

AGREEMENT NO.

SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF CLAIMS
BETWEEN THE CITY OF LOS ANGELES AND
SWIFT TRANSPORTATION COMPANY, INC.

PARTIES

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between the City of Los Angeles ("City"), by and through its Board of Harbor Commissioners, and Swift Transportation Company, Inc. ("Swift").

RECITALS

WHEREAS City and Swift entered into Agreement No. LMC CA 08-00175 entitled "Drayage Services Concession Agreement for Access to the Port of Los Angeles" ("Concession") made effective October 1, 2008 (the attached Concession is identified as Exhibit 1 and incorporated herein);

WHEREAS City and Swift further entered into an addendum to the Concession entitled "Incentive Addendum to Agreement No. 08-00175 Drayage Services Concession Agreement for Access to the Port of Los Angeles" ("Incentive Addendum") on December 29, 2008 (the attached Addendum is identified as Exhibit 2 and incorporated herein);

WHEREAS City and Swift further entered into an amendment to the Addendum entitled "First Amendment to Incentive Addendum to Agreement No. 08-00175 Drayage Services Concession Agreement for Access to the Port of Los Angeles" ("First Amendment to Incentive Addendum") on June 11, 2009 (the attached First Amendment to Incentive Addendum is identified as Exhibit 3 and incorporated herein);

WHEREAS City and Swift dispute Swift's obligations relating to repayment of incentives under the Incentive Addendum and First Amendment to Incentive Addendum (collectively "Amended Incentive Addendum"); and

WHEREAS City and Swift now desire to resolve all claims, disputes and controversies between them regarding the Amended Incentive Addendum and Concession to date on the terms and conditions stated in this Agreement.

AGREEMENT AND RELEASES

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and with the intent to finally and fully settle all disputes related to the Amended Incentive Addendum and Concession to date, City and Swift agree as follows:

1. PAYMENT: Concurrent with the City's and Swift's execution of this Agreement, Swift shall pay to City the sum of FOUR MILLION DOLLARS (\$4,000,000) in immediately available, certified funds, in full satisfaction of its obligations under the Amended Incentive Addendum and in full and final settlement of all claims for payment and damages that may be alleged by the City for breach or violation of the Amended Incentive Addendum.

2. TERMINATION OF AMENDED INCENTIVE ADDENDUM: The Amended Incentive Addendum is hereby terminated. The Concession shall remain in full force and effect subject only to the limited Releases below.

3. RELEASES:

3.1 Swift on behalf of itself and its predecessors, successors, officers, directors, employees, agents, representatives, affiliates, transferees, and assigns, fully and forever releases and discharges City and its predecessors, successors, board members, employees, agents, representatives, affiliates, transferees, and assigns, from any and all matters, complaints, charges, damages, claims, demands, debts, causes of action, controversies, judgments, liabilities, and obligations of any kind and nature whatsoever, known or unknown, foreseen or unforeseen, arising out of the Amended Incentive Addendum (and termination thereof) and/or Concession existing as of the effective date of this Agreement.

3.2 City on behalf of itself and its predecessors, successors, board members, employees, agents, representatives, affiliates, transferees, and assigns, fully and forever releases and discharges Swift and its predecessors, successors, officers, directors, employees, agents, representatives, affiliates, subsidiaries, parent corporations, transferees, and assigns, from any and all matters, complaints, charges, damages, claims, demands, debts, causes of action, controversies, judgments, liabilities, and obligations of any kind and nature whatsoever, known or unknown, foreseen or unforeseen, arising out of the Amended Incentive Addendum (and termination thereof) and/or Concession existing as of the effective date of this Agreement.

3.3 Each party giving a release under this Agreement understands and agrees that such release is a full and final release applying to all known and unknown, foreseen and unforeseen, and unanticipated claims existing as of the date of execution of this Agreement by the Parties. Each party understands and agrees that their rights and obligations under this Agreement and the Concession referenced as Exhibit 1, arising after the execution of this Agreement by the Parties, are not terminated by the releases set forth in this paragraph 3.

3.4 Each party giving a release under this Agreement understands and agrees that such release is a full and final release applying to all known and unknown, foreseen and unforeseen, and unanticipated claims. In connection with each such release, the releasing party expressly waives all rights or benefits which that party has against each released party under the provisions of California Civil Code, section 1542:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT

THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

4. JURISDICTION AND GOVERNING LAW:

4.1 Any litigation arising out of, or relating to, this Agreement shall be brought in a state or federal court in the County of Los Angeles in the State of California. The parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

4.2 This Agreement shall be interpreted in accordance with, and governed in all respects by, the laws of the State of California.

5. ATTORNEYS' FEES: Each party shall bear its own attorneys' fees and costs associated with or arising out of the execution and any enforcement of this Agreement.

6. REPRESENTATIONS AND WARRANTIES: Each party, and each person signing this Agreement on behalf of a party, represents and warrants as follows:

6.1 Each party and each person executing this Agreement on behalf of a party has full authority and the right to enter into this Agreement. The officer, director, or other individual signing on behalf of a party has full authority to sign on that party's behalf and by so signing binds the party to the terms and conditions of this Agreement.

6.2 Each party and each person executing this Agreement has read the Agreement and understands the contents and legal effect of each provision of the Agreement. The party and person signing has consulted with one or more attorneys of that party's own choosing in entering into this Agreement.

6.3 Each party and each person signing this Agreement on behalf of a party has executed the Agreement voluntarily and without the duress or undue influence on the part of, or on behalf of any other party to this Agreement, or any other person or entity.

7. TAXES. The payment made pursuant to this Agreement is inclusive of any and all taxes that may be assessed thereon or due in connection therewith and the recipient of the payment will be responsible for all recipients' taxes related to the payment under this Agreement but shall not be responsible for any tax consequences to paying party.

8. MUTUAL NON-ADMISSION. Both Parties agree that nothing herein shall be construed as an admission by either of them of any liability, wrongdoing breach of contract, or violation of any applicable law, and that nothing in this Agreement shall be so construed by any other person.

9. MISCELLANEOUS PROVISIONS:

9.1 This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement and supersedes and replaces all prior and contemporaneous negotiations and agreements between the parties, whether written or oral, concerning the subject matter of this Agreement.

9.2 Amendments or modifications of this Agreement, if any, shall be made only by mutual consent of the parties in a writing, signed and dated by both parties, prior to any such amendment or modification becoming effective. Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the parties agree that the remaining provisions shall remain in full force and effect.

9.3 Neither City nor Swift shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

9.4 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 the 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.

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

THE CITY OF LOS ANGELES

Dated: _____

By: _____
Executive Director of the
Harbor Department

SWIFT TRANSPORTATION COMPANY, INC.

Dated: _____

By: _____
Print/Type Name: _____
Print/Type Title: _____

Attest: _____
Print/Type Name: _____
Print/Type Title: _____

APPROVED AS TO FORM AND LEGALITY

_____, 2012
CARMEN A. TRUTANICH City Attorney
Thomas A. Russell, General Counsel

By _____
Simon Kann, Deputy