

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement"), is entered into effective May 9, 2023, by Plaintiff PACIFIC AIRSHOW LLC ("PA") and Defendant CITY OF HUNTINGTON BEACH (the "CITY"). PA and the CITY are collectively referred to as the "Parties."

RECITALS

WHEREAS, on or about October 1, 2021, an oil rig and connected pipelines located off the coast of Long Beach, California had a breach, spilling oil into the Pacific Ocean ("Oil Spill");

WHEREAS, on or about October 21, 2022, PA filed a complaint against the CITY and KIM CARR, an individual, in the civil action now pending in the Orange County Superior Court, styled *Pacific Airshow, LLC v. City of Huntington Beach*, Case No. 30-2022-01287749-CU-BC-CJC (the "Action");

WHEREAS, PA alleged five causes of action against the CITY – (1) Breach of Contract; (2) Intentional Interference with Contractual Relations; (3) Intentional Interference with Prospective Economic Advantage; (4) Negligent Interference with Prospective Economic Advantage; and (5) Violation of 42 U.S.C. §1983;

WHEREAS, the City, on its own behalf and on behalf of its agents, representatives, employees, and assigns, has denied and continues to deny any wrongdoing and any liability in connection with the allegations in the Action;

WHEREAS, the Parties now desire to settle any and all claims related to and arising from the Action and enter into this Agreement;

WHEREAS, KIM CARR is not a party to this settlement or Agreement;

WHEREAS, the Parties freely and knowingly, and after due consultation with their respective counsel, enter into this Agreement intending to waive, settle, and release all claims they have or may have against each other, except as provided herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, which incorporate by this reference the Recitals set forth above, the Parties agree as follows:

SETTLEMENT TERMS

The Parties, and each of them, represent and warrant that they have full authority to enter into this Agreement pursuant to the following terms:

1. Payment for Settlement. In exchange for the promises, release, and consideration herein:

a. The CITY shall pay PA Four Million Nine Hundred Ninety-Nine Thousand

Dollars (\$4,999,000.00) plus inflation interest ("Settlement Funds"), as follows:

- i. \$1,999,000.00 due on or before July 31, 2023;
 - ii. \$500,000.00 due by January 30, 2024;
 - iii. \$500,000.00 due by January 30, 2025;
 - iv. \$500,000.00 due by January 30, 2026;
 - v. \$500,000.00 due by January 30, 2027;
 - vi. \$500,000.00 due by January 30, 2028; and,
 - vii. \$500,000.00 plus inflation interest due by January 30, 2029. At the CITY's option, the CITY may pre-pay this payment by January 30, 2028, in order for the CITY to avoid the inflation interest. Inflation interest shall be calculated on Jan. 30, 2029 using the "CPI Inflation Calculator" available on the U.S. Bureau of Labor Statistics website (https://www.bls.gov/data/inflation_calculator.htm): "\$500,000.00 in March 2023 has the same buying power as \$X in Jan. 30, 2029 [or closest date possible]". Inflation interest due under this Agreement shall be the difference between \$X and \$500,000.00, if \$X is greater than \$500,000.00. If \$X is less than \$500,000.00, inflation interest due under this Agreement shall be 0. In the event the CPI Inflation Calculator is not available on the U.S. Bureau of Labor Statistics website, inflation interest shall accrue and compound annually from March 14, 2023 to January 30, 2029, based on the percent change in Consumer Price Index for each year. Notwithstanding anything herein, inflation interest shall not ever be negative under this Agreement – i.e. the minimum payment due under this 7th installment of the Settlement Funds shall not be less than \$500,000.00
- b. The CITY shall pay the Settlement Funds via wire transfer to a bank account designated by PA;
 - c. The CITY shall forever waive and discharge the Specific Events Invoice in the amount of \$194,945.35 related to the 2021 airshow and associated events conducted by PA in the CITY ("2021 Specific Events Invoice"). By this Agreement, there shall be no liability, claim, debt, or obligation against PA related to or arising out of the 2021 Specific Events Invoice, and the CITY forever and fully releases, waives, and settles any and all claims, losses, damages, expenses, or fees, of whatever nature, known or unknown, relating to or arising out of the 2021 Specific Events Invoice;
 - d. The CITY shall refund the fees paid by PA towards the 2022 Specific Events Invoice. The refund shall be provided to PA in the form of a credit in the amount of \$149,200.00, which may be applied toward any future Specific Events

Invoice(s) for the benefit of PA or PA's affiliates and/or designees, as elected by PA in PA's sole discretion.

- e. As with past Air Show Special Events Permits, for the 2023 Air Show Event, the CITY shall waive parking space fees for PA for up to 600 "CITY Parking Spaces" (as defined herein) for usage during the time to prepare/load-in/set up the Air Show, the Air Show performance/event dates, and takedown/load-out; and, PA shall receive from the CITY the parking offset consistent with what PA has received in the past for previous Special Events Permits, in an amount not less than \$110,000.

2. Future Air Show Events. In exchange for the promises and consideration herein, the CITY shall provide the following benefits to PA for any and all future airshow events (inclusive of any embedded multi-day musical festival) (hereinafter air show and embedded music festival, if any, together as "Air Show Event") that PA may conduct in the CITY in 2024 and thereafter:

- a. The CITY has already taken action to commence the process of environmental review, pursuant to California Environmental Quality Act ("CEQA"), for any annual Air Show Event(s) conducted by PA. The CITY will complete this environmental review as soon as practical for future Air Show Events, at its expense.
- b. If PA desires to conduct future Air Show Event(s) (after 2023), PA and CITY will enter into a separate Air Show Event Agreement after the aforementioned environmental review pursuant to CEQA is complete. That Air Show Event Agreement for future Air Show Events will be based on, and supported by, the completed aforementioned CEQA environmental review, and consistent with the terms of this Agreement. The future Air Show Event Agreement will expressly provide the benefits conferred to PA by the CITY under this Agreement, including Sections 2.b.i. through 2.b.viii.
 - i. PA shall be granted the right and ability to conduct at least 1 Air Show Event per year, on dates selected by PA. PA shall have the exclusive right to conduct and operate the Air Show Event in the CITY. After the completion of the environmental review referenced in Section 2.a. above, PA shall have the exclusive right and ability to conduct annual Air Show Events in the CITY for 10 years starting from 2024, with options to renew this 10 year term up to 3 times, for 3 additional 10 year terms. This option to renew may be exercised by PA, at PA's sole discretion, as early as anytime during the 7th year of any 10 year term.
 - ii. The CITY shall grant PA the exclusive use of and right to monetize up to 3,500 CITY Parking Spaces ("CITY Parking Spaces" is defined as those public parking spaces located at the Pier Plaza & amphitheater parking (Sixth St.) parking lots, CITY beach parking lots, and Main St. parking garage, which are available for public use and not already encumbered or reserved by a law enforcement agency (to provide law

enforcement for the Air Show Event) or a business or organization lease as of the date of this Agreement, such as the valet spaces reserved and leased by Duke's Restaurant), at no cost to PA, during the dates of the Air Show Event(s). For clarification purposes, during the dates of event, the 3,500 CITY Parking Spaces includes any CITY Parking Spaces PA uses for operational needs. Additionally, PA shall have the exclusive use of up to 600 CITY Parking Spaces, at no cost to PA, for 14 days prior to dates of event for load-in, and 12 days following dates of event for load-out as required by PA's operational needs related to the airshow event (inclusive of any embedded multi-day musical festival). PA shall have discretion over where the operational parking is to be allocated and be granted the exclusive right to operate the Huntington Street entrance to the beach parking lots as required by their operational needs. Should PA require additional parking above and beyond this allocation, the price shall be set at \$10.00 per CITY Parking Space per day. During PA's use of CITY Parking Spaces pursuant to this Agreement, the CITY shall staff the parking lots with personnel and kiosk attendants at CITY's expense.

- iii. The CITY shall grant PA the exclusive use of, control of, and right to monetize any RV camping in/of the CITY Parking Spaces at no cost to PA, during the dates of the Air Show Event(s). Additionally, PA shall have the exclusive use of up to 15 RV camping spaces for 14 days prior to the dates of event for load-in and 12 days following dates of event for load-out, as required by PA's operational needs. The CITY shall work with PA to ensure that public camping reservations do not interfere with PA's use and operational needs of the RV camping lot.
- iv. The CITY shall waive all CITY fees and costs (including but not limited to all public safety fees [marine safety, police, fire, etc.], application fees, permit fees, beach maintenance fees, setup & take-down fees, banner placement fees, public works, electrician/electrical, and restroom maintenance/cleaning fees, road and street closure fees, etc.) for PA for any such fees and costs incurred in connection with the Air Show Event(s).
- v. The CITY shall assist PA in mitigating all 3rd party fees related to public safety and permits (including OC Sheriff's Department fees, State Park fees, permit fees, etc.), and 3rd party public works, restroom, refuse/trash, and road closure fees, by providing as much of the services as possible from the CITY's resources and trade relationships to diminish the need for 3rd party services.
- vi. Any Air Show Event shall not be revoked, modified, or cancelled by the CITY for any reason, except by the written determination by the CITY's Unified Command (comprised of, among other possible agencies, Huntington Beach Police Department, Huntington Beach Fire

Department, Huntington Beach Marine Safety, City Attorney, FBI, FAA, Coast Guard, and other agencies that may comprise the Unified Command) of a justifiable health and/or safety crisis, provided that PA is notified and consulted prior to any such determination by the CITY's Unified Command, PA participates in the determination by the CITY's Unified Command, and any revocation, modification, or cancellation is coordinated with PA.

vii. The CITY shall enact/adopt any necessary rules, policies and procedures to effectuate the terms and spirit of this Agreement, specifically including this Section 2.

viii. The benefits under this Section 2 shall be granted to and inure to PA, and any affiliate, assignee, transferee, subsidiary or parent of PA, as designated by PA and approved by the CITY ("PA's Designee"). PA shall have the right to assign or transfer the rights and interest under this Section 2 to a party of PA's designation, i.e., PA's Designee, who must be approved by the CITY. Such approval by the CITY shall not be withheld, unless five or more of seven members of the City Council vote to withhold approval. In the event PA notifies CITY in writing with the name of PA's proposed designee, and the CITY does not respond to such designation in writing within 30 days of the notification, PA's proposed designee shall be deemed approved by the CITY. Notification to CITY by PA shall be in writing to the City Attorney, the City Manager, and each of the members of the City Council.

3. Claims against Amplify Energy Corporation. In the event the CITY pursues any claims or suits related to the Oil Spill against any third party, including without limitation, Amplify Energy Corporation or any shipping company ("Oil Spill Action"):

- a. The CITY shall pay to PA up to a total of \$2,000,000 of the CITY's net recovery after attorneys' fees and costs in the Oil Spill Action that are attributable to damages PA sustained.
- b. Nothing in this Agreement shall affect, modify, limit or restrict PA's standing or right to pursue claims related to the Oil Spill against any third party, including, but not limited to, Amplify Energy Corporation, shipping companies, or other potential tortfeasors. PA expressly reserves all rights and interests in claims against any third parties related to the Oil Spill, including without limitation, claims for economic and/or noneconomic damages, and for loss of goodwill and reputation.
- c. Nothing in this Agreement shall affect, modify, limit or restrict the CITY's standing or right to pursue claims related to the Oil Spill against any third party, including, but not limited to contribution, apportionment, indemnity or other payments of amounts paid under this agreement from Amplify Energy Corporation, shipping companies, or other potential tortfeasors. The CITY

expressly reserve all rights and interests in claims against any third parties related to the Oil Spill.

4. Dismissal with Prejudice. Within 3 calendar days of PA's receipt of the first payment of \$1,999,000 listed under Section 1(a)(i) above, PA shall file with the Orange County Superior Court a Request for Dismissal with Prejudice of the Action as to the CITY.

5. Mutual Release of Claims by the Parties. Except for the obligations set forth in this Agreement, the Parties, and each of them, for themselves and their agents, representatives, parent corporations, shareholders, owners, subsidiaries, affiliated businesses, officers, directors, employees, council members, heirs or assigns, past, present, or future, will and hereby do, forever release and discharge the other Party, and their agents, representatives, parent corporations, shareholders, owners, subsidiaries, affiliated businesses, insurers, officers, directors, employees, attorneys, heirs or assigns, past, present, or future, from any and all causes of action, judgment, liens, indebtedness, damages, losses, claims, liability, and demands of every kind and character that were or could have been raised in the Action or with the 2021 Specific Events Invoice. KIM CARR is not a released party under this Agreement.

6. Waiver of California Civil Code § 1542. To effectuate a full and complete general release as described above, the Parties expressly waive and relinquish all rights and benefits of § 1542 of the *Civil Code* of the State of California and do so understanding and acknowledging the significance and consequence of specifically waiving § 1542. Section 1542 of the *Civil Code* of the State of California states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. Continuing Jurisdiction. The Parties shall request that the court retain jurisdiction under *California Code of Civil Procedure* § 664.6 to enforce the terms of this Agreement.

8. Confidentiality. The Parties agree that neither they, their attorneys, agents, or employees shall disclose to any person, directly or indirectly, the terms of this Agreement except as required by State law, and as follows:

a. Each of the Parties may disclose to third parties the fact that any disputes between the Parties have been satisfactorily resolved;

b. Each of the Parties may disclose information to any accountant or tax advisor to the extent reasonably necessary for the purpose of tax planning and preparation of any tax returns;

c. Each of the Parties may respond to any subpoena, court order, or other lawful process compelling disclosure of this Agreement or its terms, provided that prior notice of

any subpoena, court order, or lawful process served on any one of the Parties shall be given to the other Parties to enable such Parties at their sole discretion to take any legal action they deem appropriate.

9. No Admission of Liability. The Parties are entering into this Agreement to compromise disputed claims and to avoid the expense, stress, and uncertainty of continued litigation, and their entry into this Agreement shall not be construed as an admission or finding of liability on the part of any party, which liability is expressly denied.

10. Waiver of Costs. Each of the Parties shall bear his or its own costs and attorneys' fees, if any, and each of the Parties hereby waives their rights, if any, to recover such costs or fees from the other Parties.

11. General Provisions.

a. Severability. Should any of the provisions of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

b. Headings. The paragraph headings used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

c. Representation by Counsel. The Parties acknowledge and agree that all Parties have been represented by counsel, or had the opportunity to be represented by counsel, and have participated in the drafting of this Agreement.

d. Successors. This Agreement shall be binding upon the Parties and upon the Parties' heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of the other Parties and to their respective heirs, administrators, representatives, executors, successors, and assigns in accordance with Section 2.i. herein.

e. Counterpart and Facsimile. This Agreement may be signed in separate counterparts, with each counterpart having the full force and effect of an original. Any signature to this Agreement shall be deemed an original signature even if the signature is transmitted by facsimile or a pdf. Further, California, Civil Code §§ 1633.1-1633.17 shall apply.

f. Affirmation Regarding Claims. Each of the Parties represents and warrants that they are the current owner of any and all claims that they are releasing and that no prior assignment of any such claims has taken place.

g. Amendment. This Agreement may not be modified, altered, or changed except upon express written consent of all Parties wherein specific reference is made to this Agreement.

h. Joint Drafting. This Agreement shall be deemed to have been prepared jointly and shall not be strictly construed against any party.

i. Voluntary Execution. Each of the Parties has executed this Agreement voluntarily, after consultation with their respective counsel, with full knowledge of its significance, and with the express intention of it having effect. Each of the Parties has made such investigation of the facts, as each deemed necessary.

j. Acknowledgment of Authority. Each person signing this Agreement on behalf of any of the Parties which is an entity, corporation or a limited liability company, represents and warrants that they have the full authority and permission to execute and deliver this document on behalf of the entity for which they are signing, and to bind that entity and that entity's successors and assigns.

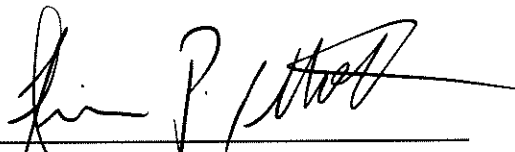
k. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without regard to conflict of laws. Any action or proceeding arising from this Agreement shall be brought and maintained only in a court located in Orange County, California and the Parties agree to, submit to, and agree not to challenge, the jurisdiction of any such court.

l. Good Faith. All Parties hereby expressly covenant to deal with each other in good faith regarding all actions, decisions and conduct relating to this Agreement.

**THE UNDERSIGNED HAVE READ THE FOREGOING, FULLY UNDERSTAND, AND
AGREE AS SET FORTH HEREIN.**

PLAINTIFF

DATED: May 8, 2023



PACIFIC AIRSHOW LLC
Kevin Elliott
CEO

APPROVED AS TO FORM FOR PLAINTIFF

DATED: May 8, 2023



ATTORNEY FOR PLAINTIFF
PACIFIC AIRSHOW LLC
Suoo Lee

FOR AND ON BEHALF OF ALL DEFENDANTS

DATED: May 8, 2023



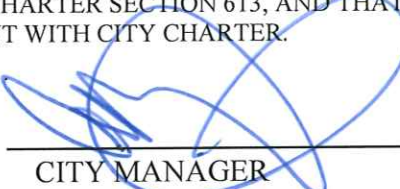
MAYOR
CITY OF HUNTINGTON BEACH
Tony Strickland

DATED: May ____, 2023

CITY CLERK
CITY OF HUNTINGTON BEACH
Robin Estanislau

THE UNDERSIGNED REPRESENTS THAT THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH HAS DULY AUTHORIZED THIS SETTLEMENT WITH PACIFIC AIRSHOW LLC, THAT THE MAYOR AND CITY CLERK OF THE CITY OF HUNTINGTON BEACH ARE AUTHORIZED TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY PER CITY CHARTER SECTION 613, AND THAT THIS AGREEMENT WILL BE ADMINISTERED CONSISTENT WITH CITY CHARTER.

DATED: May 8, 2023



CITY MANAGER
CITY OF HUNTINGTON BEACH
Al Zelinka *SIGNED PURSUANT TO
HUNTINGTON BEACH CITY COUNCIL ACTION #2*

APPROVED AS TO FORM FOR CITY OF HUNTINGTON BEACH ON MAY 2, 2023

DATED: May 8, 2023



CITY ATTORNEY
CITY OF HUNTINGTON BEACH
Michael E. Gates

FOR AND ON BEHALF OF ALL DEFENDANTS

DATED: May 9, 2023



MAYOR
CITY OF HUNTINGTON BEACH
Tony Strickland

DATED: May 9, 2023

ATTEST:



CITY CLERK
CITY OF HUNTINGTON BEACH
Robin Estanislau

THE UNDERSIGNED REPRESENTS THAT THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH HAS DULY AUTHORIZED THIS SETTLEMENT WITH PACIFIC AIRSHOW LLC, THAT THE MAYOR AND CITY CLERK OF THE CITY OF HUNTINGTON BEACH ARE AUTHORIZED TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY PER CITY CHARTER SECTION 613, AND THAT THIS AGREEMENT WILL BE ADMINISTERED CONSISTENT WITH CITY CHARTER.

DATED: May ____, 2023

CITY MANAGER
CITY OF HUNTINGTON BEACH
Al Zelinka

APPROVED AS TO FORM FOR CITY OF HUNTINGTON BEACH

DATED: May ____, 2023

CITY ATTORNEY
CITY OF HUNTINGTON BEACH
Michael E. Gates