

AGREEMENT

This Agreement ("Agreement") is made and entered into as of this ___ day of March, 2020, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), on one hand, and the Pacific Maritime Association, 555 Market Street, Third Floor, San Francisco, California, 94105, acting for and on behalf of itself, and its membership as identified on Exhibit "A" ("PMA"), on the other hand.

1. City's Provision of Cleaning Solution and Conditions Applicable Thereto. PMA acknowledges receipt of certain cleaning solution from City's Harbor Department ("Cleaning Solution"), which constitutes good and valuable consideration for its promises and covenants herein. City provides such Cleaning Solution: (a) with no warranties, express or implied, for its fitness for any particular purpose, quality, quantity, merchantability, or otherwise; (b) with no representations, recommendations, or instructions concerning its use, except as may be provided on any labels affixed to the containers housing such Cleaning Solution; and (c) in express reliance on PMA's acknowledgement and voluntary assumption of the risks of receipt and use of the Cleaning Solution.

2. Release by PMA. As to City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliates, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing ("City Released Parties"), PMA forever waives and releases any and all of PMA's rights, claims, demands, damages, debts, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity, or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with the Cleaning Solution.

3. Indemnity by PMA. Except for the sole negligence or willful misconduct of City, PMA shall defend, indemnify and hold harmless the City Released Parties from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with the Cleaning Solution.

4. Advice of Counsel and Voluntary Execution. Each Party has freely and voluntarily read and executed this Agreement. Each Party has had this Agreement, its meaning, effect, significance and consequences, fully explained to them by their attorneys of choice and acknowledge that they fully understand the meaning, effect, significance and consequences thereof.

5. Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign this Agreement. Except for City and PMA, no other person, corporation, partnership or other entity shall have any rights hereunder as a third party beneficiary or otherwise, except to the extent specifically provided for herein.

6. Construction of Agreement. This Agreement shall not be construed against the Party preparing the same, shall be construed without regard to the identity of the person who drafted such, and shall be construed as if all Parties had jointly prepared this Agreement, and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

7. Governing Law/Venue. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. The proper venue for any dispute arising out of this Agreement shall be the Superior Court of California, County of Los Angeles.

8. Severability. Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or City charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the Parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the Parties as closely as possible.

9. Attorney's Fees. In the event of any action or proceeding brought by either Party against the other under this Agreement, the prevailing party shall be entitled to recover its attorneys' fees, if any, and costs in such amount as the court may adjudge reasonable.

10. Integrated Agreement. This Agreement contains the entire understanding and Agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement reference shall be deemed in any way to exist or bind any of the Parties. Each Party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

11. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one Agreement to be effective on the date first above written.

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

CITY OF LOS ANGELES HARBOR DEPARTMENT,
by its Board of Harbor Commissioners

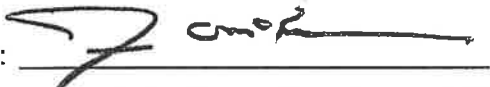
Dated: 3/23/20

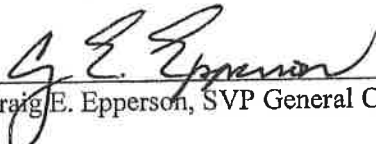
By: 
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

PACIFIC MARITIME ASSOCIATION

Dated: 3/23/2020

By: 
James C. McKenna, President and CEO
(Print/Type Name and Title)

Attest: 
Craig E. Epperson, SVP General Counsel and Secretary
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 2020
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By _____
STEVEN Y. OTERA, Assistant