuant to the procedure set forth in Paragraph 2(a)(vii) below. If the revised estimate of costs and expenses to perform the Soil Work (which the Parties acknowledge may involve a scope of work different than that which was the basis of the original estimate) exceeds one-hundred and fifty percent (150%) of the original estimate, or \$950,550.00, Tenant may, in its sole and absolute discretion, terminate Permit 893 by written notice to City without further action of City, Board, City Council or Subtenant, and any sublease issued under Permit 893 shall also automatically terminate. Upon providing a termination notice pursuant to this Paragraph 2(a)(v), neither Tenant nor City shall have any further obligations or liabilities under Permit 893 or this Agreement, except those obligations that survive the expiration or earlier termination of this Agreement or Permit 893; provided, however, that under no circumstances shall Tenant have any further obligation or liabilities with regard to Pre-existing Contamination or to restore the Premises pursuant to Section 11 of Permit 893. Upon termination pursuant to this Paragraph 2(a)(v) and prior to Tenant's commencement of physical remediation on the Premises, City releases and forever discharges and covenants not to sue Tenant, and its members, officers, board, employees, agents and attorneys, from all liabilities, claims and causes of action, whether known or unknown of whatever nature whether in contract, statutes, equity, or common law, arising out of Pre-existing Contamination at the Premises and the obligations to address same as may be set forth in either Permit 893 or this Agreement, except to the extent such claims

arise from the negligence or willful misconduct of Tenant, or its employees or agents.

Under no circumstances shall Tenant be entitled to any recovery or reimbursement from City of costs or expenses to prepare Soil Plans or perform Soil Work incurred by Tenant up to and including the date of termination pursuant to this Paragraph 2(a)(v).

vi. If, and only if, Tenant constructs the Dispatch Hall Improvements on the Premises, Tenant, at its sole cost and expense, shall install any building mitigation systems (e.g., vapor barriers) required pursuant to Environmental Laws for the construction and operation of the Dispatch Hall Improvements. To the extent that the required mitigation system is generally consistent with the building mitigation system required by the Los Angeles Department of Building and Safety (“LADBS”) to mitigate potential methane gas intrusion into the Dispatch Hall Improvements, the costs and expenses for such a building system shall not be included in the revised cost estimate provided for in Paragraph 2(a)(v) above. In the event that the RWQCB requires modifications to the building mitigation system required by LADBS or a separate building mitigation system to address soil vapor at the Premises, the costs and expenses associated with such modifications or separate system shall be included in the revised cost estimate provided for in Paragraph 2(a)(v) above.

vii. Upon RWQCB’s approval of a remedial action plan and/or soil management plan for the Soil Work, Tenant shall revise the cost estimate to perform the Soil Work based on the scope of work reflected in the RWQCB’s approval. The Soil Work costs and expenses that may be included in the revised cost estimate include: (a) consultant and contractor costs and expenses related to the excavation, removal, handling, sampling, disposal and/or remediation of soil, including without limitation, subcontractor

costs and expenses and project management costs and expenses; (b) costs and expenses related to the transport and disposal and/or treatment of removed soil, including without limitation waste disposal fees and taxes, and the replacement of removed soil with import soil to the extent necessary; (c) costs and expenses related to obtaining and complying with permit, waste profile and/or manifest requirements for the Soil Work; (d) costs associated with the design, construction, operation and maintenance of a modified or separate building mitigation system pursuant to Paragraph (2)(a)(vi) above; (e) utility costs related to the Soil Work; and (f) RWQCB oversight costs related to the Soil Work.

In no event shall the revised cost estimate include Tenant's staff or legal costs and expenses, or outside consultant costs and expenses to draft and review Soil Plans. Tenant shall provide City a written copy of the revised cost estimate and, at the City's request, Tenant and its consultant(s) shall meet with City to review the revised cost estimate. City shall have thirty (30) calendar days from receipt of the revised cost estimate, or the date of the requested meeting, which ever is later, to approve or disapprove of the revised cost estimate. City's approval of the revised cost estimate shall not be unreasonably withheld. If City does not disapprove of the revised cost estimate in writing to Tenant within the time limit specified above, the revised cost estimate shall be deemed approved by City. If the Parties are unable to reach agreement on the revised cost estimate, the Parties shall attempt to resolve the dispute as set forth in Paragraph 4.

viii. Tenant's obligations to investigate and remediate Pre-existing Contamination in soil and soil gas at the Premises shall terminate upon the earlier of (a) Tenant's termination of Permit 893; (b) the Expiration Date of Permit 893; or (c) a "no further action letter" for soil or written acknowledgement from the RWQCB

that the investigation and remediation of Pre-existing Contamination in soil and soil gas at the Premises has been completed to the satisfaction of the RWQCB.

ix. Other than as provided in Permit 893 as amended by this Agreement, Tenant is not responsible for Pre-existing Contamination.

b. Groundwater Contamination.

i. City, at its sole cost and expense, shall (i) conduct any additional assessment of Pre-existing Contamination in groundwater at and from the Premises and prepare any necessary work plans and/or remedial action plans and/or groundwater monitoring plans, and written modifications thereto, required by the RWQCB to address Pre-existing Contamination in groundwater at and from the Premises (the "Groundwater Plans"), (ii) investigate and monitor, remediate and/or otherwise respond to Pre-existing Contamination in groundwater at and from the Premises to the satisfaction of the RWQCB (the "Groundwater Work"), and (iii) pay any applicable RWQCB oversight costs related thereto.

ii. Within fifteen (15) days of commencing construction of the Dispatch Hall Improvements on the Premises (which for purposes hereof, commencing construction means the commencement of excavation work at the Premises directly relating to the Dispatch Hall Improvement by Tenant's General Contractor), Tenant shall pay City the sum of Five Hundred Thousand dollars (\$500,000) (the "Groundwater Settlement Amount") in full and final settlement of all responsibilities, obligations, liabilities, claims and causes of action related to the Pre-existing Contamination in groundwater at and from the Premises. The Groundwater Settlement Amount shall be paid in the form of a cashier's check made payable to the City of Los Angeles Harbor

Department. Upon the Tenant's payment of the Groundwater Settlement Amount, (A) City, including all of its officers, boards, commissioners, employees, agents, attorneys, and all other persons interested or acting on its behalf, hereby completely, irrevocably and unconditionally releases and forever discharges and covenants not to sue Tenant, and its members, officers, board, employees, agents and attorneys, from all responsibilities, obligations, liabilities, claims and causes of action, whether known or unknown of whatever nature whether in contract, statutes, equity, or common law, arising out of, or relating in any way to, Pre-existing Contamination in groundwater at and from the Premises and any Environmentally Regulated Material in groundwater that may migrate to or from the Premises and any obligations to address same as may be set forth in Permit 893 or this Agreement, including but not limited to all past, current, future and contingent costs (including without limitation damages, punitive damages, fines, losses and/or reasonable attorney's fees and expenses, consultant fees and expert's fees) and (B) except for Tenant's obligations under Paragraph 2(c) below, City indemnifies Tenant, and its members, officers, board, employees, agents and attorneys, from all responsibilities, obligations, liabilities, claims and causes of action, whether known or unknown of whatever nature whether in contract, statutes, equity, or common law that may be raised, alleged, claimed or otherwise brought by (1) any federal, state, or local agency or governmental body arising out of, or relating in any way to, Pre-existing Contamination in groundwater at and from the Premises and any Environmentally Regulated Material in groundwater that may migrate to or from the Premises and any obligations to address same as may be set forth in Permit 893 or this Agreement, including but not limited to all past, current, future and contingent costs (including without limitation damages, punitive

damages, fines, losses and/or reasonable attorney's fees and expenses, consultant fees and expert's fees or (2) a third party arising out of, or relating in any way to any Pre-existing Contamination in groundwater that may migrate from the Premises and any obligations to address same as may be set forth in Permit 893 or this Agreement, including but not limited to all past, current, future and contingent costs (including without limitation damages, punitive damages, fines, losses and/or reasonable attorney's fees and expenses, consultant fees and expert's fees.

c. Groundwater Dewatering. If, and only if, Tenant constructs the Dispatch Hall on the Premises and it is necessary to either extract groundwater from the excavation area during construction or extract or remove groundwater to prevent the flow of groundwater into the building, building foundation or building mitigation system, Tenant, at its sole cost and expense, shall remove such extracted groundwater and discharge the extracted groundwater in compliance with applicable Environmental Laws, including obtaining any applicable discharge permits and treat the extracted groundwater to levels established by the permits prior to the discharge of the extracted. City acknowledges that Tenant's extraction of groundwater during construction or operation of the building may alter the flow of groundwater at the Premises and City agrees that Tenant's extraction of groundwater during construction or operation of the building shall not limit City's obligations under Paragraph 2(b) above.

3. Cooperation. City and Tenant shall cooperate to effectuate and shall undertake such actions that are reasonably necessary to expeditiously effectuate this Agreement, including access to the Premises. City shall provide Tenant and its Subtenants with reasonable notice prior to its entry on the Premises to perform

Groundwater Work. City shall use reasonable efforts to conduct and schedule the Groundwater Work so that it will not unreasonably interfere with Tenant or its Subtenants use of the Premises. Prior to installing any Groundwater Work equipment on the Premises, such as groundwater wells or treatment systems, City shall consult with Tenant and its Subtenants in order to locate the equipment in the manner least disruptive to Tenant's and its Subtenants' use of the Premises to the extent feasible.

4. Resolution of Disputes. The Parties shall make a good faith effort to reach a unanimous decision regarding approval of Soil Plans and Groundwater Plans, approval of cost estimates, approval of invoices or audits thereof, and other material decisions arising in connection with this Agreement. If the Parties are unable to reach an agreement, then representatives of the Parties and their counsel shall meet in person to resolve the dispute. Either City or Tenant may request a meeting of the Parties and their counsel to discuss or resolve disputes arising in connection with the Soil Plans, Soil Work, Groundwater Plans or Groundwater Work by providing the other party with a written request for a meeting. Any meeting so requested shall be held within seven (7) business days after delivery of such request.

5. Waiver of Unknown Claims. In giving the releases contained herein the City hereby expressly waives the benefits of any statute limiting the waiver of unknown claims, including without limitation Section 1542 of the California Civil Code which reads as follows:

“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.”

The City understand and acknowledge the significance and consequence of the specific waiver of Section 1542 and hereby assume full responsibility for any injury, loss, damage or liability that may be incurred by reason of or related to the releases provided herein and/or by the waiver of Section 1542.

6. Consultation with Legal Counsel – Absence of Reliance. Each party hereto warrants that it has reviewed this Agreement in detail with the counsel of their choice and hereby affirms that the Agreement represents their true intent. Each party represents that the persons who have executed this Agreement have read it, have sought counsel as necessary to interpret it, and are relying solely upon their counsel and their own investigation in entering into this Agreement and not in reliance upon any representation, statement, omission to state, warranty or other utterance or proposition to enter into the Agreement, and any reliance on which is hereby expressly disclaimed by all Parties hereto.

7. Mineral Rights Agreement Conditions. The City and Tenant hereby acknowledge and agree that the City and the City of Long Beach are still in the process of attempting to satisfy the Mineral Rights Agreement Conditions as set forth in Section 3.3.8 of Permit 893 but have not yet been successful. Consequently, City hereby acknowledges and agrees that Tenant's right to terminate Permit 893 by providing a Section 3.3.8 Termination Notice as set forth in Section 3.3.8 of Permit 893 remains available to Tenant and in full force and effect.

8. No Default.

a. No Default by City. Subject to City's execution and delivery of this Agreement, Tenant hereby warrants and represents to City that as of the Agreement

Date i) Permit 893, as amended by this Agreement, remains in full force and effect; and ii) to the knowledge of Tenant, there are no defaults of City under Permit 893, as amended by this Agreement, nor any existing conditions which upon the giving of notice or lapse of time or both would constitute a default by City under Permit 893, as amended by this Agreement.

b. No Default by Tenant. Subject to Tenant's execution and delivery of this Agreement, City hereby warrants and represents to Tenant that as of the Agreement Date i) Permit 893, as amended by this Agreement, remains in full force and effect; and ii) to the knowledge of City, there are no defaults of Tenant under Permit 893, as amended by this Agreement, nor any existing conditions which upon the giving of notice or lapse of time or both would constitute a default by Tenant under Permit 893, as amended by this Agreement.

9. No Admission of Liability. It is understood and agreed by the Parties hereto that no covenant or condition contained in this Agreement shall be construed as an admission of liability on the part of any party arising from or relating to the Permit 893 Pre-existing Contamination Disputes and that the Parties intend by this Agreement to avoid further disputes and controversies with respect to the Permit 893 Pre-existing Contamination Disputes.


10. Entireties. This Agreement and Permit 893 embody the entirety of the agreement of the Parties regarding the subject matter hereof. There are no other Agreements, oral or written, between or among the Parties that relate in any way to the matters discussed herein that are not specifically referenced herein, and each party acknowledges that no representations have been made to it that could in any manner or


form be inconsistent with the express written covenants contained herein. If there is any conflict between the terms and conditions of this Agreement and Permit 893, the terms and conditions of this Agreement shall control. Any and every representation of any kind, made by any party, is merged into this Agreement. This Agreement may not be modified, altered, or discharged except by written agreement signed by each of the Parties hereto.

11. Choice of Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, without regard to the choice of law provisions of California or any other jurisdiction.

Dated: February 6, 2012

PACIFIC MARITIME ASSOCIATION
A California Corporation

By: 
Print Name/Title Senior Vice President
Labor Relations and Chief Operating Officer

Attest: 
Print Name/Title Senior Vice President
General Counsel and Secretary

Dated: February 6, 2012

CITY OF LOS ANGELES, acting by and through
its Board of Harbor Commissioners

By: _____
Geraldine Knatz, Executive Director

Approved as to form and legality

CARMEN A. TRUTANICH, City Attorney

Dated: _____, 2012

By: _____