

Attachment 1: Draft Amended Agreement

RETIREMENT AGREEMENT

This **FIRST AMENDED RETIREMENT AGREEMENT** (the "Agreement") is made and entered into effective as of this day, ~~September 18th 2017~~TBD (the "Effective Date"), by ~~Pacific Ethanol Alto~~ Columbia, LLC, a Delaware limited liability company ("~~Pacific Alto~~"), ~~formerly Pacific Ethanol Columbia, LLC~~, and the Port of Morrow, a municipal corporation of the State of Oregon ("Port"). ~~Pacific Alto~~ and Port are each referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, ~~Pacific Alto~~ leases property from Port to operate an ethanol production facility in the industrial park at the Port of Morrow ("Site");

WHEREAS, ~~Pacific Alto~~ holds a Site Certificate from the Oregon Energy Facility Siting Council (the "EFSC") that requires that ~~Pacific Alto~~ must post a bond to cover the cost of removing certain above ground improvements ("Improvements") from the Site upon termination of facility operations and further a condition that ~~Pacific Alto~~ remove all specified Improvements upon termination of facility operations;

WHEREAS, ~~Pacific Alto~~ and Port agree that any Improvements would continue to provide value after termination of facility operations and that the Site can be restored to a useful and non-hazardous condition suitable for further industrial use should the Improvements be left in place;

And WHEREAS, ~~Pacific Alto~~ and Port further agree that they would prefer any Improvements not chosen to be removed by ~~Pacific Alto~~ to remain at the Site and that Port will take over legal ownership and liability for such Improvements upon ~~Pacific's Alto's~~ termination of facility operations;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Transfer of Ownership and Conveyance of Improvements Upon Expiration of Site Certificate or Termination of Facility Operations. Upon termination (as defined in OAR 345-027-0110) of the Site Certificate, ~~Pacific Alto~~ shall transfer all of its rights, title and interest in all Improvements remaining on the Site to the Port at no cost, by executing and delivering to the Port a bill of sale, quitclaim deed or other instrument(s) reasonably requested by the Port to effectuate the conveyance (collectively, "Transfer Documents").¹ The Improvements will be conveyed to the Port in their AS IS, WHERE IS conditions with no representations or warranties whatsoever from ~~Pacific Alto~~ except as expressly set forth in this Agreement.

2. Acceptance of Liability for Improvements by Port and Indemnification of Pacific Alto. Port agrees to assume all legal liability for all remaining Improvements upon transfer of ownership from ~~Pacific Alto~~ to Port.

¹ The certificate holder must apply to the Council to terminate the site certificate within two years following permanent cessation of operation of the facility. If the certificate holder fails to apply to Council to terminate the site certificate, the Council may terminate the site certificate according to procedures described in OAR 345-0257-00200006(16).

Port shall defend, indemnify and hold harmless PacificAlto, its parent company, and all of their respective successors and assigns, its officers, directors, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgements, costs or expenses (including court costs and reasonable attorneys' fees) incurred by Pacific-Alto in connection with (i) Port's negligence, willful misconduct, fraud, or violation of law and (ii) any property damage, personal injury or death which results from Port's use of the Improvements after the effective transfer of ownership.

If requested by EFSC after transfer of the Improvements to the Port, the Port shall provide written confirmation to EFSC that the Port waives any claim, existing or future, that the State of Oregon or any of its agencies or departments, including without limitation EFSC, has any responsibility for removal of the Improvements from the Site; provided, however, that any sure waiver shall not prevent recourse to the Bond for payment of remediation costs pursuant to the terms of the Bond.

3. Public Statements Against the State of Oregon or EFSC. The Parties agree that neither Party may make any public statement asserting that the State of Oregon or EFSC have any legal obligation to remove any of the Improvements.

4. Conditions on Amendment or Early Termination and Third Party Beneficiary. The Energy Facility Siting Council ("EFSC") is an intended beneficiary of this Agreement. The Parties acknowledge that EFSC may rely on this Agreement in issuing a final order on Pacific's-Alto's Request for Amendment 1 to the Site Certificate. The Parties further agree that this Agreement may not be amended or terminated without prior approval of EFSC, or in the alternative:

- (a) Submit to the Oregon Department of Energy of a bond or letter of credit in the amount of \$852,000 (in 4th Quarter 2016 dollars, inclusive of any existing bond or letter of credit already held by the EFSC under the Site Certificate) naming the State of Oregon, acting by and through the EFSC, as beneficiary or payee and consistent with the following terms:
- (b) The certificate holder shall adjust the amount of the bond or letter of credit to present value annually, using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published by the Oregon Department of Administrative Services' "Oregon Economic and Revenue Forecast," or by any successor agency ("Index"). If at any time the Index is no longer published, the EFSC shall select a comparable calculation to adjust Fourth Quarter 2016 dollars to present value.
- (c) The form of bond or letter shall be subject to prior approval by EFSC.
- (d) The issuer of the bond or letter of credit shall be subject to prior approval by EFSC.
- (e) The certificate holder shall describe the status of the bond or letter of credit in the annual report submitted to the EFSC under Condition (VI.B.6).

The bond or letter of credit shall not be subject to revocation or reduction before retirement of the facility.

The terms of Condition 4(a) through 4(c) shall apply to Pacific-Alto if there has been a violation of the terms or conditions of the site certificate for which sanctions may be imposed, as described in OAR 345-029-0000, and shall be complied with within 90-days following the Department's issuance of a notice of violation.

5. Representations and Warranties of PacificAlto. Pacific-Alto represents and warrants that, as of the effective date of the transfer of ownership of the Improvements to the

Port:

- 5.1 Title and Authority. Pacific-Alto has good title to the Improvements, free and clear of liens and encumbrances other than liens or encumbrances that benefit the Port, if any.
- 5.2 Authority. Pacific-Alto is the owner of the Improvements and has the right and authority to transfer ownership of the Improvements to the Port.
- 5.3 Condition. The Site and the Improvements are in a useful, non-hazardous condition suitable for industrial use. There exists no contamination of the Improvements or the Site resulting from the acts or omissions of Pacific-Alto or Pacific's-Alto's agents or employees during the term of Pacific's-Alto's lease of the Site that has not been fully remediated in compliance with Environmental Law. As used herein: (a) "Environmental Law" means any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment; and (b) "Hazardous Substance" means any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law, including without limitation petroleum products.

6. Personal Property of PacificAlto. Within thirty (30) days after delivery of the Transfer Documents to the Port ("Removal Period"), Pacific-Alto shall remove all moveable personal property and trade fixtures from the Site, including without limitation any and all chemicals, fuels and other Hazardous Substances. If Pacific's-Alto's lease of the Site has expired or terminated, Pacific-Alto shall have an irrevocable license to go into the Site for the Removal Period to effectuate the removal required by this Section. Any personal property of Pacific-Alto remaining on the Site at the end of the Removal Period shall be deemed abandoned by Pacific-Alto and may be removed, store or disposed of by the Port and Pacific's-Alto's expense.

~~7. Condition Precedent. The effectiveness of this Agreement shall be conditioned upon the approval by EFSC of Amendment No. 1 to Pacific's Site Certificate in substantially the form requested by Pacific's request to EFSC dated April 2016, and the expiration of any appeal periods applicable thereto with either no appeals having been filed or any appeals having been resolved to a final conclusion that is satisfactory to Pacific in its sole discretion. The foregoing includes without limitation, EFSC's approval of Pacific's requests to: (a) reduce the amount of the Bond to \$295,172 to cover the cost of any potential remediations of environmental hazards at the Site; and (b) amend the conditions of approval of the Site Certificate so that upon expiration of the Site Certificate, the Site needs to be restored to useful, non-hazardous condition suitable for industrial use.~~

General Provisions.

Governing Law. This Agreement and the rights and obligations of the Parties are governed by and interpreted in accordance with the laws of the State of Oregon (without regard to principles of conflicts of law).

~~Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association. The number of arbitrators shall be one. The place of arbitration shall be Portland, Oregon. Oregon law shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If any dispute, controversy, or claim arises between the parties related to or arising out of this Agreement, it shall be settled by arbitration as follows.~~

- ~~(a) The party requesting arbitration shall submit in writing the request for arbitration. Such~~

- arbitration shall be before one disinterested arbitrator if one can be agreed upon, by an arbitrator appointed by the presiding circuit court judge of Umatilla County.
- (b) The arbitration shall proceed in accordance with Oregon statutes governing arbitration and the award of the arbitrator shall have the effect therein provided. The arbitration shall take place in Morrow County, Oregon. Costs of the arbitration shall be shared equally by the parties, but each party shall pay the fees of the arbitrator it selects if three arbitrators are used, and each party shall pay its own attorney fees.
 - (c) The arbitrator shall have authority to issue preliminary and other equitable relief.
 - (d) Discovery proceedings of the type provided by the Oregon Rules of Civil Procedure shall be permitted both in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery shall be resolved by the arbitrator.
 - (e) The arbitrator shall have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses
 - (f) The arbitrator shall have the authority to award any remedy or relief that an Oregon court could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator shall not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or loss incurred
 - (g) The award shall be in writing, shall be signed by the arbitrator, and shall include a statement regarding the disposition of any claim.

Authority. Each Party warrants that its signatory to this Agreement has any and all legal authority to bind the signatory's Party to this Agreement.

Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart hereof.

Parties in Interest. Each and every covenant, term, provision, and agreement is binding on and inures to the benefit of the Parties and their heirs, successors, assigns, and legal representatives.

Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement. There are no agreements, understandings, restrictions, representations, or warranties between the Parties other than those in this Agreement or referred to or provided for in this Agreement.

Further Effect. The Parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

Correspondences to the Appropriate Parties should be Direct to:

If to ~~Pacific Ethanol~~ Alto:

If to Port:

~~Pacific Ethanol~~ Alto Columbia, LLC
c/o ~~Pacific Ethanol~~ Alto Ingredients, Inc.
400 Capital Mall, Suite 2060
Sacramento, CA 95814
Attn: Chief Operating Officer

And

~~Pacific Ethanol~~ Alto Ingredients, Inc
400 Capital Mall, Suite 2060
Sacramento, CA 95817
Fax: 916-403-2785
Attn: General Counsel

(Signatures follow)

IN WITNESS WHEREOF the Undersigned have executed this Agreement as of the date and year first above written.

~~Pacific Ethanol~~ Alto Columbia, LLC, Inc. _____

By:
Its:

Port of Morrow

By:
Its: