

**SETTLEMENT AGREEMENT, MUTUAL RELEASE AND COMPROMISE,  
AND INDEMNITY AGREEMENT**

**THIS SETTLEMENT AGREEMENT, MUTUAL RELEASE AND COMPROMISE, AND INDEMNITY AGREEMENT** (together with all of its exhibits collectively defined as "Agreement") is executed on \_\_\_\_\_, 2011 by and between Pacific Cruise Ship Terminals, LLC ("PCST"), on the one hand, and the City of Los Angeles ("City"), on the other hand, who collectively, from time to time, may hereinafter be referred to individually as "party" or collectively as "parties."

**RECITALS**

WHEREAS, in December of 2002, City, acting by and through the Board of Harbor Commissioners ("Board") of City's Harbor Department ("Department"), issued Operating Agreement No. 2264 ("OA 2264") to PCST, which OA 2264 became effective on January 1, 2003;

WHEREAS, OA 2264, among other things, obligated PCST to manage and operate the passenger cruise ship terminal at the Port of Los Angeles ("POLA") on behalf of City, and for City to compensate PCST for such services;

WHEREAS, disputes arose between City and PCST regarding, among other things, revenues, expenses, and compensation due to PCST;

WHEREAS, City intends to commence shortly a competitive process to hire an entity to manage and operate the passenger cruise ship terminal at POLA, in which competitive process PCST may participate;

WHEREAS, City and PCST now desire to fully and finally resolve such disputes according to the terms and conditions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, City and PCST agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals to this Agreement, above, are hereby incorporated herein and made a part hereof.

2. **CITY PAYMENT TO PCST.** City, in the form of a check made payable to the order of "Pacific Cruise Ship Terminals, LLC," shall pay to PCST the sum of Seven Hundred, Ninety Five Thousand, Nine Hundred and Eight (\$795,908) Dollars. City shall tender such check to PCST within forty-five (45) days following the effective date of this Agreement.

3. PCST'S RELEASE. PCST forever releases and discharges City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, 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 PCST's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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 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: (i) OA 2264's formation and administration; (ii) the management and operation of the passenger cruise ship terminal at POLA from January 1, 2003 up to and including December 31, 2010; (iii) requests, authorization and performance of passenger cruise ship terminal services by PCST at POLA prior to the effective date of this Agreement; (iv) determinations of compensation, fees, revenue and expense in connection with passenger cruise ship terminal services by PCST at POLA prior to the effective date of this Agreement; (v) any and all actual and/or consequential damages suffered or claimed to be suffered by PCST as a result of providing passenger cruise ship terminal services at POLA. Such claims released by PCST are referred to as the "PCST Released Claims."

4. PCST'S COMPROMISE AND SETTLEMENT. PCST compromises and settles the matters released in Section 3, above, and agrees that this compromise and settlement shall constitute a bar to the assertion of any such matter against City. PCST covenants and agrees never to commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against City and/or City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions, and all persons or entities acting by, through, under or in concert with any of the foregoing, any action, proceeding or defense based in whole or in part upon the PCST Released Claims.

5. PCST'S REPRESENTATIONS AND WARRANTIES. PCST represents and warrants to City that (a) it has not at any time assigned or transferred, or purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any of the rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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 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 PCST Released Claims, which it has ever had, has or ever will have; (b) there are no liens applicable to the PCST

Released Claims; (c) no subsidiary(ies), parent(s), or affiliate(s) of PCST shall commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted any PCST Released Claims against City; and (d) it has the full right, power and specific authority to enter into, execute and consummate this Agreement. PCST agrees to indemnify, defend and hold harmless City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiaries 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 rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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, in any way arising from, connected with or related to its assignment or transfer or purported assignment or transfer set forth in subsection (a) of this Section 5.

6. CITY'S RELEASE. City forever releases and discharges PCST and PCST's former, present and future boards, employees, officers, directors, representatives, agents, departments, subsidiaries 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 City's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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, and which 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: (i) OA 2264's formation and administration; (ii) the management and operation of the passenger cruise ship terminal at POLA from January 1, 2003 up to and including December 31, 2010; (iii) requests, authorization and performance of passenger cruise ship terminal services by PCST at POLA prior to the effective date of this Agreement; and (iv) determinations of compensation, fees, revenue and expense in connection with passenger cruise ship terminal services by PCST at POLA prior to the effective date of this Agreement. Such claims released by City are referred to as the "City Released Claims."

7. CITY'S COMPROMISE AND SETTLEMENT. City compromises and settles the matters released in Section 6, above, and agrees that this compromise and settlement shall constitute a bar to the assertion of any such matter against PCST. City covenants and agrees never to commence, voluntarily assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against PCST or any of its former, present and future boards, employees, officers, directors, representatives, agents, departments, subsidiaries 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, any action, proceeding or defense based in whole or in part upon any of the City Released Claims.

8. CITY'S REPRESENTATIONS AND WARRANTIES. City represents and warrants to PCST that (a) City has not at any time assigned or transferred, or purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any of the rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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, and which 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 City Released Claims, which it has ever had, has or ever will have; (b) there are no liens applicable to the City Released Claims; and (c) City has the full right, power and specific authority to enter into, execute and consummate this Agreement. City agrees to indemnify, defend and hold harmless PCST and PCST's present and future boards, employees, officers, directors, representatives, agents, departments, subsidiaries 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 rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorneys' 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, in any way arising from, connected with or related to any assignment or transfer or purported assignment or transfer set forth in subsection (a) of this Section 8.

9. WAIVER OF SECTION 1542. There is a risk that, subsequent to the execution of this Agreement, a party hereto 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 hereby assumes this risk and understands that THIS AGREEMENT SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED LOSSES, DAMAGES OR INJURIES RELATED TO THE MATTERS RELEASED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED. Each party hereby 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 it or he/she 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.

10. 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.

11. PERSONS AND ENTITIES AFFECTED. To the fullest extent legally possible, the releases contained in this Agreement shall apply to City, PCST, and all affiliates of City and PCST. As used in this Agreement, the term "affiliates" means a person or entity which controls, is controlled by, or is under common control with PCST or City. Except for City and PCST, no other person, corporation, partnership or other entity shall have any rights hereunder as a third party beneficiary or otherwise, except to the extent specifically provided for herein.

12. 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.

13. 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.

14. 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.

15. PERFORMANCE OF ADDITIONAL ACTS. Each party agrees that it shall execute and deliver any and all documents and perform any and all acts required on its part or those which may be reasonably necessary to effectuate and complete and

facilitate the provisions of this Agreement.

16. NOTICES. The parties shall send all notices or other communication necessary under this Agreement through their counsel. PCST is represented by Mark Seidemann, Esq. of Cooper, White & Cooper LLP. City is represented by Steven Otera of the Los Angeles City Attorney's office.

17. 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 the Los Angeles City Charter, the Los Angeles City Administrative Code, or elsewhere.

18. WAIVER. A failure of any party 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.

19. GOVERNING LAW. 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.

20. 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 city 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.

21. TIME IS OF THE ESSENCE. Time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

22. ATTORNEYS' FEES. In any legal action, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to "reasonable attorneys' fees" and any other costs and expenses, including, but not limited to, expert fees, incurred in that proceeding in addition to any other relief to which it is entitled. The "reasonable attorneys' fees" awarded under this paragraph shall be determined as the lesser of (1) calculating the hours reasonably expended by each counsel for the prevailing party multiplied by the prevailing market hourly rate in Los Angeles County for attorneys of comparable skill and experience and (2) attorney fees

reasonably expended by the prevailing party.

23. ENFORCEMENT OF AGREEMENT. Nothing contained herein, including, but not limited to, provisions relating to releases or waiver of provisions of section 1542 of the Civil Code, is intended to, or shall, affect or limit any party's right to enforce any provision of this Agreement. This Agreement is admissible in any judicial proceeding to enforce its terms.

24. JURISDICTION. The parties hereto consent to the jurisdiction of the State of California for the enforcement of this Agreement.

25. 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 by 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.**

26. 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.

27. EXHIBITS; SECTIONS. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to sections are to sections of this Agreement unless stated otherwise.

**READ CAREFULLY BEFORE SIGNING**

**IN WITNESS WHEREOF**, this AGREEMENT, consisting of eight (8) pages, is executed on the date first above written.

**THE CITY OF LOS ANGELES**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Secretary

**PACIFIC CRUISE SHIP TERMINALS,  
LLC**

Date: 9/16/11

By: S Borzone

Name: Stefano Borzone

Title: President

Attest: Janifer C. Moose

Name: JANIFER C. MOOSE

Title: Secretary

APPROVED AS TO FORM:

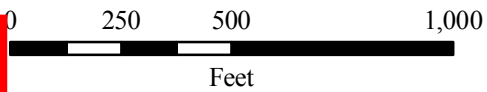
9/21, 2011  
CARMEN A. TRUTANICH, City Attorney

By: [Signature]  
Deputy City Attorney

# Pacific Cruise Ship Terminals, LLC



TRANSMITTAL 2



Harbor Department  
Planning & Economic Development  
Map Produced 8/2011

