

FOURTH AMENDMENT TO AGREEMENT NO. 1989
BETWEEN THE CITY OF LOS ANGELES
AND PACIFIC HARBOR LINE, INC.

AGREEMENT NO. 1989 ("Agreement") between the City of Los Angeles (the "Owner") and Pacific Harbor Line, Inc., ("PHL" or "Operator") is hereby amended a fourth time (the "Fourth Amendment") as follows:

WHEREAS, the Agreement will terminate on December 31, 2024;

WHEREAS, for the foregoing, it is in the best interest of the Owner to extend the Agreement for an additional term;

NOW, THEREFORE, in consideration of the terms, covenants, and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED that the Agreement be amended as follows:

1. Article 4, Section 4.3 of the Agreement is hereby amended in its entirety to read as follows:

"4.3 Term of Agreement. The term of this Agreement shall terminate on December 31, 2025; *provided however*, on or after January 1, 2025, the Owner has the right to terminate this Agreement without cause upon six (6) months advance written notice."

2. "Exhibit I-Amended" of the Agreement and Third Amendment is hereby deleted in its entirety and replaced with "Exhibit I-Amended In the Fourth Amendment" which is attached hereto and incorporated by reference.

3. This Fourth Amendment shall become effective if but only if the City of Long Beach, within one hundred twenty (120) days prior to or subsequent to Owner's approval of this Fourth Amendment, extends the term of its Operating Agreement No. HD-6053 with Operator to on or about December 31, 2025. Otherwise, this Fourth Amendment shall be null and void.

4. Except as specifically provided herein, this Fourth Amendment shall not in any manner alter, change, modify, or affect any of the rights, privileges, duties, or obligations of either of the parties hereto under or by any reason of said Agreement, and except as expressly exercised herein, all of the terms, covenants, and conditions of said Agreement, as exercised, shall remain in full force and effect.

[signature page follows]

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

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

Dated: _____, 20__

By _____
Executive Director

Attest: _____
Board Secretary

PACIFIC HARBOR LINE, INC.

Dated: June 21, 2023

By: Ol Craft II
Ol Craft II President
(Print/type Name and Title)

By: Mark H. Sidman
MARK H. SIDMAN, ASSISTANT SECRETARY
(Print/type Name and Title) & GENERAL COUNSEL,
ANACOSTIA RAIL
HOLDINGS COMPANY

APPROVED AS TO FORM AND LEGALITY

August 3, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By [Signature]
HELEN J. SOK, Deputy City Attorney

EXHIBIT I-AMENDED IN THE FOURTH AMENDMENT
ECONOMIC TERMS FOR REPLACEMENT RAILYARD

1. If at any time during the term of this Agreement (No. 1989-A), as amended Operator uses the Replacement Railyard, then Operator shall pay to Owner a Minimum Annual Fee (the "Minimum Annual Fee"), as follows:
 - (i) For the first year of use of the Replacement Railyard, \$100,000 Minimum Annual Fee, which shall be adjusted annually upward in accordance with an increasing Consumer Price Index (CPI) after the first year. Payment of the Minimum Annual Fee will begin when the Pier A Replacement Yard is made available to Operator by the Owner. Payment of the fee will terminate when the Pier A Replacement Railyard ceases operations.
 - (ii) The Annual Fee shall be prorated for any calendar year in which Operator uses the Replacement Railyard for less than the entire year.
 - (iii) Each January 1st, the Annual Fee shall be adjusted by the CPI to account for inflation by application of the Consumer Price Index (i.e. Minimum Annual Fee is subject to a CPI-adjusted floor), as follows: The Minimum Annual Fee shall equal the prior year's Minimum Annual Fee adjusted for inflation by multiplying the prior year's Minimum Annual Fee by the CPI of the current year and then dividing it by the CPI of the prior year (Adjusted Minimum Annual Fee = Minimum Annual Fee x $(\text{CPI October } 20\text{CY}_{(\text{CY}=\text{Current Year})} \div \text{CPI October } 20\text{PY}_{(\text{PY}=\text{Prior Year})})$). CPI is the Consumer Price Index for All Items, All Urban Consumers ("CPI - U") for the Los Angeles-Riverside and Orange Counties, as published by the U.S. Department of Labor, Bureau of Labor Statistics as series CUURA421SAO for October of each year. If the publication of said index is discontinued, then a successor index selected by the Executive Director in his/her sole but reasonable discretion shall be substituted. CPI will have a 3% cap during the first ten-year period and said cap shall terminate on May 31, 2024. In no event shall the Minimum Annual Fee be lower than the Minimum Annual Fee for the preceding year. For calendar year 2024, the Annual Fee inflation adjustment will be prorated as follows: (i) January to May 2024 - CPI (for October 2023) with 3% cap; and (ii) June to December 2024 -CPI (for October 2023).
 - (iv) In the event the Owner terminates the Permit of one of its shipping tenants that is one of Operator's carloading customers as identified [on the list to be supplied by Operator and attached hereto prior to the Effective Date of the Third Amendment] and which represents at least twenty (20) percent of Operator's total carloading volume handled by Operator originating from the Port of Los Angeles, then the Owner will meet and confer with Operator concerning a revision or reduction of the Minimum Annual Fee as provided herein.