

**SETTLEMENT AGREEMENT AMONG  
THE UNITED STATES; THE STATE OF CALIFORNIA, ON BEHALF OF  
THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE;  
AND UNITED MOLASSES Inc.**

**I. Introduction**

1. The United States of America, on behalf of the National Oceanic and Atmospheric Administration (“NOAA”), and the State of California, on behalf of the California Department of Fish and Wildlife, Office of Spill Prevention and Response (“CDFW/OSPR”) (collectively referred to as the “Trustees”), and United Molasses, Inc. (“Settling Defendant”) enter into this Settlement Agreement to resolve, without litigation, the Trustees’ civil claims under Section 1002 of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702 (a) and (b), and CDFW/OSPR’s civil claims under the California Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (“OSPRA”), California Government Code § 8670.1, *et seq.*, for damages for alleged injuries to, destruction of, or loss of natural resources, including the costs of assessing the injuries, resulting from discharges of oil from or adjacent to the Port of Richmond Terminal 4 (the “Site”) located in Richmond, California.

2. The Trustees have shared trust responsibilities for the natural resources injured or damaged as a result of oil discharged at the Site and this Settlement Agreement is executed by both agencies in their capacity as Natural Resource Trustees as that term is defined in OPA and the LKS Act, respectively.

3. The execution of this Settlement Agreement shall not constitute, nor is it in any way an admission by Settling Defendant of any allegation, fact or liability, and shall not be used in any other action against Settling Defendant as proof of liability.

4. For purposes of any action to enforce this Settlement Agreement, Settling Defendant consents to the jurisdiction of the U.S. District Court for the Northern District of California over this Settlement Agreement and any such action and over Settling Defendant, and consent to venue in the U.S. District Court for the Northern District of California.

## **II. Parties Bound**

5. The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendant and all of its successors and assigns, and upon the Trustees.

## **III. Definitions**

6. Terms used in this Settlement Agreement that are defined in OPA, or in regulations promulgated under OPA, shall have the meanings assigned to them in such law or regulations, unless otherwise provided in this Settlement Agreement. Whenever the terms set forth below are used in this Settlement Agreement, the following definitions shall apply:

a. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

b. “Effective Date” has the definition provided in Section XII.

c. “LKS Act” means the California Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, California Government Code § 8670.1, *et seq.*

d. “Natural Resource” or “Natural Resources” means land, wildlife, biota, air, water, ground water, surface water (including sediments), drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State Trustee.

e. “Natural Resource Damages” means damages, including costs of damages assessment, recoverable under Section 1002 of OPA, 33 U.S.C. § 2702, for alleged injury to, destruction of, or loss of any or all natural resources resulting in whole or in part from the release or threatened release of oil from the Site.

f. “Natural Resource Damage Assessment Costs” means the costs incurred by the Trustees in assessing the Natural Resource Damages that have occurred at or relating to the Site.

g. “Natural Resource Restoration Projects” means the future projects or project to be developed and overseen by the Trustees to restore, replace, rehabilitate, or acquire the equivalent of the Natural Resources that were allegedly injured, destroyed, or lost as a result of releases of oil at or from the Site, including lost natural resource services.

h. “NOAA” means the National Oceanic and Atmospheric Administration.

i. “OPA” means the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*

j. “Parties” means the Trustees and Settling Defendant.

k. “Settlement Agreement” means this Settlement Agreement between the United States, California Department of Fish and Wildlife, and the Settling Defendant.

l. “Settling Defendant” means United Molasses, Inc., and its associated, parent, subsidiary, and successor companies, and the present and former officers, directors, agents, and employees of the foregoing parties to the extent their liability arises from actions taken in their official capacities as officers, directors, agents, and employees of the Settling Defendant.

m. “Site” means the Port of Richmond Terminal 4 located on the western shore of the City of Richmond, California at 2101 Western Drive, Richmond, California and the former United Molasses, Inc. facility located at 2055 Western Drive, Richmond, California.

n. “Trustees” means the National Oceanic and Atmospheric Administration and the California Department of Fish and Wildlife, Office of Spill Prevention and Response.

o. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

#### **IV. Payments by Settling Defendant**

7. Payment to the United States for Natural Resource Damage Assessment Costs. Within thirty (30) Days after the Effective Date, Settling Defendant shall pay two hundred thousand dollars (\$200,000.00) to the United States to reimburse Natural Resource Damage Assessment Costs incurred by NOAA relating to the Site.

8. Payment for Natural Resource Restoration Projects. Within thirty (30) Days after the Effective Date, Settling Defendant shall pay four hundred fifty thousand dollars (\$450,000.00) to the United States for the joint benefit and use of the federal and state Trustees in planning, selecting, implementing, and monitoring Natural Resource Restoration Projects.

9. Payment Instructions. Payment of the amount set forth in Paragraphs 3 and 4 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the United States . Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The United States will provide the payment instructions to the following on behalf of the Settling Defendant:

Donald Cole  
Head of Legal, NOAM  
United Molasses, Inc.  
c/o Tate & Lyle, North America  
5450 Prairie Stone Pkwy  
Hoffman Estates, IL 60192

With a copy to: Todd O. Maiden  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105-3659  
tmaiden@reedsmith.com

a. At the time of payment in Paragraphs 3 and 4, Settling Defendant shall send a written and electronic notice of payment and a copy of any transmittal documentation to:

Rachel Ramos, Attorney Advisor  
Natural Resources Section  
NOAA Office of the General Counsel  
501 West Ocean Boulevard, Suite 4470  
Long Beach, CA 90802  
rachel.ramos@noaa.gov

And

Nicole Gleason, Senior Counsel  
Office of Spill Prevention and Response  
CA Department of Fish and Wildlife  
1010 Riverside Parkway  
West Sacramento, CA 94244  
Nicole.gleason@wildlife.ca.gov

With a copy to:

eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-1-1-12847

10. Interest.

a. If Settling Defendant fails to make either of the payments specific in Paragraphs 3 and 4 when due, Settling Defendant shall pay interest on those payments at the rate

specified in 28 U.S.C. § 1961(a) and (b) on the amount due. Interest shall be calculated from the Effective Date to the date of payment.

b. Interest shall be paid in accordance with the payment instructions in Paragraph 5.

11. Stipulated Penalties.

a. If Settling Defendant fails to make any of the payments specified in Paragraphs 7 and 8 when due, they shall pay \$2,000 as a stipulated penalty for each Day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full (except to the extent that payment is delayed due to Trustees failing to timely provide payment instructions). Separate stipulated penalties shall accrue for failure to make each such payment. All stipulated penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the day that payment of amounts owed is made.

b. Stipulated penalties shall be paid in accordance with the payment instructions in Paragraph 9.

c. Stipulated penalties shall accrue as provided this Paragraph regardless of whether the United States or the State of California has notified Settling Defendant of the violation or made a demand for payment but need only be paid upon demand. Interest and stipulated penalties are due within thirty (30) Days of the date of a written demand by the United States or the State of California.

d. Payments made under this Paragraph shall be in addition to any other remedies or sanctions available to the United States and the State of California by virtue of Settling Defendant's failure to comply with the requirements of this Settlement Agreement.

e. Settling Defendant shall be liable for attorneys' fees and costs incurred by the United States or the State of California to collect any amount due under this Settlement Agreement that is not timely paid but not for any fees and costs incurred prior to the Effective Date other than what is being paid in paragraphs 3 and 4, above.

**V. Covenant Not to Sue and Reservation of Rights by the Trustees**

12. In consideration of the payment to be made by Settling Defendant pursuant to Section IV (Payment of Settling Defendant), the United States and CDFW/OSPR covenant not to sue or maintain any lawsuit, action, administrative proceeding, claim or other proceeding against Settling Defendant under OPA for Natural Resource Damages at the Site, including any costs, attorneys' or experts' fees, other fees, or expenses incurred by the Trustees to recover Natural Resource Damages. In addition, the State covenants not to sue or take any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendant for Natural Resource Damages related to or associated with the Site under the LKS Act.

13. The covenants not to sue in Paragraph 12 are not effective until, and are conditioned upon, complete and satisfactory performance by Settling Defendant of its obligations under Section IV (Payment of Settling Defendant) of this Settlement Agreement.

14. Notwithstanding any other provision of this Settlement Agreement, the United States and the State reserve, and this Settlement Agreement is without prejudice to, any claims not expressly included in Paragraph 12, including but not limited to:

- a. Claims based upon a failure of Settling Defendant to meet a requirement of this Settlement Agreement;
- b. Criminal claims;
- c. Claims for costs of removal or remedial action at the Site;

d. Claims for damages for injury to, destruction of, or loss of natural resources unrelated to alleged acts or omissions at the Site.

e. Additional claims for Natural Resource Damages as a result of releases of oil at or from the Site if conditions, factors, or information, not known to the Trustees as of the Effective Date, are discovered that, together with any other relevant information, indicate there is a threat to the environment, or injury to, destruction of, or loss of Natural Resources of a type unknown, or of a magnitude significantly greater than was known, as of the Effective Date of this Settlement Agreement (for purposes of this Subparagraph, information known to the Trustees shall consist of any information in the files of, or otherwise in the possession of, any one of the individual Trustees, or their contractors or consultants who worked on the Trustees' natural resource damages assessment).

#### **VI. Covenant Not to Sue by Settling Defendant**

15. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State of California, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, with respect to:

- a. this Settlement Agreement;
- b. claims related to Natural Resource Damages at the Site; or
- c. any claim for costs, attorneys' fees, other fees, or expenses incurred in

connection with this Settlement Agreement or claims resolved herein. Settling Defendant reserves the right to sue and / or assert any claim or cause of action relating to Natural Resource Damages at or relating to the Site against any entity not a Party to this Settlement Agreement.

16. In any subsequent administrative or judicial proceeding initiated by the United States or the State of California related to the Site, Settling Defendant shall not assert, and may



not maintain, any defense or claim based upon principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States or the State of California in the subsequent proceeding were or should have been settled in this Settlement Agreement; except with respect to claims that have been specifically resolved pursuant to Paragraph 12. Nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section V (Covenant Not to Sue and Reservation of Rights by the Trustees) herein.

#### **VII. Signatories**

17. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

#### **VIII. Entire Agreement**

18. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Settlement Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Settlement Agreement or the settlement it represents, nor shall it be used in construing the terms of this Settlement Agreement.

#### **IX. Modification**

19. The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all the Parties.

#### **X. Execution**

20. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

## **XI. Public Comment**

21. Final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than thirty (30) Days after publication of notice of this Settlement Agreement in the *Federal Register*. Settling Defendant agrees not to withdraw consent to the Settlement Agreement pending consideration of public comments and approval of the United States. If public comments disclose facts or considerations which, reasonably construed, indicate that this Settlement Agreement is inappropriate, improper, or inadequate, the United States may withdraw its approval of the Settlement Agreement. Should the United States withdraw its approval, this Settlement Agreement shall be null and void.


## **XII. Effective Date**

22. The Effective Date of this Settlement Agreement shall be the date upon which: a) the United States issues written notice to the Settling Defendant that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement; b) that the Trustees have both counter-executed this Settlement Agreement; and c) the Trustees have provide Settling Defendant with a counter-executed copy of this Settlement Agreement.

*Signatures on following pages*

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES, AND THE STATE OF CALIFORNIA, ON BEHALF OF THE DEPARTMENT OF FISH AND WILDLIFE, AND THE UNITED MOLASSES GB LTD FOR NATURAL RESOURCE DAMAGES RELATING TO RICHMOND TERMINAL 4**

**FOR THE UNITED MOLASSES, INC.**

By:  Date: 10/31/2024  
Donald A. Cole  
Head of Legal

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES, AND THE STATE OF CALIFORNIA, ON BEHALF OF THE DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL PREVENTION AND RESPONSE AND THE UNITED MOLASSES GB LTD FOR NATURAL RESOURCE DAMAGES RELATING TO RICHMOND TERMINAL 4**

**FOR THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL PREVENTION AND RESPONSE**

Signed by:  12/2/2024  
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By: \_\_\_\_\_ Date: \_\_\_\_\_  
Heather Geldart  
Administrator

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES, AND THE STATE OF CALIFORNIA, ON BEHALF OF THE DEPARTMENT OF FISH AND WILDLIFE, AND THE UNITED MOLASSES GB LTD FOR NATURAL RESOURCE DAMAGES RELATING TO RICHMOND TERMINAL 4**

**FOR THE UNITED STATES OF AMERICA**

PATRICIA McKENNA  
Deputy Section Chief

By: Steven O'Rourke Date December 2, 2024  
STEVEN O'ROURKE  
Environmental Enforcement Section  
U.S. Department of Justice  
Washington, DC 20002  
(202) 514-2779  
Steve.o'rourke@usdoj.gov