

SECOND AMENDMENT TO PERMIT NO. 882
GRANTED BY THE CITY OF LOS ANGELES
TO WESTOIL TUG SERVICES, INC.

THIS SECOND AMENDMENT to Permit No. 882 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation (“City”), acting by and through its Board of Harbor Commissioners (“Board”), and WESTOIL TUG SERVICES, INC., a Washington corporation formerly known as MILLENNIUM MARITIME, INC. (“Tenant”) as follows:

1. Terms defined in Permit No. 882 shall have the same meanings herein. References herein to “Sections” shall be to sections of Permit No. 882, unless otherwise stated.

2. Articles of Amendment for MILLENNIUM MARITIME, INC. whereby the corporate name was changed to WESTOIL TUG SERVICES, INC. were received and filed by the Secretary of State of the State of Washington on February 2, 2021.

3. The name of the “Tenant,” as defined in the Agreement, is hereby changed from MILLENNIUM MARITIME, INC. to WESTOIL TUG SERVICES, INC.

4. Section 13.2, Insurance, is amended as follows:

a. Subsection (a), Commercial General Liability, is amended to require coverage of no less than Five Million Dollars (\$5,000,000) for injury or death to one person and Five Million Dollars (\$5,000,000) for injury or death to more than one person arising out of each accident or occurrence and Five Million Dollars (\$5,000,000) for property damage for each accident or occurrence and Five Million Dollars (\$5,000,000) for watercraft including protection and indemnity, Jones Act, and hull and machinery coverage.

b. Subsection (b), Fire Legal Liability, is amended to require coverage with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence.

c. Subsection (d), Environmental Impairment Liability Insurance, is amended to require coverage with a limit of at least Twenty-Five Million Dollars (\$25,000,000) per occurrence.

5. The references to HARLEY MARINE SERVICE, INC. in Section 13.2.2, Right to Self-Insure, is hereby changed to CENTERLINE LOGISTICS CORPORATION.

6. Section 16.28, Guaranty of Agreement, is amended to read:

“In further consideration of the grant of this Agreement, Tenant shall provide to City a written Guaranty of Tenant’s obligations under this Agreement executed by Centerline Logistics Corporation, a Delaware corporation, in the form attached hereto as Exhibit “K-1”.”

7. The Guaranty attached hereto as Exhibit “K-1” shall replace Exhibit “K” for Permit No. 882.

8. The effective date of this Second Amendment shall be upon execution by the Executive Director, and by the Secretary of the Board, after approval by the Board and City Council.

9. Except as amended herein, all remaining terms and conditions of Permit No. 882 shall remain in full force and effect.

(signature page follows)

IN WITNESS THEREOF, the parties hereto have executed this Second Amendment to Permit No. 882 on the date to the left of their signatures.

Dated: _____, 20__


THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By _____
EUGENE D. SEROKA
Executive Director

Attest _____
AMBER M. KLESGES
Board Secretary

Dated: December 22 _____, 2022

WESTOIL TUG SERVICES, INC.

By  _____
Name: Matt Godden
Title: President and CEO

By  _____
Name: Matt Godden
Title: President and CEO

APPROVED AS TO FORM AND LEGALITY

February 15, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By  _____
JANET KARKANEN, Deputy

JLK/ila 12/14/2022

EXHIBIT K-1

GUARANTY

THIS GUARANTY ("**Guaranty**") is made as of _____, 20__, by CENTERLINE LOGISTICS CORPORATION, a Delaware corporation ("**Guarantor**"), to and for the benefit of the CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("**City**").

WITNESSETH:

A. A wholly owned subsidiary of Guarantor known as Westoil Tug Services, Inc. ("Tenant") has requested that City issue to it Permit No. 882 ("Permit"); and

B. As a condition to the effectiveness of the Permit, City has requested and Guarantor has agreed to irrevocably guarantee the timely payment and performance of all obligations of Tenant arising under the Permit; and

C. Guarantor acknowledges that the consummation of the transactions hereunder and under the Permit provides direct benefits to Guarantor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to obtain City's approval to issue the Permit, and intending to be legally bound, Guarantor does hereby warrant, represent, and covenant unto City as follows:

1. GUARANTY AND SURETY.

Guarantor hereby absolutely, irrevocably and unconditionally guarantees, and becomes surety for, the full and timely payment and performance of the debts, obligations and liability of Tenant under the Permit, whether now or hereafter made, incurred or created, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and regardless of whether recovery against Tenant with respect to such obligations is prevented by bankruptcy, or otherwise (collectively, the "**Guaranteed Obligations**").

2. SUBSEQUENT ACTS BY CITY.

City may, in its sole and absolute discretion and without notice to Guarantor, take any action which might otherwise be deemed a legal or equitable release or discharge of Guarantor's obligations hereunder, **this being a continuing guaranty**, without either impairing or affecting the liability of Guarantor for payment of the Guaranteed Obligations, which actions might include, by way of illustration and not limitation:

2.1 the renewal or extension of any of the Guaranteed Obligations or any payments hereunder;

2.2 the acceptance of partial payment or performance of the Guaranteed Obligations;

2.3 the settlement, release, compounding, compromise, cancellation, rearrangement or consolidation of any of the Guaranteed Obligations;

2.4 the collection of or other liquidation of any claims City may have in respect to the Guaranteed Obligations;

2.5 the granting of indulgences, forbearances, compromises, extensions or adjustments in respect to any covenant or agreement under the Permit;

2.6 the release from liability of any Guarantor, or payment of the Guaranteed Obligations or any portion thereof;

2.7 the release, surrender, exchange or compromise of any lien, security or collateral held by City as security for the Guaranteed Obligations;

2.8 the release or compromise of any lien or security held by City as security for the liability of any person who is guaranteeing the Guaranteed Obligations; or.

2.9 the amendment of the Permit **and/or any escalations or other modifications of compensation;**

3. EXPENSES.

Guarantor agrees to reimburse City for all expenses (including without limitation reasonable attorneys' fees, costs and expenses) incurred by City in enforcing the Guaranteed Obligations, pursuing any remedies relating to the Guaranteed Obligations set forth in the Permit, and enforcing this Guaranty.

4. PAYMENT BY GUARANTOR.

In the event of any default by Tenant with respect to the Guaranteed Obligations, Guarantor agrees to pay or perform on **written** demand such obligations. City shall not be required to liquidate any lien or any other form of security, instrument, or note held by City prior to making such demand. **THIS IS A GUARANTY OF PAYMENT AND PERFORMANCE AND NOT OF COLLECTION**, and Guarantor hereby waives all rights that Guarantor may have, if any, to require that any action be brought against Tenant (or any other person) or to require that resort be first made against any security prior to demanding payment or performance hereunder.

5. CUMULATIVE REMEDIES.

Guarantor hereby agrees that all rights and remedies that City is afforded by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as City deems advisable. In addition, all such rights and remedies are nonexclusive and shall in no way limit or prejudice City's ability to pursue any other legal or equitable rights or remedies that may be available. Without limiting the generality of the foregoing, Guarantor agrees that in any action by City by reason of the Guaranteed Obligations, City at its election may proceed (a) against Guarantor together with Tenant, (b) against Guarantor and Tenant individually, or (c) against Guarantor only without having commenced any action against or having obtained any judgment against Tenant.

6. WAIVERS BY GUARANTOR.

6.1 Guarantor hereby waives to the fullest extent permissible by law:

6.1.1 notice of acceptance of this Guaranty and of creation of the Guaranteed Obligations;

6.1.2 presentment, notice of non-payment, and demand for payment of the Guaranteed Obligations;

6.1.3 protest, notice of protest, and notice of dishonor or default to Guarantor or to any other party with respect to any of the Guaranteed Obligations;

6.1.4 the right to receive demand for payment under this Guaranty;

6.1.5 any defense or circumstance (including, without limitation, disability, insolvency, lack of authority or power, insanity, minority, death or dissolution), other than payment of the Guaranteed Obligations, which might otherwise constitute a legal or equitable discharge of Guarantor's liability hereunder;

6.1.6 any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereof, or under any state or other federal statute;

6.1.7 the right to trial by jury in any litigation arising out of, relating to, or connected with this Guaranty;

6.1.8 all rights or defenses that Guarantor may have as set forth in Division Three, Part 4, Title 13, currently Sections 2787 through 2914, of the California Civil Code, which address generally suretyship;

6.1.9 Guarantor waives any and all demands, actions, defenses, defaults, claims, breaches, causes of action, obligations, damages, and/or liabilities of any nature whatsoever existing as of the date hereof which Guarantor has or may have against City arising from or out of the Permit.

6.2 It is expressly agreed that the liability of the Guarantor under this Guaranty will in no way be affected by: (1) the release, or discharge of Tenant, or the modification or limitation of Tenant's liability, in bankruptcy, receivership, or other proceeding; (2) the assignment or transfer of the Permit by Tenant; (3) the exercise by City of any of its rights or remedies at law and equity, including but not limited to those provided under the Permit. It is agreed between Guarantor and City that the foregoing waivers are of the essence of the Permit transaction and that, but for this Guaranty and such waivers, City would decline to enter into the Permit.

7. WAIVER AND RELEASE OF SUBROGATION AND PARTICIPATION.

Until such time as all obligations of Tenant under the Permit have been satisfied, Guarantor shall have no right of subrogation in or under the Permit, and no rights of reimbursement, indemnity or contribution from Tenant or any other rights by law, equity, statute or contract that would give rise to a creditor-debtor relationship between Guarantor and Tenant.

Effective for the time period described in the preceding sentence, Guarantor hereby explicitly waives and releases any of the above-described rights of subrogation, reimbursement, indemnity, contribution, participation, and any right to require the marshaling of Tenant's assets under any circumstances.

8. SUBORDINATION.

Any obligation or debt of Tenant now or hereafter held by Guarantor is hereby subordinated to the Guaranteed Obligations and Guarantor shall not enforce or collect any such indebtedness from Tenant. Nevertheless, upon request by City, Guarantor shall collect, enforce and receive such indebtedness of Tenant to Guarantor. Any sums collected at City's request or collected in contravention of the prohibition set forth herein shall be held by Guarantor as trustee for City and shall be paid over to City on account of the Guaranteed Obligations; provided, however, such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty.

9. REPRESENTATIONS AND WARRANTIES.

Guarantor hereby represents and warrants to City that:

9.1 Guarantor now has no defense whatsoever to any action, suit or proceeding whatsoever that may be instituted on this Guaranty;

9.2 No other agreement or special condition exists between Guarantor and City regarding the liability of Guarantor hereunder; and

9.3 This Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

10. STRICT PERFORMANCE: WAIVERS.

No failure, delay or omission by City to exercise any of the rights, powers, remedies and privileges hereunder shall be deemed a waiver thereof and every such right, power, remedy and privilege may be exercised repeatedly. No notice to or demand on Guarantor shall be deemed to be a waiver of the right of City to take further action without notice or demand as provided herein. In no event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing executed by City. Any waiver granted shall be applicable only in the specific instance for which it is given. Failure of City to insist upon strict performance or observance of any of the terms, provisions and covenants hereof or to exercise any right herein contained shall not be construed as a waiver or relinquishment of the right to demand strict performance at another time. Receipt by City of any payment or performance on the Guaranteed Obligations shall not be deemed a waiver of the breach of any provision hereof or of the Permit.

11. CAPTIONS.

The captions appearing herein are used for reference only and shall not be construed as limiting anything set forth herein.

12. SEVERABILITY.

If any term, covenant, condition or provision of this Guaranty, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Guaranty, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. GOVERNING LAW; JURISDICTION.

This Guaranty shall be governed by the laws of the State of California without reference to choice of law rules. Guarantor submits to the jurisdiction of all courts in the State of California and waives any defense to jurisdiction that Guarantor may have, if any.

14. ASSIGNMENT; DELEGATION; BINDING EFFECT.

The duties and obligations of Guarantor may not be delegated or transferred by Guarantor without the prior written consent of City. The duties and obligations of Guarantor shall bind Guarantor's heirs, personal representatives, executors, successors and assigns.

15. TERMINATION; REINSTATEMENT; LIMITATION.

15.1 Subject to Section 15.2 below, Guarantor's obligations hereunder shall terminate, and this Guaranty shall be released, upon payment and performance in full of all debts, obligations and liabilities of Tenant to City under the Permit; **notwithstanding the foregoing, this Guaranty is a continuing guaranty and shall continue in the event that the Permit is terminated or Tenant holds over possession of the Premises at the end of the Permit term and with respect to any of Tenant's obligations under the Permit which are not performed; and obligations which survive the expiration and/or termination of the Permit.**

15.2 This Guaranty shall remain in full force and effect and continue to be effective should any petition be filed by or against Tenant under the Bankruptcy Code, as at any time amended, for liquidation or reorganization, or should Tenant become insolvent or make an assignment for the benefit of creditors or a receiver or trustee be appointed for all or any significant part of Tenant's assets, and this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by City, whether as a "preferential transfer," "voidable preference," "fraudulent conveyance," or otherwise, as if the portion of such payment rescinded, reduced, restored or returned had never been made.

16. NOTICES.

To City: The City of Los Angeles
Executive Director
425 S. Palos Verdes Street
San Pedro, California 90731


With a copy to: Office of the City Attorney
425 S. Palos Verdes Street
San Pedro, California 90731


To Guarantor: Centerline Logistics Corporation
910 SW Spokane Street
Seattle, WA 98134
Attn: Matthew Godden, President

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty the day and year first above written.

Guarantor:

CENTERLINE LOGISTICS CORPORATION, a Delaware corporation

By: 
Name: Matt Godden
Title: President and CEO

By: 
Name: John Saltsman
Title: VP of Finance

APPROVED AS TO FORM AND LEGALITY
_____, 20____
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By _____
JANET KARKANEN, Deputy