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VIA PERSONAL SERVICE

Mr. Thomas Russell
City Attorneys Office
425 S Palos Verdes Street
San Pedro, CA 90731

Re: **Case Name: POLA Hard Hat Diving Service Contract**

Dear Mr. Russell:

We represent American Marine Corporation with respect to the above matter. Our client has advised us that after being recently advised that it was granted the contract for diving services at the Port, a contract which it has held for many years, the Port inexplicably reversed course, and is now intending to award the contract to both our client and Parking Diving Service. We believe that decision is ill advised and inappropriate for the following reasons.

As the incumbent service provider for this contract, American Marine Corporation (AMC) is in possession of certain information and evidence that clearly indicates that an award or a partial award of this contract to Parker Diving would be irresponsible. Simply put, we firmly believe it would result in the Port, and ultimately the taxpayers, paying excessive costs for substandard unacceptable work. Please do not dismiss this simply as American's remorse at not being awarded the contract again. While American obviously wants to retain this contract, which it has successfully performed for years, this is also its proactive attempt to provide the Port with all the pertinent and necessary information to ensure that the Port makes a proper, reasonable, and legal recommendation of award based on sound management practices and good business ethics. Instead, we hope that with a clearer understanding of the history of this contract, the history of the most recent RFP, and the experience level and work product of the various bidders, POLA will reconsider its present position and award the contract solely to AMC. AMC hopes that this situation can be rectified now to negate the need to bring all of this information out publicly during a formal protest of award at a POLA board meeting.

AMC's DIVING CONTRACT HISTORY:

AMC has a long history with the Port of Los Angeles. Having first opened an office in the Port of L.A. in 1982, AMC has continuously maintained its mainland headquarters within the Port for over twenty-eight years. Presently, AMC occupies berths 270 and 271 in the Fish Harbor area of the Port. AMC provides tugboat and towing services, crew boat services, vessel maintenance, vessel support, salvage and diving services within and around the port complex, as well as worldwide. The company (either as AMC or under its previous name, American Divers Inc.) has continuously been the successful bidder for the Port of Los Angeles' diving contract since its arrival here in 1982. It has professionally performed those services without interruption and without a single lost-time injury over that twenty-eight plus year period, receiving high praise from the Port for its performance. Its three individual dive team leaders have a combined experience of well over 50,000 diving hours within the Port's boundaries – with respect to POLA diving experience, there exist no better experienced divers! Over the past 29 years, AMC has accumulated a knowledge base of the Port's underwater infrastructure that is unparalleled. Throughout its tenure here, AMC has developed and nurtured an exceptional working relationship with both the POLA C&M and HAB personnel.

Since 1950, the POLA Hard Hat Diving contract has only been held by a small handful of contractors. The reasoning for this is because experience and expertise with respect to the Port's underwater infrastructure are the key ingredients for safe, cost effective operations in this highly technical and dangerous work. It is critical that the divers must have the technical skills and experience to perform this work because the Port has no one with in-house experience and is unable to train them. POLA is the only major port in the area with such an extensive number of timber pilings (both new and some decades old). Given this, the requisite level of experience in timber pile maintenance cannot be obtained elsewhere.

RECENT BID AND RFP HISTORY:

The Hard Hat Diving contract went out for rebid in the summer of 2009, consistent with POLA's past practice of rebidding the contract every 3-4 years. However, this time, the bid package did not contain any contractor or diver experience requirements. In August of 2010, POLA officially elected to reject all bids and instead decided to utilize a Request for Proposal (RFP) format to ensure that it received the best value from the successful proposer, based on numerous criteria. The RFP was issued October 21, 2010 and final proposals were submitted on November 19, 2010. Two months later, on January 13, 2011, AMC was requested to attend a meeting at the C&M offices of POLA at 500 Pier A Street in Wilmington, CA. At that meeting, AMC was notified that their proposal was the best "hands down", which clearly indicated that AMC's continued diving work under this contract would be the best value for the Port. AMC was informed that their proposal unanimously received the highest score by each of the individual evaluators based on the RFP's scoring criteria. Further, AMC was told that they would be awarded the contract as the sole contractor. Upon receiving this news, AMC commenced preparing for this contract, inclusive of incurring substantial costs associated with necessary equipment purchases, upgrades and maintenance, as well as personnel retention.

On February 22, 2011, AMC was notified by a POLA representative that Parker Diving's attorney had met with or corresponded with the City Attorney's office, who then met with or corresponded with the Port's Executive Director. The result of these meetings and/or correspondences was that POLA was now going to recommend that the contract be awarded to both Parker Diving and AMC. AMC was not invited to participate in those discussions and we don't know what was said. If, after reviewing this entire correspondence, POLA still elects to recommend awarding the contract to two service providers, we would respectfully request to know what was said by Parker Diving's attorney that persuaded POLA to change its mind.

REASONING TO AWARD SOLELY TO AMC:

AMC, as evidenced by its nearly three decades of cost effective, professional and exemplary dive services to the Port of Los Angeles, will provide the Port with the best all around value for the services requested in the RFP. By focusing on safety, quality, redundancy of equipment and personnel, and customer service, coupled with their POLA location and availability of in-house support services, equipment and resources, AMC offers superior on-call, hard hat dive services while maintaining extremely efficient operations that provide the Port and its managers and supervisors with the convenience of a one-stop, one phone call service. AMC is uniquely qualified to offer the POLA the best overall value based upon its special strengths, which include:

- The most overall experience in the type of work and location specific work that this contract requires;
- A perfect safety record in performing the requisite work for over 28 years without a single lost time injury;
- Insurance coverage in excess of \$25million, far in excess of the RFP required minimums;
- AMC's diving work is performed correctly the first time, all the time. AMC has never been notified by POLA of any substandard work, nor has it been requested to conduct any "re-work" for any of its dive work that it has conducted in the Port of Los Angeles, whether working on behalf of the Port under the referenced contract, or as a prime contractor or a subcontractor to other marine construction companies working for POLA.
- All AMC dive team employees are seasoned journeymen and members in good standing of the Pile Drivers Union which will ensure labor harmony with all diving work conducted under this contract;
- All equipment is fully owned and operated by AMC and is fully insured and bonded. AMC maintains three additional dive vessels (in excess of the three required in the RFP) to ensure availability under any circumstances.
- AMC utilizes all in-house personnel, services and resources and has no dependency on third party vendors or subcontractors;
- All of its primary dive vessels and back-up vessels are all Tier II compliant for emissions - well ahead of CARB and EPA standards;
- AMC's experience and past performance underscores its unparalleled work efficiency and best value to the Port.

REASONING TO NOT AWARD ANY PORTION TO PARKER DIVING:

AMC has never been put in the position of criticizing its competition. However, in order to ensure that POLA makes the correct decision, you should be aware of the improper and substandard work that has been, and continues to be performed by Parker Diving in the Port of L.A., which AMC believes have and likely will result in direct financial detriment to the Port.

While AMC is aware of numerous examples of Parker Diving's substandard work, the focus here will be on the three most recent incidents that have occurred over the past few years:

Example 1 - Berth 73 W, X, Y and Z:

Parker Diving was the diving subcontractor on this project. Its scope of work was to include the following timber pile tasks: mudline and rockline seals, mudline wraps, subwraps, tidalwraps, and upper and lower band installation. On July 31, 2009, after the work was reportedly completed, the Port inspected this work and found the following:

1. 38% of the piles had either no seal or had improper mudline/rockline seals in direct violation of the requirements per the plans and specs;
2. 21% had missing or improper mudline subwrap in direct violation of the requirements per the plans and specs;
3. 49% of the bands were either missing entirely or had improper seals in direct violation of the requirements per the plans and specs;
4. Instead of moving the rocks in way of the piles as called for in the plans and specs, Parker utilized a shortcut methodology - an imbecilic fix of placing concrete bags around the piles and then pumping concrete between the bags and the piles in an attempt to create rockline/mudline seals resulting in numerous improper seals.

All together there were 478 required re-work components found during this inspection. By contrast, AMC has NEVER had to do ANY re-work on its POLA dive jobs. After given ample time to correct this substandard work, and after Parker assured the Port that the corrections had been made, the site was re-inspected in October and December of 2009. Astonishingly, rather than having completed the required re-work, 128 of the 478 tasks (or 27%) were still not completed in accordance with the plans and specs!

Again, in March of 2010, at the request of the Port, another re-inspection was conducted at this site, and even after the two previous inspections and the two subsequent acknowledgments by Parker Diving that the corrective re-work was completed, Parker Diving still had deficiencies.

For this particular project, Parker Diving was required to return time and again to repair substandard work. Further, the methodologies employed by Parker to conduct this work indicated a clear lack of experience and knowledge in regard to working with

timber piles. Without going into all the specifics, the required diving work scope for this project is all necessary to protect the timber pile from marine borers and prolong the life of the pile. The substandard work performed on this project not only cost POLA a substantial amount of money to continually re-inspect and document the work, we believe it will cost POLA hundreds of thousands of dollars in the future because the piles at this berth will have a substantially reduced lifespan and require replacement many years before it should have been necessary.

Example 2 – Slope and Ratproofing Repair associated with the Marine Improvements Contract:

Parker Diving was the named diving subcontractor for the awarded POLA Marine Improvements Contract, which commenced in 2008. The plans and specs associated with this project provided detailed methodologies regarding how to properly effect slope repairs and fix the associated undermined rat-proofing. Rather than conducting the repairs in conformance with the plans and specs, Parker Diving instead improperly erected a concrete bag wall (averaging 3 to 5 feet high) at the low end of the undermined rat-proofed slope wall, and filled the void between the bag wall and the slope wall with concrete.

The result of this inexplicable effort was numerous cement wall failures (blow-outs), severe barrier wall side loading on piles, excessive yardage of pumped concrete placed in the harbor, and the subsequent conditions resulting from the excessive over-pour of concrete. There now exists a shear force which is side loading the pilings at G and F rows of Berths 126-131, which could affect the structural integrity of the berths. Pumping such an extremely large volume of concrete between the bag wall and the slope resulted in excessive concrete covering the entire seabed to the detriment of the sea life and the underwater environment. This same methodology and over pumping of concrete occurred at Berth 73 W, X, Y and Z as well, with the same environmentally detrimental results.

Again, this example illustrates the cost implications in allowing substandard work from an inexperienced contractor. There now exists a potential liability cost associated with the possible loss of structural integrity to the berth, and there is certainly a potential environmental cost associated with all of this excess concrete strewn along the harbor's seabed in multiple locations throughout the Port. Not surprisingly, the Marine Improvement Contract includes a line item for "Repair Undermined Rat-proofing" that provides for a unit price per cubic yard of concrete. By pumping all of this excessive concrete (thousands of yards), POLA paid \$1,010. per cubic yard – so it was clearly in Parker Diving's interest to pour as much concrete as possible. In fact, we understand that they pumped so much concrete on the Marine Improvements contract that they bought their own concrete pumping truck.

Example 3 – Pile Wraps and Mudline/Rockline seals at the Passenger Ship Terminal, Berths 92 and 93:

Most recently within the past 12 months, and again under the contractual vehicle of the Marine Improvement Contract, POLA utilized Parker Diving to conduct pile wraps

and mudline and rockline seals at the Cruise Ship Berths (POLA Berths 92, 93 A&B). Once again, Parker used improper methods which had not been approved by POLA C&M to wrap piles and create mudline/rockline seals. Parker Diving's substandard work at this project included the following:

1. Piles were not moved away from whalers to properly install 150 mil wrap material resulting in exposed creosote in violation of POLA's standard procedures;
2. Bolts not properly fastened after wrap installation;
3. Parker's failure to cut and remove pile stubs on the harbor bottom in way of making a proper mudline seal;
4. Parker's failure to remove rocks adjacent to piles on harbor bottom in way of making a proper mudline/rockline seal;
5. Attempting to achieve mudline/rockline seals using concrete bag walls and pumped concrete.

While any one of these issues should have been reason enough to remove Parker Diving from the project, issue number 5 caused the most alarm. Indeed, when POLA C&M became aware of the practice, they immediately halted the operation. Parker Diving's concrete bag wall (at some locations 5 feet high) created a completed circumference around multiple pile bases. They then filled the annulus between the concrete bag wall and the piles with pumped concrete, thereby permanently encapsulating in excess of 10 fender piles with a permanent concrete base. This was done multiple times at the berth location. The results of this improper operation include:

- An improper seal at the base of each pile which will result in exposed timber and ultimate marine borer penetration thereby deteriorating each pile years ahead of its projected lifespan;
- The harbor bottom beneath the concrete structure (which is attached to the lower portion of the fender files) will scour away with the daily current movement resulting in an undermanning of the piles and the associated loss of foundation support;
- The inability to repair/replace a broken or deteriorated fender pile or perform corrective work without first performing expensive underwater hydraulic jackhammer operations to free the faulty pile from the concrete slab that ties it to 10+ other piles.
- There now exist concrete structures on the seafloor (approximately 5 feet tall by 5 feet wide by 25 feet long) that surround numerous fender pile walls of up to 15 piles per wall. These structures extend outward toward the channel from the face of the fender pile wall approximately 4 feet, thereby reducing the available water depth for the entire berth by approximately 5 feet. Theoretically, a vessel could potentially breach its hull leaving POLA susceptible to millions of dollars of potential damage and pollution liability;

Interestingly, these berths contain approximately 30 fender pile walls, half of which were wrapped by AMC in early 2010 for POLA under the existing hard hat diving contract and half of which were wrapped by Parker Diving under the Marine Improvement Contract. A simple side by side analysis of the work would clearly

illustrate the superior quality and workmanship of AMC compared with the substandard, shoddy work of Parker Diving. As of the date of this letter, AMC has completed all of their fender pile walls at this location, on time and without a single "re-work" order. Since POLA C&M disallowed the continuation of the concrete encasement mudline/rockline seals, Parker Diving has been unable to complete the work on their 15 fender pile walls (30% still incomplete) because they do not possess the knowledge or experience to effect a proper rockline/mudline seal.

SUMMARY:

Given these facts, we believe that C&M's initial decision to award this contract solely to AMC was correct for the following reasons:

1. AMC was deemed to have provided the best overall proposal and the proposal scores of the other proposers fell significantly short of AMC's mark;
2. AMC has a proven track record of performing outstanding, cost effective work for the Port that NEVER requires any re-work while Parker Diving has a record of performing poor quality, substandard, work that historically requires a phenomenally high percentage of re-work;
3. AMC has never placed the Port in a position of exposing POLA to potential environmental, third party damage, and/or pollution liabilities as we believe Parker Diving's work routinely does and will do;
4. Utilizing Parker Diving to even perform a portion of this contract work will cost the Port significantly more money – first, when the work is initially completed at a pace significantly slower than AMC's experienced divers, and then a second time when their work requires correction and/or re-work, and then again when their substandard work results in a shortened lifespan of the piles necessitating earlier than planned replacement;
5. AMC's divers are exemplary and the most experienced in the field. Parker Diving is the only diving contractor in the POLA Hard Hat Diving contract history to have a diver permanently "kicked off" the project for incompetency;
6. The "two service provider" concept for this contract does not work. It was attempted in the past, and POLA concluded at that time, that it proved inefficient and more costly to the Port. The Port of Long Beach utilizes one diving contractor and so should the Port of L.A.;
7. Issuing this contract to two service providers would result in putting some of the most experienced timber pile divers out of work, and replacing them with inexperienced divers, more likely to perform substandard work or worse, incur a severe injury or a fatality;
8. AMC has never had a lost-time injury in nearly thirty years of performing this contract, while previous contractors who have held this contract have had injury related lawsuits against POLA and one contractor in the 1970's incurred a fatality on the contract.

9. Issuing the contract solely to AMC saves POLA the embarrassment of having all of Parker Diving's shortfalls and issues revealed publicly, thereby allowing POLA to deal with the matter effectively internally.

We are happy to discuss this matter with you further, if you so desire. We can provide you with photographic and video evidence supporting all of the claims made herein at that time if deemed appropriate.

We respectfully request that POLA reconsider its decision. We await your response.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Wootton", written over a horizontal line.

Richard C. Wootton
COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP