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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GETTY PETROLEUM MARKETING INC., *et al.*,

Reorganized Debtors.

Chapter 11

Case No. 11-15606 (SCC)

Jointly Administered

**NOTICE OF LODGING OF PROPOSED SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND THE GETTY
PETROLEUM MARKETING INC. LIQUIDATING TRUST
CONCERNING NEWTOWN CREEK SUPERFUND SITE**

The United States of America hereby lodges with the Court a proposed Settlement Agreement Between the Getty Petroleum Marketing Inc. Liquidating Trust and the United States on Behalf of the United States Environmental Protection Agency, the United States Department of the Interior, and the National Oceanic Atmospheric Administration (the "Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as Exhibit A and has been executed by all parties.

The United States respectfully requests that the Court not approve the proposed Settlement Agreement at this time. Notice of the lodging of the proposed Settlement Agreement will be published in the *Federal Register*, following which the United States

Department of Justice will accept public comments on the proposed Settlement Agreement for a 30-day period. After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, will request that the Court approve the proposed Settlement Agreement.

Dated: New York, New York
October 21, 2014

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: /s/ Joseph N. Cordaro
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
GETTY PETROLEUM MARKETING, INC., et al.,	:	Case No. 11-15606 (SCC)
	:	
Debtors.	:	(Jointly Administered)
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SETTLEMENT AGREEMENT BETWEEN THE GETTY PETROLEUM MARKETING INC. LIQUIDATING TRUST AND THE UNITED STATES ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

WHEREAS, on December 5, 2011 (the "Petition Date"), debtors Getty Petroleum Marketing Inc. ("GPMI"), Getty Terminals Corp. ("Getty Terminals"), Gasway Inc., and PT Petro Corp. (collectively, "Getty" or the "Debtors") filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code"), which have been consolidated for procedural purposes and are being jointly administered as *In re Getty Petroleum Marketing Inc.*, Case No. 11-15606 (SCC) (the "Bankruptcy Cases");

WHEREAS, on August 24, 2012, the Bankruptcy Court entered Findings of Fact, Conclusions of Law and Order Confirming the Plan of Liquidation for Getty Petroleum Marketing Inc. and its Subsidiary Debtors (the "Confirmation Order") (Docket No. 714);

WHEREAS, pursuant to the Confirmation Order, the Getty Petroleum Marketing Inc. Liquidating Trust (the "Liquidating Trust") was established to resolve claims against Getty, which is governed by the Liquidating Trust Agreement and managed by Liquidating Trustee Alfred Giuliano (the "Liquidating Trustee");

WHEREAS, the United States acknowledges that on March 6, 2012, the Bankruptcy Court entered an Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 252], which states that “proofs of claim filed by governmental units must be filed on or before WEDNESDAY, SEPTEMBER 5, 2012 AT 5:00 P.M. (Eastern Time)”;

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), has filed proofs of claim (Claim Nos. 856 and 857) (the “US Proofs of Claim”), contending that GPMI and Getty Terminals are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, and the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701 *et seq.*, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Newtown Creek Superfund Site, located in Queens County and Kings County, New York (the “Newtown Creek Site”), and for removal costs resulting from the discharge of oil into the navigable waters of the United States at the Newtown Creek Site;

WHEREAS, the Liquidating Trustee acknowledges that pursuant to a Master Lease with Getty Realty Corporation dated March 1997, as amended and restated in November 2000, GPMI leased a facility located at 30-23 Greenpoint Avenue, Long Island City, New York (the “Facility”), which is adjacent to the Newtown Creek.

WHEREAS, the Liquidating Trustee acknowledges that Debtors have admitted that GPMI was formed to run the former marketing and sales business of Getty Petroleum Corporation, including the Facility;

WHEREAS, the Liquidating Trustee acknowledges that Debtors have admitted that beginning on February 1, 1985, and continuing through at least 2012, Getty Terminals operated the Facility and exercised actual control or held significant authority to control activities at the Facility;

WHEREAS, the Liquidating Trustee acknowledges that Debtors have admitted that a spill occurred at the Facility in October 2005;

WHEREAS, as a result of the history of industrial activities from facilities adjacent to the Newtown Creek or otherwise in its vicinity, the Newtown Creek is one of the nation's most polluted waterways;

WHEREAS the US Proofs of Claim also include a claim by the United States, on behalf of the United States Department of the Interior ("DOI") acting through the United States Fish & Wildlife Service and the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration ("NOAA," and together with DOI, the "NRD Trustees"), under CERCLA and OPA for natural resource damages and costs of assessment ("NRD") at or in connection with the Newtown Creek Site;

WHEREAS the US Proofs of Claim also assert, in protective fashion only, Getty's liability for equitable remedies and work obligations with respect to underground and aboveground storage tank systems owned or formerly owned by Getty, which are not within the Bankruptcy Code's definition of "claim," which are addressed under the Orders issued by the Bankruptcy Court on August 16, 2012, and December 6, 2012;

WHEREAS, the US Proofs of Claim set forth the United States' position that the Debtors' obligation to comply with work obligations, including but not limited to cleanup

obligations, under court orders, administrative orders, environmental statutes, regulations, licenses, and permits is not dischargeable pursuant to Section 1141 of the Bankruptcy Code;

WHEREAS, this Settlement Agreement is fair, reasonable, and consistent with environmental law;

NOW, THEREFORE, upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b). To the extent that consent may be necessary, each party consents to the Bankruptcy Court's entry of a final order regarding this Settlement Agreement.

2. With respect to the Newtown Creek Site, the United States on behalf of EPA shall have an allowed claim of \$14,844,800 (the "EPA Allowed Claim"), to be paid as a Class 3 General Unsecured Claim under the Debtors' Plan of Reorganization, confirmed by order dated August 24, 2012 (the "Plan of Reorganization" or "Plan").

3. With respect to the Newtown Creek Site, the United States on behalf of the NRD Trustees shall have an allowed claim of \$1,155,200 (the "NRD Allowed Claim"), to be paid as a Class 3 General Unsecured Claim under the Plan of Reorganization. \$16,590.91 of the NRD Allowed Claim reimburses past assessment costs incurred by NOAA.

4. The EPA Allowed Claim and the NRD Allowed Claim shall receive the same treatment under the Plan of Reorganization, without discrimination, as all other allowed Class 3 General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed Class 3 General Unsecured Claims. In no event shall the EPA Allowed Claim or the NRD Allowed

Claim be subordinated to any other allowed Class 3 General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

5. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to the Debtors by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York.

At the time of any cash distribution pursuant to this Settlement Agreement, the Debtors shall transmit written confirmation of such distribution to the United States at the addresses specified below, with a reference to Bankruptcy Case Number 11-15606 (SCC), the CDCS number, and DOJ File No. 90-7-1-10503/1:

Joseph N. Cordaro, AUSA

United States Attorney’s Office – SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-7-1-10503/1

Michael A. Mintzer
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

Mark Barash
Senior Attorney
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton, MA 02458

Kate Barfield
NOAA Office of General Counsel
Natural Resources Section
1315 East-West Highway, SSMC3, Room 15107
Silver Spring, MD 20910-3282

6. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and rights of EPA, DOI or NOAA to sell their rights to all or a portion of any distributions under the Plan to one or more third parties, or to transfer or sell to one or more third parties all or a portion of the EPA Allowed Claim or the NRD Allowed Claim.

7. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement into one or more special accounts established for the Newtown Creek Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Newtown Creek Site, or to be transferred to the Hazardous Substance Superfund.

8. All cash distributions received by the NRD Trustees pursuant to this Settlement Agreement (excluding cash distributions reimbursing past assessment costs incurred by NOAA) shall be deposited in the DOI Natural Resource Damage Assessment and Restoration Fund (the "NRDAR Fund"), and managed by DOI under the joint control of DOI and NOAA pursuant to a Memorandum of Agreement to be entered into between the NRD Trustees. The cash distributions deposited in the NRDAR Fund may be used to fund future assessment costs and fund restoration related to the Newtown Creek Site.

9. Only the amount of cash received by EPA and the NRD Trustees, respectively, pursuant to this Settlement Agreement for the EPA Allowed Claim and the NRD Allowed Claim, and not the total amount of the EPA Allowed Claim or NRD Allowed Claim, shall be credited by EPA and the NRD Trustees to their respective accounts for the Newtown Creek Site, which credit shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

10. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 11-13, the United States, on behalf of EPA, and the NRD Trustees, covenants not to file a civil action or take administrative action against GPMI, Getty Terminals, or the Liquidating Trust, on behalf of GPMI and Getty Terminals, pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 1002(a) of OPA, 33 U.S.C. § 2702(a), with respect to the Newtown Creek Site.

11. The covenant set forth in Paragraph 10 extends only to GPMI, Getty Terminals and the Liquidating Trust, on behalf of GPMI and Getty Terminals, and does not extend to any other person or entity. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than GPMI, Getty Terminals, the Liquidating Trust, on behalf of GPMI and Getty Terminals, and the United States. EPA, the NRD Trustees, GPMI, Getty Terminals, and the Liquidating Trust, on behalf of GPMI and Getty Terminals, expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, or entities (including any predecessors of GPMI and Getty Terminals) for any matter arising at or relating in any manner to the Newtown Creek Site. Further, nothing in this Settlement Agreement diminishes

the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person or entity not a party to this Settlement Agreement.

12. The covenant set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against GPMI, Getty Terminals and the Liquidating Trust with respect to all matters other than those set forth in Paragraph 10. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against GPMI, Getty Terminals and the Liquidating Trust with respect to the Newtown Creek Site for liability under federal law for acts by GPMI, Getty Terminals, the Liquidating Trust, or their successors or assigns that occur after the date of lodging of this Settlement Agreement.

13. Nothing in this Settlement Agreement shall be construed as a waiver of the Liquidating Trust's right to contest or oppose any motion filed by the United States seeking leave to file an untimely proof of claim pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, and the Liquidating Trustee reserves all rights with respect to any such claims, including the right to object on any and all grounds, and has so advised the United States of its intent to do so, should the United States hereafter seek such relief from the Bankruptcy Court.

14. Nothing in this Settlement Agreement shall be deemed to alter or amend the Liquidating Trust's obligations set forth in the Orders issued by the Bankruptcy Court on August 16, 2012, and December 6, 2012.

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response or removal action (including without limitation any remedial action) under Section 104 of CERCLA, 42 U.S.C. § 9604; Section 1012 of OPA, 33 U.S.C. § 2712; Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, or under any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 10. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse Getty or the Liquidating Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

16. GPMI, Getty Terminals and the Liquidating Trust, on behalf of GPMI and Getty Terminals, covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Newtown Creek Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; (iii) any claim under Sections 1008, 1009 or 1013 of OPA, 33 U.S.C. §§ 2708, 2709 or 2713; or (iii) any claims arising out of response activities at the Newtown Creek Site. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). Nothing in this Settlement Agreement shall be deemed to constitute presentation of a claim within the meaning of Section 1013 of OPA, 33 U.S.C. § 2713, and 33 C.F.R. § 136.103.

17. Notwithstanding any other provision of this Settlement Agreement, GPMI, Getty Terminals, and the Liquidating Trust, on behalf of GPMI and Getty Terminals, reserve, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against GPMI, Getty Terminals, or the Liquidating Trust, on behalf of GPMI and Getty Terminals, pursuant to any of the reservations set forth in Paragraph 12, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the claims of GPMI, Getty Terminals, or the Liquidating Trust, on behalf of GPMI and Getty Terminals, arise from the same response action, response costs or removal costs that the United States is seeking pursuant to the applicable reservation. Notwithstanding any other provision of this Settlement Agreement, GPMI, Getty Terminals, and the Liquidating Trust, on behalf of GPMI and Getty Terminals, also specifically reserve, and this Settlement Agreement is without prejudice to, any action based on a failure of the United States to meet a requirement of this Settlement Agreement.

18. The parties hereto agree, and by entering this Settlement Agreement the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that GPMI, Getty Terminals, and the Liquidating Trust, on behalf of GPMI and Getty Terminals, are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are (i) all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Newtown Creek Site by the United States or any potentially responsible parties, and (ii) all claims by DOI, NOAA or potentially responsible parties for natural resource

damages (including assessment and restoration costs) at or in connection with the Newtown Creek Site; provided, however, that, if EPA or the NRD Trustees exercise rights under the reservations in Paragraph 12, other than for failure to meet a requirement of this Settlement Agreement, the “matters addressed” in this Settlement Agreement shall no longer include those response costs, response actions, or natural resource damages that are within the scope of the exercised reservation.

19. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States’ responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not fair, reasonable and consistent with environmental law.

20. The Liquidating Trustee represents that, pursuant to the Liquidating Trust Agreement, as approved by the Confirmation Order and Plan of Liquidation, it has the authority to bind GPMI and Getty Terminals to this Settlement Agreement, including but not limited to the covenants not to sue contained in Paragraph 16.

21. To the extent that the Liquidating Trust is required under the Plan of Reorganization or applicable law to obtain approval under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code, the Liquidating Trust shall promptly seek such approval.

22. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 19, or (b) the Settlement Agreement is not approved without modification (absent consent of the Parties) by the Bankruptcy Court, then the Settlement Agreement shall not go into effect and, as a result: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (ii) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

23. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

24. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

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

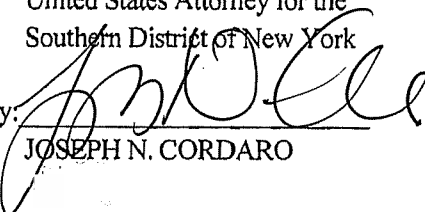
26. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the Southern District of New York) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:

FOR THE UNITED STATES OF AMERICA:


Date: 10/20/2014

PREET BHARARA
United States Attorney for the
Southern District of New York

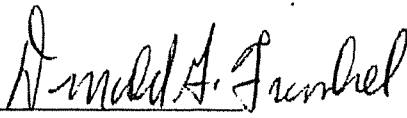
By: 
JOSEPH N. CORDARO

Assistant United States Attorney
86 Chambers Street, Third Floor
New York, NY 10007

Date:


SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

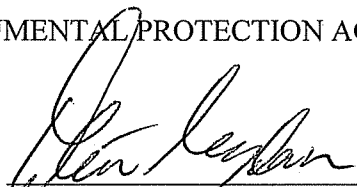
Date: 10/16/14


DONALD G. FRANKEL
Senior Counsel

ALAN S. TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 9/8/2014



WALTER MUGDAN

Director

Emergency and Remedial Response Division

EPA Region 2

Date: 9/8/2014

By: 

MICHAEL A. MINTZER

Assistant Regional Counsel

EPA Region 2

FOR THE LIQUIDATING TRUST, ON BEHALF OF ITSELF, GPMI AND GETTY
TERMINALS:

Date: 9/3/2014

By: 

Andrew Goldman, Esq.
Wilmer Cutler Pickering Hale & Dorr LLP
7 World Trade Center
New York, New York 10007

Counsel to the Liquidating Trustee