

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into as of this \_\_\_\_ day of November, 2012 by and between American Maritime Services of New York, Inc. ("AMS") and the Waterfront Commission of New York Harbor ("Commission") collectively referred to herein as the "Parties."

### **RECITALS**

WHEREAS, the Commission has jurisdiction over AMS, a stevedore that holds a temporary permit pursuant to the Waterfront Commission Act ("Act"); and

WHEREAS, AMS has been dominated, controlled, operated, or managed by Joseph Perez ("Perez"), its long-time Director of Operations and Sales and current Director of Sales; and

WHEREAS, Perez associated with Robert Santoro ("Santoro"); and

WHEREAS, Perez utilized City Check Cashing, operated by Santoro, for check cashing services in order to defraud the Internal Revenue Service; and

WHEREAS, Robert Santoro, in connection with his operation of City Check Cashing, provided money laundering services for members and associates of organized criminal groups; and

WHEREAS, on November 18, 2002, in the United States District Court for the Eastern of New York, Santoro was convicted of the following felonies: (1) conspiracy to commit mail and wire fraud, in violation of Title 18, US Code, Section 371; (2) wire fraud, in violation of Title 18, US Code, Section 1343; (3) mail fraud, in violation of Title 18, US Code, Section 1341; (4) laundering monetary instruments, in violation of Title 18, US Code, Section 1956; (5) false statement, in violation of Title 18, US Code, Section 1001; and (6) perjury, in violation of Title 18, US Code, Section 1621; and

WHEREAS, on September 5, 2003, in the United States District Court for the Eastern of New York, Santoro pleaded guilty and was convicted of conspiracy to engage in unlawful monetary transactions, in violation of Title 18, US Code, Sections 1956 (h) and (a)(1); and

WHEREAS, on December 15, 2003, Santoro was sentenced to sixty-three (63) months imprisonment and three (3) years supervised release, held liable for forfeiture in the amount of \$125,000.00, and ordered to pay an assessment of \$600.00; and

WHEREAS, on December 15, 2003, Santoro was also sentenced to seventy eight (78) months imprisonment and three (3) years supervised release, to run concurrent with his other sentence, and ordered to pay an assessment of \$100.00; and

WHEREAS, on November 14, 1998, Perez knowingly and willfully made and subscribed a United States income tax return, Form 1040 for the year 1997, verified by a written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, which income tax return he did not believe to be true and correct as to every material matter, in that he reported that his total income in 1997 was \$328,262.00 in 1997, whereas, as Perez then and there well knew and believed, his total income was substantially more than \$328,262.00 in 1997, specifically, Perez failed to disclose more than \$200,000.00 in income; and

WHEREAS, on or about November 6, 2003, in the United States District Court for the Eastern District of New York, Perez pleaded guilty to Income Tax Evasion, in violation of Title 26, US Code, Section 7206 (1), and was, on May 10, 2004, sentenced to five (5) months imprisonment, five (5) months home confinement, and two (2) years supervised release, and ordered to pay an assessment of \$100.00; and

WHEREAS, Perez was convicted by a court of the United States of the commission of a felony; and

WHEREAS, from July 2008 to January 2009, Perez, while the Director of Operations and Sales for AMS, employed Santoro at American Maritime Services of New Jersey, Inc. d/b/a Integrated Industries Corp., a company which shares the same owners and address as AMS and which is dominated, controlled, operated, or managed by Perez; and

WHEREAS, such association of AMS with Santoro, a person who has been identified by a federal, state or local law enforcement agency as an associate of an organized crime group, was under circumstances where such association creates a reasonable belief that the participation of AMS in any activity required to be licensed or registered under the Act would be inimical to the policies of the Act,

WHEREAS, Perez, while the Director of Operations and Sales for AMS, did employ, hire, or procure Christopher McDonald ("McDonald") to work within the Port of New York district despite the fact that McDonald lacked the proper registration, permit, or license from the Commission required for such employment; and

WHEREAS, Perez, while the Director of Operations and Sales for AMS, did employ, hire, or procure Robert Colozza ("Colozza") to work within the Port of New York district despite the fact that Colozza lacked the proper registration, permit, or license from the Commission required for such employment; and

WHEREAS, AMS, based upon the above, demonstrates a lack of good character and integrity; and

WHEREAS, the Commission issued a Notice of Hearing to AMS, dated December 1, 2011, to determine whether to grant or deny the application of AMS for a license as a stevedore, and whether to revoke, cancel or suspend the temporary permit of AMS as a stevedore; and

WHEREAS, in order to avoid the costs, risks and uncertainty associated with adversarial proceedings, including potential litigation or challenges before any tribunal, court, or forum, AMS hereby desires to resolve this matter and to settle all matters set forth in the Commission's Notice of Hearing and as those forth this Agreement and, in connection with such resolution and settlement, AMS has, on its own initiative, requested the services of an Independent Private Sector Inspector General ("IPSIG"); and

NOW, THEREFORE, in consideration of the mutual covenants, warranties, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

#### **DEFINITIONS**

For the purposes of this Agreement, the following terms shall be defined as follows unless explicitly stated otherwise:

**Affiliated Companies** shall be defined as the entities that are controlled, dominated, operated, owned or managed by Perez or any of the owners of AMS, or that is a subsidiary of said entity, including, but not limited to, American Maritime Services of New Jersey, Inc. d/b/a Integrated Industries Corp., American Stevedoring, Inc., American Marine Advisors, LLC, Garden State Container Haulage, Inc., Garden State Chassis Remanufacturing, Inc., Integrated Equipment Sales, Inc., Integrated Logistics Group, LLC, C&C Maintenance, LLC, and Vinal Holdings, Inc.

**Employee** shall be defined as all individuals employed by AMS who are not included in the Key People definition below.

**ILA Barred List** shall be defined as the list of barred persons prepared and periodically updated by the Ethical Practices Counsel of the International Longshoremen's Association AFL-CIO ("ILA"), as set forth in the ILA's Constitution and Rules of Order.

**Key People** shall be defined as any controllers, directors, executives, officers, managers, members, owners, partners, proprietors, shareholders and supervisors of AMS, including, but not limited to, Perez. Key People shall also include those individuals contracted or consulted by AMS who provide supervisory or management services.

**Knowledge** shall be defined as being aware of an event, occurrence, or fact.

### **AGREEMENT**

1. **Recitals.** The above Recitals and Definitions are incorporated into and are specifically made a part of this Agreement.

2. **Covenant Not to Take Administrative Action.** This Agreement is in full settlement of all matters arising from the allegations set forth in the Commission's Notice of Hearing dated December 1, 2012. Except as specifically provided herein, the Commission covenants not to take administrative action against AMS pursuant to the Act, with regard to the issues set forth in the Commission's Notice of Hearing. This covenant not to take administrative action is conditioned upon satisfactory performance by AMS of its continuing obligations under this Agreement and the Act. This covenant not to take administrative action extends only to AMS at the time of the execution of the Agreement and does not extend to future conduct of AMS or to any other person or entity.

3. **Certification of Compliance.** By its signature on this Agreement, AMS certifies that, to the best of its knowledge, it is now in compliance with all provisions of the Act.

4. **Subsequent Proceedings.** In any subsequent administrative or judicial proceeding initiated by the Commission for civil penalties, and/or other appropriate relief relating to the AMS's operations and/or violations of this Agreement, AMS shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Commission in the subsequent proceeding were or should have been brought in the instant matter, except with respect to claims that have been specifically resolved pursuant to this Agreement.

5. **Retention of IPSIG.** AMS agrees that, at the sole expense of AMS, it shall retain an IPSIG, to be selected by AMS from among a list of three (3) IPSIG candidates selected by the Commission from a set of pre-qualified candidates, to perform all of the functions, duties and responsibilities set forth in this Agreement. The IPSIG's specific scope of work and the cost associated therewith shall be set forth in a separate engagement letter, which shall be provided to the Commission upon execution of same. Within forty-five (45) days of the Commission providing AMS the list of IPSIG candidates, AMS shall retain an IPSIG from said list and a commencement meeting shall be held between AMS, the IPSIG, and the Commission ("Commencement Meeting").

6. **Term of the IPSIG.** The term of the IPSIG shall be as follows:

a. After two (2) years from the date AMS retains the IPSIG, AMS may apply to the Commission for permission to terminate or to reduce the scope of the IPSIG's services. In all cases, the decision whether to terminate or to reduce the scope of the IPSIG's services shall remain in the sole discretion of the Commission.

b. Notwithstanding the Commission's determination pursuant to Paragraph (a) above, if the services of the IPSIG are not terminated after two (2) years, AMS shall have the right at the end of each subsequent year to apply to the Commission for permission to terminate or to reduce the scope of the IPSIG's services. In all cases, the decision whether to terminate or to reduce the scope of the IPSIG's services shall remain in the sole discretion of the Commission; however, the Commission's decision whether to terminate or to reduce the scope of services of the IPSIG after the initial two (2) year term shall not be arbitrary or capricious. The Commission's decision, if challenged by AMS, shall be subject to immediate judicial review.

7. **Compensation of IPSIG.** AMS agrees to pay directly to the IPSIG all fees and expenses of the IPSIG, at reasonable rates independently negotiated by and between AMS and the IPSIG, in connection with the IPSIG's performance of the IPSIG Duties, as hereinafter defined, pursuant to this Agreement. AMS and the IPSIG shall seek to resolve any dispute(s) arising between them relating to the IPSIG's invoices and related activities. If AMS and the IPSIG are unable to do so, the dispute shall be resolved by the Commission.

8. **IPSIG Duties.** AMS authorizes and consents to the performance of the following duties by the IPSIG ("IPSIG Duties"):

a. Review the actions, conduct, operations, or omissions of AMS, or any of its Key People, Employees, agents, consultants, subcontractors, suppliers, vendors, Affiliated Companies, or other entities that, in the judgment of the IPSIG, may relate to AMS's compliance with the Act.

b. Train AMS Employees and Key People on compliance with the Act.

c. Audit and review AMS's bidding, negotiation, and performance of any contracts as may be reasonable or appropriate to ensure that AMS, its Key People, and its

Employees comply with the terms and conditions of this Agreement, the Act, and local, state, and federal criminal and civil laws, rules, and regulations. To the extent possible, the IPSIG shall not duplicate any audit and/or review already performed or to be performed by the Commission, if the result(s) of such review is available to the IPSIG.

9. **Compliance with IPSIG.**

a. AMS will cooperate fully with the IPSIG in the discharge of the IPSIG Duties hereunder and, except to the extent prohibited by a lawful collective bargaining agreement, will condition continued employment of its Key People and Employees upon their full and complete cooperation with the IPSIG in the discharge of the IPSIG Duties herein.

b. AMS shall grant the IPSIG the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of AMS and its Affiliated Companies. At the request of the Commission or the IPSIG, AMS shall execute such documents, if any, as are necessary to give the Commission or the IPSIG access to books, documents or records that are under AMS's control, in whole or in part, but not currently in AMS's possession. AMS and its Key People and Employees shall use their best efforts to assist the IPSIG in obtaining access to past and present subcontractor, consultant, and supplier files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of AMS's subcontractors, consultants, and suppliers, such best efforts to include, if appropriate, enforcement of the right-to-audit provisions of such subcontracts. AMS shall also use its best efforts to assist the IPSIG in obtaining access to interviews with, and information from, former, current, and future Key People and Employees.



Such employees shall have the right to be represented by counsel of their choice at such interviews.

c. AMS shall provide all authorizations, permissions, and/or waivers requested by the IPSIG for obtaining records pertaining to AMS, but not maintained by AMS, including, but not limited to, financial institutions, fiduciaries, and credit reporting agencies.

d. AMS shall provide the IPSIG reasonable access to, and use of, appropriate, private and secure work space, and reasonable access to adequate photocopying and communications equipment at its offices and work spaces.

e. Within thirty (30) business days after the execution of this Agreement, AMS shall require its Affiliated Companies, and use its best efforts to require its subcontractors and consultants, to adopt right-to-audit commitments in favor of the Commission and the IPSIG.

f. AMS shall maintain such records pertaining to: (i) its subcontractors, consultants, and suppliers, (ii) the workforces of its subcontractors, consultants, and suppliers, and (iii) its own Key People and Employees, as the IPSIG shall require. At the request of the IPSIG, AMS shall require subcontractors, consultants, and suppliers to submit to the IPSIG any back-up material or other books, records, or other documentation that AMS is permitted or empowered to demand from subcontractors, consultants, and suppliers by the terms of AMS's contracts with those persons and entities.

**10. IPSIG Reporting.**

a. AMS agrees that the IPSIG shall report to the Commission and, with the consent of the Commission, to other persons or entities, including appropriate law enforcement authorities, without notice or disclosure to AMS, any suspected or actual criminal activity, any suspected or actual violations of the Act, or any suspected or actual unethical or irregular

business activity, on the part of AMS, its Key People, Employees, agents, consultants, subcontractors, suppliers, vendors, its Affiliated Companies, or any other person or entity, as well as any other matter reflecting upon AMS's good character and integrity.

b. AMS hereby authorizes the IPSIG to make periodic verbal and/or written reports to the Commission regarding the IPSIG's activities and regarding AMS's activities and its compliance with the terms of this Agreement. The IPSIG shall report to AMS only to the extent as authorized by the Commission. The Parties intend that IPSIG reports made to the Commission alone shall constitute confidential investigative reports compiled for law enforcement purposes. Nevertheless, the Commission may disseminate the IPSIG's reports at the Commission's sole discretion. Any report by the IPSIG that is disseminated by the Commission shall be on notice to AMS unless the Commission reasonably determines that such notice will interfere with an ongoing investigation or prosecution, or is not in the public interest.

c. Nothing in this Agreement shall preclude the IPSIG from reporting to AMS's principals or their legal counsel information that permits AMS to prevent or promptly remediate any material breach of the terms of this Agreement, including any material breach of contract terms covered by this Agreement, so long as no such report is made by the IPSIG without the express written approval of the Commission.

11. **No Waiver/Impairment.** Nothing in this Agreement shall impair or waive any existing rights of the Commission to audit, investigate and evaluate past, current, and future acts of AMS. AMS agrees to cooperate fully with any audits or investigations commenced by the Commission with respect to AMS's operations.

12. **Code of Ethics.** Within forty (40) business days from the date of the Agreement, AMS shall draft and implement a Code of Ethics (the "Code") acceptable to the Commission.

The provisions of the Code (including, without limitation, the standards and policies set forth therein) shall apply to and be binding upon AMS, its Key People, and its Employees, and shall form a part of this Agreement as if fully set forth in this Agreement. The Code shall include, at a minimum:

a. Standards for Key People and Employees to follow in their business dealings, which shall make it a violation of the Code for AMS or any of its current or future Key People or Employees to;

i. File with the Commission, a Commission employee, or any government office or government employee, a written instrument that intentionally contains a false statement or false information;

ii. Intentionally falsify business records;

iii. Give, or offer to give, money, gratuities, or any other benefit to a labor official, including, but not limited to, an official in a labor organization that has represented, represents, or may represent AMS's Employees;

iv. Give, or offer to give, money, gratuities, or any other benefit to any public servant, including, but not limited to, a public servant who is an employee or official of the Commission or a political subdivision or governmental entity with which AMS currently conducts, has conducted, or may conduct business;

v. Make, attempt to make, or execute any agreement, or participate in any scheme, that seeks to rig bids or restrain trade by collusion or unfair trade or labor practices;

vi. Associate with a person who has been identified by a federal, State or local law enforcement agency as a member or associate of an organized crime group,

including, but not limited to, any individual listed on the ILA Barred List under the circumstances set forth in Part II, Section 5-h (6) of the Act;

vii. Associate with a person who has been identified by a federal, State or local law enforcement agency as a member or associate of any a terrorist group, a career offender cartel, or who is a career offender, as those terms are defined in Part II, Section 5-h (6) of the Act;

viii. Be convicted of a racketeering activity or knowingly associate with any individual who has been convicted of a racketeering activity by a court of the United States, or any state or territory thereof, under circumstances set forth in Part II, Section 5-h (7) of the Act; and

ix. Take any actions that are in conflict with the Act.

b. A policy that AMS will diligently investigate the nature of any charges of criminal activity made by the Commission or any government investigative or prosecutorial agency against any Key People or Employees to determine whether such charges concern business-related activities or would otherwise bear upon the good character and integrity of AMS, and a commitment that, in the event that such charges concern business-related activities or would otherwise bear upon the good character and integrity of AMS, AMS shall, except to the extent prohibited by a lawful collective bargaining agreement, terminate the employment of such Key People or Employees or place such Key People or Employees on unpaid leaves of absence pending resolution of the criminal charges against such Key People or Employees and, upon conviction, terminate the employment of such persons.

c. A requirement that AMS's Key People and Employees must promptly report to the Commission any suspected or actual violations of the Act or suspected or actual

crimes related to or concerning AMS committed by labor officials, government employees or AMS's Key People, Employees, agents, consultants, subcontractors, suppliers, vendors and Affiliated Companies.

d. A requirement that AMS immediately notify the Commission in the event that AMS is notified or otherwise learns that AMS and/or any of its Key People, Employees, or agents (a) are subpoenaed, interviewed, questioned, or otherwise contacted by any government agency, official, and/or employee in connection with any investigation or proceeding, whether of a criminal, civil, or administrative nature, whether or not AMS and/or any of its Key People or Employees are, or are believed to be, the subject or target of any such investigation or proceeding, or (b) are notified or otherwise learn that AMS and/or any of its Key People, Employees or agents are under investigation for any alleged violation of criminal law.

13. **Distribution and Posting of Code of Ethics and ILA Barred List.** Within thirty (30) business days after the Commission approves the Code, AMS shall have furnished to each of its Key People and Employees a copy of both the Code and the ILA Barred List, and shall have obtained and maintained on file, a signed receipt and undertaking from each of its Key People and Employees, acknowledging that each individual has received copies of both the Code and the ILA Barred List and has read both the Code and the ILA Barred List and agrees to abide by the Code's provisions and not associate with any individual listed in the ILA Barred List. AMS shall deliver to the Commission certification of its compliance with the obligations set forth in this paragraph within ten (10) business days of such compliance. AMS shall provide copies of the Code and the ILA Barred List to, and obtain a signed receipt from, any new Key People or Employees of AMS within twenty (20) business days of such person's engagement or hiring. AMS shall provide regular (at least annual) training to all current Key People and

Employees regarding the Code and the ILA Barred List, including any additions to the Barred List since the previous training session. The training shall be conducted by the IPSIG and paid for by AMS. AMS shall have provided the required training within sixty (60) business days of it having completed distribution of the Code and the ILA Barred List to its Key People and Employees.

**14. Violation of Agreement and Other Provisions.**

a. AMS agrees that violation of any of the terms or conditions of this Agreement shall, by itself, constitute an adequate and sufficient ground for any determination by the Commission, following an administrative hearing, to deny any application of AMS or revoke any permit or license of AMS for lacking good character and integrity.

b. In the event of any indictment or conviction of AMS or any of AMS's Key People or Affiliated Companies for a crime involving a lack of good character or integrity – as that standard has been interpreted and decided upon by administrative and appellate proceedings – and/or relating to the business of AMS, the Commission, in addition to any other remedies it may have, may terminate this Agreement.

**15. Entire Agreement.** This Agreement is fully integrated and constitutes the entire and complete agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior understandings and representations made, whether oral or written, between the Parties. The Parties further agree that this Agreement supersedes all other drafts hereof and no prior drafts and no additions or deletions from any prior drafts shall have any meaning whatsoever. No other promises or agreements shall be binding unless in writing and signed by the Parties. The Agreement is the result of negotiations between the Parties and

shall be construed without regard to any presumption against the drafter of the Agreement or any provision hereof.

16. **Successors and Assigns.** The Parties represent that they have proper authority to execute this Agreement and have not assigned any right or obligation hereunder. This Agreement shall be binding upon the Parties and upon their successors and assigns and shall insure to the benefit of said Parties and to their respective successors and assigns. AMS shall provide a copy of this Agreement to all Key People, Employees, and agents whose duties directly involve compliance with any provision of this Agreement, as well as to any contractor retained by AMS to perform work required under this Agreement. In any action to enforce this Agreement, AMS shall not raise as a defense the failure by any of its Key People, Employees, agents, or contractors to take any actions necessary to comply with the provisions of this Agreement.

17. **Address.** Any written notification or report required by or made pursuant to this Agreement shall be made, mailed, or delivered to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. The Parties agree that all notices under this Agreement shall be sent via First Class Mail and facsimile to:

Waterfront Commission of New York Harbor  
39 Broadway, 4<sup>th</sup> Floor  
New York, NY 10006  
Att: General Counsel

American Maritime Service of New York, Inc.  
One Pennval Road  
Post Office Box 868  
Woodbridge, New Jersey 07095

With copy to:  
James P. Corcoran, Esq.  
239 E. 79<sup>th</sup> Street, Suite 14D  
New York, NY 10075-0816

18. **Comprehension of Terms.** The Parties hereto represent and warrant that they have had opportunity to consult with counsel regarding the settlement of this matter, that they have read and understand this Agreement and that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto. The Parties hereby acknowledge that they are fully aware of the contents of this Agreement and of the legal effect of each and every provision herein. The Parties have signed this Agreement voluntarily and knowingly in exchange for the considerations provided, which the Parties acknowledge is adequate and satisfactory.

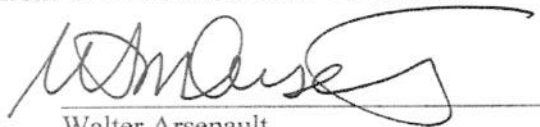
19. **Governing Law.** In the event of any dispute regarding this Agreement, the laws of the State of New York shall govern the validity, performance, enforcement and all other aspects of this Agreement.

20. **Counterparts.** This Agreement may be executed in counterpart originals, each of which has the force and effect of a single original. All signatures need not be on the same copy.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

Waterfront Commission of New York Harbor

By:

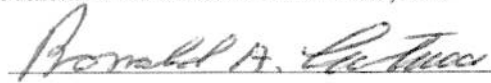


Walter Arsenault  
Executive Director

*December 18*  
Dated: ~~November~~ \_\_\_\_, 2012

American Maritime Services of New York, Inc.

By:

  
Treasurer

Dated: November 27<sup>th</sup>, 2012