

**PORT OF OAKLAND MARITIME AND AVIATION
PROJECT LABOR AGREEMENT
(MAPLA)**

ENTERED INTO BETWEEN
THE CITY OF OAKLAND, A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS,

AND THE

BUILDING & CONSTRUCTION TRADES COUNCIL
OF ALAMEDA COUNTY, AFL-CIO
AND ITS AFFILIATED LOCAL UNIONS

Reference Date:
February 1, 2016

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**PORT OF OAKLAND MARITIME AND AVIATION
PROJECT LABOR AGREEMENT**

RECITALS

This Maritime and Aviation Project Labor Agreement ("Agreement" or "MAPLA"), dated for reference purposes as of February 1, 2016, is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and the Building and Construction Trades Council of Alameda County ("Council") and its affiliated local Unions that have executed this Agreement, together with contractors and subcontractors of all tiers who shall become signatory to this Agreement by signing the Letter of Assent (attached as **Appendix A**).

The purpose of this Agreement is to promote efficiency of construction operations during the performance of Covered Project(s) (as defined in Article 2 (Scope of Agreement)), and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of Covered Project(s).

WHEREAS, the timely and successful completion of Covered Project(s) is of the utmost importance to the Port of Oakland ("Port") to meet its needs and to avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the Covered Project(s), including those to be represented by the Unions signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, it is recognized that the Covered Project(s) or any portion of it may involve multiple contractors and bargaining units on the job site at the same time over an extended period of time, thus increasing the potential for work disruption, without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the Port, the Unions and the Contractor(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns, or other interferences with work; and

WHEREAS, the Parties desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on Covered Project(s) by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) so that a satisfactory, continuous, and harmonious relationship will exist among the Parties; and

WHEREAS, the Parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise if Union and non-union workers of different employers were to work side by side on Covered Project(s), thereby leading to labor disputes that could delay completion of such work; and

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WHEREAS, the Parties place high priority on the recruitment, training and employment of historically disadvantaged residents of the Port's Local Impact Area (defined as the cities of Alameda, Emeryville, Oakland, and San Leandro), especially Oakland, for Covered Project(s), in part through the Parties' use, development, and implementation of comprehensive programs for MC3-certified pre-apprenticeship and Joint Labor-Management apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

WHEREAS, the Port also seeks to create business opportunities for small and disadvantaged companies and contractors in the LIA business community, especially for those located in Oakland; and

WHEREAS, the Agreement is not intended to replace, interfere with, abrogate, diminish, or modify existing local or national collective bargaining agreements in effect during the Agreement's duration, except to the extent that if the provisions of this Agreement are inconsistent with said collective bargaining agreements, the provisions of this Agreement shall prevail; and

WHEREAS, the Port is committed to provide open access to bidding opportunities for all contractors and to assure that an adequate supply of craft workers possessing the requisite skills and training are available to work on Port projects and to provide the Port with construction of the highest quality; and

WHEREAS, the contracts for Covered Project(s) will be awarded in accordance with Port Ordinances, procedures, and other applicable California law; and

WHEREAS, the Port has the absolute right to award its Construction Contracts for Covered Project(s) to the lowest responsive and responsible bidder; and

WHEREAS, the Parties pledge their full good faith and trust to work towards the mutually satisfactory completion of Covered Project(s) consistent with the Parties' priorities as outlined above;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1 DEFINITIONS

Unless otherwise defined in specific sections of this Agreement, all capitalized terms shall have the following meanings:

- 1.1 "Agreement" or "MAPLA" means this Maritime and Aviation Project Labor Agreement.
- 1.2 "Board" means the City of Oakland Board of Port Commissioners, as set forth in the City of Oakland Charter Article VII.
- 1.3 "Completion" means that point at which there is Final Acceptance by the Port of all work

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or improvements required to be completed under a Construction Contract. "Final Acceptance" shall mean that point in time at which the Port has determined upon final inspection that all improvements or all work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals, and data have been submitted and training completed in accordance with the contract documents and the Port has executed a written acceptance of the Covered Project(s).

- 1.4 "Construction Contract" means a contract for which bids have been advertised, or invitations or solicitations for bids or proposals have been made by the Port during the term of this Agreement. For on-call contracts, "Construction Contract" means the particular instance of an on-call contract. For a hybrid professional services contract, "Construction Contract" means the Covered Project portion of the hybrid professional services contract.
- 1.5 "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, and including the Project Manager, Construction Manager, General Contractor, Prime Contractor, or the equivalent, and their successors and assigns, that enter into a Construction Contract with the Port or into a contract with a Tenant for Covered Project(s), and any of its contractors or subcontractors of any tier.
- 1.6 "Council" means the Building and Construction Trades Council of Alameda County.
- 1.7 "Covered Project(s)" means the projects set forth in Article 2 (Scope of Agreement).
- 1.8 "Disadvantaged Workers" shall mean those LIA residents, prior to commencing Covered Project(s), who meet at least one of the following barriers to employment: (1) is currently homeless; (2) is currently a custodial single parent; (3) is currently receiving public assistance; (4) has a criminal record or other criminal justice system involvement; (5) has been continuously unemployed for the previous one year; (6) has been emancipated from the foster care system; (7) is a veteran of the U.S. military; or (8) resides in an Economically Disadvantaged Area. "Economically Disadvantaged Area" means a zip code within the LIA and that includes a census tract or portion thereof in which the median household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census, and as updated by the U.S. Census Bureau in its Median Annual Household Income data by census tract in the American Community Survey.
- 1.9 "Joint Administrative and Social Justice Trust Committee" or "JASTC" means the committee described in Article 6 (Joint Administrative and Social Justice Trust Committee).
- 1.10 "Joint Apprenticeship Training Committee" or "JATC" means a Labor-Management apprenticeship program that is registered with the State of California's Division of Apprenticeship Standards.

- 1.11 "Letter of Assent" means the agreement executed by each and every Contractor as a condition of performing Covered Project(s) at the Port, a form of which is attached hereto as **Appendix A**.
- 1.12 "List Trades" currently refers to the following unions: International Brotherhood of Electrical Workers, Local No. 595; Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Sheet Metal Workers' International Association, Local Union No. 104; Sprinkler Fitters and Apprentices, U.A. Local 483; Glaziers, Architectural Metal & Glass Workers Local Union No. 169; and International Union of Elevator Constructors Local Union No. 8; unless otherwise agreed to by the Parties.
- 1.13 "Local Business Area" or "LBA" mean all of Alameda County and Contra Costa County.
- 1.14 "Local Impact Area" or "LIA" mean the cities of Oakland, Alameda, Emeryville, and San Leandro.
- 1.15 "MAPLA Administrator" means the person(s), business entity(ies), or Port employee(s) designated by the Port to oversee the implementation of and compliance with this Agreement.
- 1.16 "Master Agreement" or "MLA" mean the Master Collective Bargaining Agreement or Schedule A of each craft Union signatory hereto. The Unions for which there are Master Agreements are listed in **Appendix B**.
- 1.17 "New Hire Apprentice" means a LIA resident who, on the date that such individual is hired or assigned to perform the applicable Covered Project(s), is newly enrolled (for fewer than two years for List Trades and fewer than one year for all other non-List Trades) in a Joint Labor-Management apprenticeship program that is currently registered with the State of California's Division of Apprenticeship Standards.
- 1.18 "Owner" means either the Port or a Tenant who contracts for Covered Project(s).
- 1.19 "Parties" means the Board, the Port, the Council, the Unions that are signatory to the Agreement, and Contractor(s) who become signatory to this Agreement by executing a Letter of Assent.
- 1.20 "Port" means the Port of Oakland, a department of the City of Oakland as set forth in City of Oakland Charter, Article VII, Section 700, and includes Port Department employees, agents, and administrative staff.
- 1.21 "Social Justice Committee" or "SJC" means the committee described in Article 5 (Social Justice Committee).
- 1.22 "Tenant" means an individual or business entity that holds a lease, license, concession agreement, space-use permit, or grant of the right of entry for use or occupancy of Port property in the Port's Maritime or Aviation areas (as defined by the Port), other than

short term rental agreements such as “temporary rental agreements” for which the Port’s Executive Director has been delegated the authority to enter into by the Board pursuant to its Bylaws and Administrative Rules.

- 1.23 “Union,” “Unions,” or “Signatory Unions” mean the Council and any affiliated Union signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.
- 1.24 “Workforce Development Center” means any construction-related community-based organization, designated on an annual basis by the JASTC that provides referrals of qualified LIA/LBA residents for construction work and/or provides MC3-certified pre-apprenticeship training to LIA/LBA residents. Workforce Development Centers, in addition, may serve as a resource for preliminary orientation, assess construction aptitude, refer to pre-apprenticeship and apprenticeship programs or hiring halls, perform needs assessment, counsel and mentor, provide a support network for women, and/or provide employment opportunities and other needs as identified for prospective workers.

ARTICLE 2 SCOPE OF AGREEMENT

- 2.1 Covered Project(s). Except for the exclusions described in Section 2.3, this Agreement covers contracts for On-Site Construction Work (as defined in Section 2.2) to the fullest extent and only within the craft jurisdiction of the Unions as set forth below:
- (a) a Construction Contract that appears on the Capital Improvement Program list for the Maritime Division or Aviation Division of the Port and that has an estimated cost that exceeds \$150,000; or
 - (b) a contract between a Tenant in the Port’s Maritime or Aviation areas and a Contractor that has an estimated cost that exceeds \$150,000 and for which the Port issues a building permit during the term of this Agreement.
- 2.2 On-Site Construction Work. “On-Site Construction Work” consists of the work described below, which shall be covered by this Agreement:
- 2.2.1 Work Within Craft Jurisdiction. All work performed on-site within the current craft jurisdiction of the signatory Unions, as defined by the MLAs or prevailing wage determinations in effect as of the effective date of this Agreement. Such work includes: all site preparation, field surveying, remediation, construction, alteration, retrofit, demolition, installation, improvement, painting or repair of buildings, structures, and other works of improvement, and related activities, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, modular furniture installation, and all soils and materials testing

and inspection. The Parties agree that work or jurisdiction added to an MLA or prevailing wage determination after the effective date of this Agreement shall not be covered by this Agreement (except for Construction Trucking Work under Section 2.2.4) except by mutual agreement of the Port and the Council. The term "on-site" referred to in this Section 2.2.1 and in Section 2.2.2 (Startup and Commissioning) means work performed on the construction project site, temporary yards, and other areas outside the construction project site established solely for and dedicated to Covered Project(s), as well as batch plants constructed solely to supply materials to Covered Project(s) at the Port.

- 2.2.2 Startup and Commissioning. All on-site craft work typically performed by signatory Union craft labor that is part of startup and commissioning, including, but not limited to, system flushes and testing, balancing, loop checks, rework and modifications, functional and operational testing up to and including the final running test prior to the Owner accepting the system from the Contractor. It is understood that the Owner's personnel, manufacturer's and/or vendor's representatives, and/or plant operating personnel may supervise and direct the startup, commissioning, rework and modification activity, and that the craft work is typically performed as part of a joint effort with these supervisory representatives and personnel. A manufacturer or its representatives may perform industry standard startup and commissioning work to satisfy its guarantee or warranty on a piece of equipment, consistent with Section 11.2 of Article 11 (Management's Rights).
- 2.2.3 On- and Off-Site Fabrication. All on-site fabrication work over which the Port or Contractor(s) possess the right of control (including work done for the project in any temporary yard or area established for the project). Additionally, this Agreement covers any off-site work, including fabrication necessary for Covered Project(s), that is covered by a current MLA or local addenda to a national agreement of the applicable Unions that is in effect at the effective date of this Agreement (i.e., Sheet Metal Workers' International Association, Local Union No. 104 (SMART) and United Association, Local 342.) To the extent possible, such work will be performed in the nine-county San Francisco Bay Area consisting of Alameda, Contra Costa, Solano, Napa, Sonoma, Marin, San Francisco, San Mateo, and Santa Clara Counties.
- 2.2.4 Construction Trucking. The delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble ("Construction Trucking Work") to the fullest extent and only as provided by law and the prevailing wage determinations of the California Department of Industrial Relations. Contractor(s), including brokers, of persons providing Construction Trucking Work shall provide certified payroll records to the Port within ten (10) days of written request or as required by bid specifications, to the fullest extent required by law or consistent with Port practice and policy. Construction Trucking Work

shall also be governed by the terms of **Appendix F** (Addendum and Memorandum of Agreement Regarding Construction Trucking Work).

- 2.3 Items specifically excluded from the scope of this Agreement include the following:
- 2.3.1 Work of non-manual employees, including but not limited to, superintendents, supervisors above the level of General Foreman, construction managers, staff engineers, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees. The Port acknowledges that the exclusions from coverage regarding “superintendents, supervisors above the level of General Foreman, staff engineers, quality control and quality assurance personnel” do not cover testing and inspecting work performed at the site of construction.
 - 2.3.2 Off-site testing facilities or off-site activities of inspection or testing services Contractors, including “runners” whose duties may cause them to be present at site(s) where Covered Project(s) is/are performed, but are present only incidentally to the performance of their normal work and who are not performing any testing or inspection work.
 - 2.3.3 All work performed by railroad, shipping lines, airlines, terminal operators, concessionaires, or stevedoring companies. Operation of equipment and machinery owned or controlled and operated by any non-Port entity, except where such equipment is being operated to perform Covered Project(s).
 - 2.3.4 All employees of design teams or any other consultant of the Port for, architectural/engineering design services and other professional services not expressly covered by the Agreement.
 - 2.3.5 Any work performed on or near or leading to or onto the site(s) of Covered Project(s) and undertaken by state, county, city, or other governmental bodies, or their contractors; or by public utilities or their contractors.
 - 2.3.6 Non-construction support services contracted by the Owner or the MAPLA Administrator in connection with Covered Project(s).
 - 2.3.7 All work by employees of the Port or by railroad or shipping lines, airlines, terminal operators, concessionaires, or stevedoring companies doing business at the Port.
 - 2.3.8 Construction work ancillary to Covered Project(s) but contracted by others. When the MAPLA Administrator is informed of such construction work, it

will notify the Council as soon as possible thereafter, but not later than twenty-four (24) hours prior to the commencement of such work.

2.3.9 Poles and billboards are within the jurisdiction of the Port's Commercial Real Estate Division and therefore are excluded from this Agreement.

2.4 For any Covered Project(s) for which the Port believes there may be insufficient bidders, the Port may refer the issue to the Council. Within five (5) working days of notice from the Port, the Port and the Council shall meet and attempt to resolve the issue.

2.5 Work Notices.

2.5.1 Port Work Notice. Immediately upon determining which company is the apparent low bidder for any Construction Contract, and not later than 48 hours after such determination, the Port shall be responsible for notifying the Council of the identity of the apparent low bidder and the next two apparent low bidders for all such work. The Port shall notify the Council no later than 48 hours after awarding Construction Contracts of the identity of the work in question and the Contractor to whom such contract was awarded. The Port shall notify the Council no later than 24 hours after issuing a notice to proceed to any Contractor that such notice has issued and shall provide the Council with a copy of such notice to proceed.

2.5.2 Tenant Work Notice. The Port shall notify the Council of the details of all Covered Project(s) to be performed by Tenants within 5 business days of the Tenant's submission of a complete permit application to the Port of the contemplated work, unless the work is to be performed in fewer than 48 hours, in which case the Port shall immediately notify the Council that the Tenant is commencing work.

2.6 This Agreement shall be limited to work within the scope of this Agreement, as set forth in this Article, for which bids have been advertised, or invitations or solicitations for bids or proposals have been made by the Port during the term of this Agreement. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work, or function awarded to any Contractor before the effective date of this Agreement or which may be performed by the Owner for its own account on the property or in and around the construction site.

2.7 Covered Project(s) within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 12 (Work Stoppages and Lockouts), 13 (Grievances), and 14 (Jurisdictional Disputes) shall apply to such work.

- 2.8 To the fullest extent allowable by law and by federal agencies, MAPLA will apply to Covered Project(s) funded in whole or in part by federal financial assistance or grants. However, any MAPLA provisions disallowed by federal agencies – such as (without limitation) binding arbitration or penalties that enforce local hire provisions – shall not apply to Covered Project(s) funded in whole or in part by federal financial assistance or grants. The JASTC will meet and confer to create appropriate and legal replacement provisions within the federal agencies' requirements.
- 2.9 No work authorizations, project, or bid may be split or separated into smaller work authorizations, projects, or bids for the purpose of evading the application of this Agreement.

ARTICLE 3 EFFECT OF AGREEMENT

- 3.1 By executing this Agreement, the Unions and the Port agree to be bound by each and all of the provisions of the Agreement.
- 3.2 This Agreement shall be included in the bid documents as a condition of the award of all Construction Contracts.
- 3.3 By accepting the award of a Construction Contract, the Contractor agrees to be bound by every provision of this Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as **Appendix A**.
- 3.4 The Owner, the MAPLA Administrator, and/or Contractors, as appropriate, have the absolute right to award contracts or subcontracts on Covered Project(s) notwithstanding the existence or non-existence of any MLAs between the prospective Contractor and any Union party, and provided that such Contractor is willing, ready and able to comply with this Agreement and shall execute a Letter of Assent (in the form attached as **Appendix A**), should such Contractor be awarded Covered Project(s).
- 3.5 At the time that any Contractor enters into a subcontract with any subcontractor to perform Covered Project(s), the Contractor shall require the subcontractor as a precondition of accepting an award of Covered Project(s) to agree in writing, by executing the Letter of Assent (in the form attached as **Appendix A**), to be bound by every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting.
- 3.6 Any dispute as to the applicable source between this Agreement and any MLA for determining the wages, hours, and working conditions of employees for Covered Project(s) shall be subject to resolution under the procedures established in Article 13 (Grievances). It is understood that this Agreement, together with the referenced MLAs, constitutes a self-contained, stand-alone agreement and that, by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local,

area, or national agreement as a condition of performing work within the scope of this Agreement.

3.7 Subcontracting.

3.7.1 With regard to any Contractor that is independently signed to any MLA, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in Section 3.7.2 of this Section.

3.7.2 If a craft union (as used in this Section, "Aggrieved Union") believes that an assignment of Covered Project(s) has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its MLA as permitted by Section 3.7.1, the Aggrieved Union may submit a claim under the jurisdictional resolution process contained in Article 14 (Jurisdictional Disputes), and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft union under the subcontracting clause of its MLA, as permitted under Section 3.7.1, shall be valid and fully enforceable by that craft Union unless it conflicts with a jurisdictional award made pursuant to this Agreement. If the award made under the MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void ab initio.

3.8 This Agreement shall only be binding on the Parties and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such Party. Each Contractor and its successors and assigns, shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement.

3.9 The liability of any Contractor and the liability of the separate signatory Unions shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other signatory Union(s). The Unions and Council agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, MAPLA Administrator, and/or any Contractor.

3.10 The provisions of this Agreement, including the MLAs that are incorporated herein by reference, shall apply to the work covered by this Agreement notwithstanding the provisions of any other local, area, and/or national agreements that may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a MLA, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a MLA and is not covered by this Agreement, the provisions of the MLA shall prevail.

- 3.11 None of the provisions of this Agreement shall be construed to prohibit or restrict the Port or its employees from performing work not covered by this Agreement on or around the construction site. As areas of Covered Project(s) are accepted by the Owner, the Agreement shall have no further force or effect on such items or areas except where the Contractor is directed by the Owner to engage in start-up, repairs (including warranty work by the Contractor but excluding any warranty work as set forth in Article 11 (Management's Rights)), or punch list modifications to work by the Contractor.
- 3.12 It is understood that the Owner, at its sole option, may terminate, delay, or suspend any and all portions of the Covered Project(s) at any time.

ARTICLE 4 PRE-JOB CONFERENCES

- 4.1 Prior to the commencement of any Covered Project(s), the MAPLA Administrator shall notify the Council of the need to convene a pre-job conference. Every effort shall be made to hold such conference in a timely manner (minimum of 7 days) prior to the commencement of each and every construction phase or construction contract for the Covered Project(s). The pre-job conference shall be conducted by the Council and held at a location selected by the Council that is reasonably accessible for all attendees and is ADA-compliant. Such pre-job conference shall be attended by a representative each from the participating Contractor(s) and affected Union(s) and the MAPLA Administrator.
- 4.2 All Contractor(s) at all tiers that are required to participate in the pre-job conference shall be prepared to make craft assignments of work and to discuss in detail all issues that may impact or are relevant to the particular construction work being performed and shall include the following information:
- (a) A listing of each Contractor(s)'s scope of work, including the estimated start and completion dates;
 - (b) A listing of all subcontractors performing work under the direction of each Contractor(s) participating in the pre-job conference;
 - (c) The estimated number of craft workers required to perform the work;
 - (d) A copy of the signed Letter of Assent for each Contractor(s); and
 - (e) A listing of all specific work to be performed by the employees of an equipment vendor or manufacturer to protect the warranty on such equipment, as set forth in Section 11.2 of Article 11 (Management's Rights).
- 4.3 Craft workers shall not be required to attend the pre-job conference.

ARTICLE 5
SOCIAL JUSTICE COMMITTEE

- 5.1 The Parties have agreed to various provisions of the Agreement to achieve the inclusion of historically disadvantaged businesses and individuals in the contracting and employment opportunities created by the Covered Project(s). In order to implement and monitor the progress of these social justice provisions, the Port and the Unions, in recognition of their mutual commitment to and the partnership they have established to achieve those goals, shall form a Social Justice Committee ("SJC"). The SJC will serve as the central forum for representatives of all interested or affected parties to exchange information and ideas and to advise the JASTC concerning the operation and results of the Port Social Justice Program and the ongoing role of this Agreement as an integral component of the Port's program. As part of these responsibilities, the SJC will assess the obstacles to success of achieving inclusion of disadvantaged workers in the construction opportunities and shall make recommendations for a program to overcome some of those obstacles.
- 5.2 Membership and Organization.
- 5.2.1 The Port and the Council shall mutually agree to and appoint representatives of all interested segments of the community to the SJC, which will include local, minority, and female business organizations, community-based organizations, training providers (i.e., MC3-certified pre-apprenticeship programs operating in the LIA and/or serving primarily residents of the LIA), Port employees, the Council, the Unions signatory hereto, the MAPLA Administrator, and Contractors participating under this Agreement.
- 5.2.2 The SJC will establish its rules of procedure.
- 5.2.3 The MAPLA Administrator shall chair the SJC.
- 5.3 Meetings.
- 5.3.1 The SJC will meet monthly or more frequently at the call of the Chair. The meetings shall be open to the public.
- 5.3.2 The Chair will establish agenda topics with input from the SJC and the Chair will send notices of meetings with the agenda in advance of the meetings to the SJC members.
- 5.3.3 The meetings will receive reports and consider work progress and practices, MSBE utilization, pre-apprentice recruitment, training and referral, apprentice development and utilization, and other issues of concern to the SJC.
- 5.3.4 The MAPLA Administrator and the Contractors shall report on monthly progress on these issues and provide ongoing workforce projections for their work.

5.4 Relation to the JASTC.

5.4.1 The SJC has the right to refer to the JASTC concerns about a Party's compliance with the Agreement's provisions relating to the utilization of LIA residents and businesses on Covered Project(s).

5.4.2 The SJC shall make advisory recommendations to the JASTC on elements of a Social Justice Program.

5.5 Actions by the SJC. Any action taken by the SJC will not be deemed official until it has been ratified by the JASTC.

ARTICLE 6

JOINT ADMINISTRATIVE AND SOCIAL JUSTICE TRUST COMMITTEE

6.1 The Parties recognize the necessity for cooperation and communication between Labor and Management, and the elimination of disputes and misunderstandings among the Parties. To this end, a representative of the MAPLA Administrator will meet monthly with the representatives of the signatory Unions to promote harmonious and stable labor/management relations on Covered Project(s), and to ensure effective and constructive communications between the labor and management parties.

6.2 A MAPLA Joint Administrative and Social Justice Trust Committee ("JASTC") will be formed consisting of seven (7) representatives selected by the Council and seven (7) representatives selected by the Port, two of whom shall be co-chairs for the JASTC ("Co-Chairs"), one appointed by the Port and one appointed by the Council. A quorum shall consist of a minimum of two (2) representatives of the Port and two (2) representatives of the Council, plus the two Co-Chairs or their designated alternates.

6.3 The purpose of the JASTC will be to help resolve issues or disputes as to the interpretation and implementation of all Articles of this Agreement (except as otherwise set forth in this Agreement), including resolving issues presented to it by the Social Justice Committee or by the Parties. Any issue not resolved through the JASTC may be referred by any Party for formal resolution under Step 2 of the grievance procedure in Article 13 (Grievances).

6.4 Social Justice Trust Fund.

6.4.1 The Parties acknowledge the existence of the Social Justice Labor Management Cooperation Trust Fund ("Social Justice Trust Fund" or "Fund") utilized to manage the MAPLA Social Justice Program. Attached as **Appendix C** is a two (2) page document entitled "Social Justice Labor Management Cooperation Trust Fund" that discusses the amount for Contractors' payments to the Fund as well as the process for making such payments; also included is a single page attachment entitled "Social Justice Trust Fund Contribution Letter of Transmittal." The Contractor agrees to be

bound by that certain Declaration of Trust Establishing the Social Justice Labor Management Cooperation Trust Fund dated October 6, 2000, as such has been or may from time to time be amended or supplemented.

- 6.4.2 This Section establishes a Contractor payment in the amount of thirty cents (\$0.30) per hour worked or paid into the Social Justice Labor Management Cooperation Trust Fund according to the terms and conditions set forth in **Appendix C**.
- 6.4.3 Organizations eligible for funding by the Social Justice Trust Fund are those that prioritize placing Disadvantaged Workers for placement in the apprenticeship program.
- 6.5 The JASTC shall meet at the call of the Joint Chairs at least on a quarterly basis, or at the request of the Social Justice Committee, and will establish its own rules of procedure.
- 6.6 The Parties agree that the timely, efficient, and economical completion of Covered Project(s) is of utmost importance. Accordingly, the JASTC shall review, as needed, the operational impacts of the Agreement and any related issues that arise.
- 6.7 Grievance Subcommittee. The JASTC shall appoint a Grievance Subcommittee consisting of one (1) representative selected by the Port, and one (1) representative selected by the Council for the purpose of convening to confer in an attempt to resolve a grievance that has been filed consistent with Article 13 (Grievances) or issues referred to the JASTC by the Social Justice Committee. The Grievance Subcommittee shall meet as required to resolve grievances by majority vote with such resolutions to be final and binding on all signatories of the Agreement. Failure of any Party to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Grievance Subcommittee, if such award is made by a majority vote, and the hearing shall proceed ex parte. If the Grievance Subcommittee is unable to resolve the grievance, the grievance may be referred to arbitration in accordance with Step 4 of Article 13 (Grievances).

ARTICLE 7 UNION RECOGNITION AND REFERRAL

- 7.1 Contractors performing Covered Project(s) shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Union signatory hereto.
- 7.2 The Contractor has the right to determine the competency of all employees and the number of employees required, subject to the lawful manning provisions of applicable local MLAs (provided that such provisions will not be recognized if they unduly restrict the productivity or efficiency of the work and the full utilization of the workforce), and shall have the sole responsibility for selecting employees to be laid off, consistent with Section 10.5 of Article 10 (Union Security). The Contractor may reject any referral for

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any lawful reason, provided the Contractor complies with its reporting pay obligations in Article 15 (Wages, Benefits, and Working Conditions).

- 7.3 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s). The selection of craft foremen and/or general foremen, and the number of foremen required shall be entirely the responsibility of the Contractor.
- 7.4 In the event that the Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union and the MAPLA Administrator of the name and Social Security Number of any applicants hired from other sources and shall refer the applicant to the Union to comply with Article 10 (Union Security) and for dispatch to perform Covered Project(s).
- 7.5 The Contractor recognizes the Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on Covered Project(s).
- 7.6 To ensure that Contractors will have an opportunity to employ their "core" employees for Covered Project(s), the Parties agree that in those situations where a Contractor not a party to a current MLA with the signatory Union having jurisdiction over the affected work is a successful bidder, the Contractor may request by name, and the local will honor, referral of persons who have applied to the Union for Covered Project(s) and who demonstrate the following qualifications:
- (1) possess any license required by state or federal law for the Covered Project(s) to be performed;
 - (2) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
 - (3) were on the Contractor's active payroll for at least sixty (60) out of the one-hundred eighty (180) calendar days prior to the contract award; and
 - (4) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when

the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. In no event shall the use of this Section relieve Contractors of local hire obligations under this Agreement.

ARTICLE 8 WORKFORCE DEVELOPMENT AND LOCAL HIRING

General Provisions

- 8.1 The provisions of this Article apply to the extent they are consistent with the MLAs, hiring hall rules and procedures, and Joint Apprenticeship Training Committee ("JATC") rules and procedures. All employees shall comply with the Union security provision of the applicable MLA for the period during which they are performing Covered Project(s).
- 8.2 The hiring procedures, including related practices affecting apprenticeship and training, will be operated so as to facilitate the ability of the Contractors to meet the requirements of this Article.

Local Hire Provisions

- 8.3 The Parties agree to a goal that residents of the LIA will perform fifty percent (50%) of all hours worked, on a craft-by-craft basis but, if sufficient and qualified workers from the LIA are not available to achieve this goal, then residents of the LBA may be utilized. The Contractor shall make "Good Faith Efforts," as described below, to reach this goal through the utilization of normal hiring hall procedures listed in the MLAs and the resources of the Workforce Development Center(s).
- 8.3.1 The following items are a complete list (subject to revision by the JASTC except for item number one regarding the local hiring compliance form(s)) of the "Good Faith" steps that a Contractor shall take to demonstrate that it has made every effort to reach the local hiring goals of the MAPLA. All communication shall flow through the Contractor.

All Contractors shall:

1. Submit all required, local hire compliance plan form(s) mutually agreed upon by the Port and the Council, to the Prime Contractor, who will send copies to the Port outlining local workforce projections prior to the pre-job conference;
2. Attend a pre-job conference and discuss any local hire concerns before beginning Covered Project(s);
3. Use "Name Call", "Rehire", or other programs to reach local hiring goals when they are available as part of the hiring hall dispatch procedures;

4. Maintain copies of all dispatch requests for LIA residents along with Union responses;
 5. Request a worker from all currently designated Workforce Development Centers, consistent with Article 8, if the Unions cannot provide LIA residents to the Contractor upon request;
 6. Sponsor Disadvantaged Workers for apprenticeship, when possible; and
 7. Meet with the MAPLA Administrator or the Social Justice Committee ("SJC") upon request to resolve compliance issues.
- 8.4 If, after going through the dispatch procedures in the MLA, the Contractor hires workers from the Workforce Development Center(s) to meet the LIA/LBA goals, the Contractor will contact the applicable Union dispatcher to request that worker as a name-call, and the Union will agree to dispatch such worker from the Union hall. The Workforce Development Center(s) will provide the necessary confirmation to the Union dispatcher that the worker has received and accepted the dispatch and will also provide confirmation to the Contractor.

Apprentice Provisions

- 8.5 The Parties recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry. The Contractors shall employ apprentices from California State-approved joint apprenticeship programs in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
- 8.6 Subject to any restrictions contained in law and in the MLAs, the Parties agree to a goal that apprentices will perform a minimum of twenty percent (20%) of the total craft work hours consistent with Labor Code Section 1777.5 *et seq.*, as amended. The Union agrees to cooperate with the Contractor in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with provisions contained within the MLAs.
- 8.7 The Parties agree to a goal that only LIA residents shall be utilized as apprentices but, that if sufficient and qualified apprentices from the LIA are not available to achieve this goal, then LBA residents may be utilized. The Contractor shall make good faith efforts to reach this goal through the utilization of MLA hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through the Workforce Development Centers.
- 8.8 The Parties agree that available, capable, qualified, and willing Disadvantaged Workers are prioritized for placement as New Hire Apprentices. Consistent with this Article, the Parties agree that twenty-five percent (25%) of all apprentice hours shall be performed by Disadvantaged Workers, if available.

- 8.9 For each Construction Contract, a Contractor and/or its subcontractors must hire at least one (1) LIA resident as a New Hire Apprentice for the first one million dollars (\$1 million) of construction bid value. For each additional five million dollars (\$5 million) of construction bid value (beyond the first \$1 million), a Contractor and/or its subcontractors must hire at least one (1) additional LIA resident as a New Hire Apprentice. New Hire Apprentices must have graduated from an MC3-certified or JATC-established pre-apprenticeship program. The Port may request an exemption from or modification of this dollar amount from the JASTC for operational reasons.
- 8.10 The New Hire Apprentice must work at least five hundred (500) hours unless the Contractor demonstrates to the SJC that the New Hire Apprentice worked the maximum feasible hours available for the New Hire Apprentice. A Contractor shall maximize the Covered Project(s)' hours for the New Hire Apprentices and shall document and report those hours to the SJC, which will evaluate if the Contractor acted reasonably and in good faith. Further, for apprentices hired to comply with this goal, there will be no limitation on where such apprentices will work subsequent to being hired for the Covered Project(s). A Contractor cannot hire more than one (1) LIA resident exclusively for a single trade to satisfy the hiring goals in this Section unless required by the nature of the work or unless approved by the JASTC based on a recommendation of the SJC.
- 8.11 To meet the goals described in Sections 8.6, 8.7, 8.8, 8.9, and 8.10, a Contractor may qualify for up to one-half (1/2) credit toward the goal by employing LIA resident New Hire Apprentices on "other work" the Contractor is performing during the life of Covered Project(s) only. In order to receive such credit, the Contractor must submit certified payrolls and a Contractor Credit Request Form concerning the use of LIA residents (to be mutually agreed upon by the Port and the Council) as documentation to the MAPLA Administrator. No credit for other work will be allowed until the Contractor has demonstrated a good faith effort to reach the goal on Covered Project(s) and has received written approval from the MAPLA Administrator.
- 8.12 LIA apprentices hired to perform Covered Project(s) who have graduated and become journeypersons may continue to be counted towards the Apprenticeship goals in this Section by the Contractor(s) for the duration of the Covered Project(s) or until such time as they are laid-off in the normal course of staff reductions at the end of the Contractor's scope of work, whichever is sooner. In order to receive such credit, the Contractor must submit certified payrolls and a Contractor Credit Request Form concerning the use of LIA residents (to be mutually agreed upon by the Port and the Council) as documentation to the MAPLA Administrator.
- 8.13 A Contractor shall make all requests for apprentices in writing. The Contractor shall report the number of LIA resident New Hire Apprentices, date of hire and hours worked to the MAPLA Administrator as well as any information about the Contractor's hiring efforts. The MAPLA Administrator will evaluate such information to determine whether the Contractor has acted in good faith to comply with this Section.

- 8.14 Each Signatory Union will be responsible for dispatching/referring LIA residents as New Hire Apprentices to a Contractor on a priority basis if they are available, capable and willing to work on Covered Project(s). If apprentice(s) are not available, a Contractor shall request workers from the Workforce Development Center. If LIA apprentice(s) are still not available, the Contractor shall adhere to MLA dispatch procedures.
- 8.15 The Unions and intermediate bodies will afford New Hire Apprentices the most liberal time payment and organizing entry fees otherwise available for new member applicants with respect to such Union or intermediate body.

Port and Council Commitments

- 8.16 To the extent permitted by law, the Unions will recommend and encourage that the JATCs give credit for bona fide, provable past experience to applicants, including work for non-Union Contractors who become signatory to this Agreement, provided those applicants are willing to become Union members. The experience and practical knowledge of applicants will be reviewed and tested by the applicable JATC. Applicants will be placed at the appropriate stage of apprenticeship or at the journey level, as the case may be. Final decisions will be the responsibility of the applicable JATC.
- 8.17 The Unions agree, for the life of this Agreement, to the annual placement of no fewer than twenty-five (25) LIA residents, at least ten (10) of whom will enter the List Trades. The LIA residents must have graduated from MC3-approved pre-apprenticeship programs. Those include, but are not limited to, Cypress Mandela, Rising Sun, Future Build, City-Build and Richmond-Build. The responsibility of the Port, working with the Unions and applicable community based organizations, is to maintain and track a list of such graduates. These graduated LIA residents will become part of a pool of New Hire Apprentices for the Contractors to draw from for hiring on Covered Project(s). The requirements of this Section are in addition to any other goals and requirements discussed in this Article.
- 8.18 For purposes of monitoring and compliance with respect to the placement requirements of Section 8.17, the Port and the Unions agree to the following process:
- 8.18.1 Each January, the Council shall submit a Plan for Compliance (as used in this Article, the "Plan") to the SJC. The Plan will include projections/schedules for new apprentice intakes and available information on the projected use of Disadvantaged Workers. It may also include the Union's commitment to job fairs, financial or human support in tutoring of LIA residents for math exam preparation, opportunities for LIA residents to enroll in Union pre-apprenticeship programs, support of and participation in LIA high school construction academies, etc.
- 8.18.2 The Council will submit a bi-annual in-person report to SJC on the status of recruitment, placement and retention of LIA new apprentices, including details of outreach in the LIA, based on available information.

- 8.18.3 If a Union is found to be in apparent non-compliance with the Commitments in Section 8.17 the SJC will request that the MAPLA Administrator invite the Council Representative before it for a presentation on why the goals are not being met, along with a revised proposed Plan. Any revisions to the commitments must be approved by the JASTC.
- 8.18.4 If approved, the MAPLA Administrator will track the Council's adherence to the revised Plan, offering assistance with local resources, as requested. If the Unions fail to meet the goals of the revised Plan, the SJC may refer the issue to the JASTC. At any time before referral to JASTC, the Unions will have the opportunity to seek resolution in the SJC.
- 8.18.5 The Port will, in coordination with the Council and other agencies, commit to supporting organizations that facilitate at least two Construction Job fairs per year aimed at identifying LIA residents that would be eligible for apprenticeship and pre-apprenticeship programs. These job fairs should identify a minimum of 50 interested applicants. In addition, the Port will make every effort to advocate for funding for MC3-certified pre-apprenticeship programs with the goal of 50 LIA graduates. Finally, the Port will support educational institutions and community based organizations that teach LIA residents the necessary math skills to enter into the List Trades. These education institutions and community-based organizations will graduate a minimum of 20 students that are LIA residents. Failure of any of these program targets to materialize relieves the Council of its obligations specified in Section 8.17.
- 8.19 The Unions agree to coordinate with the Workforce Development Centers to create and maintain an integrated database of hiring list members from the LIA and LBA, and agree that such Union out-of-work-list registrants may use the Workforce Development Center(s) as a facility from which they may be referred for Covered Project(s). Further, the Parties agree, that a Contractor may use the Workforce Development Center(s) as a resource for identifying LIA/LBA Union out-of-work-list registrants who could be made subject to applicable name call for the purpose of meeting the LIA/LBA hiring goals. A Contractor will contact the applicable Union dispatcher to request a name-call worker, and the Union will dispatch such a worker from the Union hall. The Workforce Development Center(s) will provide the necessary confirmation to the Union dispatcher that the worker has received and accepted the dispatch and will also provide confirmation to the Contractor. Contractors shall also use the Workforce Development Centers for the purpose of sponsoring New Hire Apprentices, when applicable.
- 8.20 On a quarterly basis, the appropriate Joint Apprenticeship Coordinator(s) will be invited to the JASTC to discuss progress on the number and status of apprentices.
- 8.21 The Unions, Contractors, and the Port will cooperate with the City and other community-based organizations in the LIA in conducting outreach activities to recruit and refer local resident applicants to programs for which they are qualified or qualifiable. The Unions

will conduct outreach activities to recruit and refer qualified LIA resident applicants to apprenticeship programs.

Compliance and Enforcement

- 8.22 In cases where the MAPLA Administrator identifies potential noncompliance with this Article, the SJC shall, by majority vote, make recommendations for resolution to the JASTC. The JASTC may impose sanctions for failure to meet the goals or demonstrate "good faith" effort to do so.
- 8.23 The MAPLA Administrator will track all Contractor requests for LIA New Hire Apprentices, including use of Disadvantaged Workers, and the Union responses to such requests. The Union's failure to dispatch/refer such LIA New Hire Apprentices will be reported to the SJC on a monthly basis. Copies of the written requests shall be provided to the MAPLA Administrator within ten (10) days of request by the MAPLA Administrator.
- 8.24 In cases of alleged noncompliance with the goals of this Article, the issue may be referred to the SJC. The issue may then be referred by the SJC to the grievance procedure in Article 13 (Grievances). For purposes of resolution of any dispute arising under this Section, the Port, the Council, and the MAPLA Administrator shall be considered parties-in-interest with full right of participation in the grievance procedure.

Special Provisions

- 8.25 It is recognized that special procedures may be established by joint agreement of the Port and the Council for the purpose of implementing the requirements under this Article.
- 8.26 The Parties also agree that they will make good faith efforts to assist in the proper implementation of any related and applicable Executive Orders, regulations, or laws for the general benefit of LIA residents.

ARTICLE 9 MAPLA SMALL BUSINESS ENTERPRISE PROGRAM

- 9.1 The Parties recognize the Port's MAPLA Small Business Enterprise Program (the "Program") under which MAPLA Small Business Enterprises ("MSBEs") may be certified and be subject to the terms of this Article.
- 9.2 A MSBE is any economically independent and continuing business enterprise certified by the Port that:
- (A) Is located within Alameda County or Contra Costa County; and
 - (B) Is eligible for certification as a "small business" under the regulations of the State of California's Department of General Services, Office of Small Business

Procurement and Contracts (described in California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 8), as amended.

- 9.3 Program Cap. The aggregate value of all bid packages (or portions thereof) chosen prior to advertisement by the Owner for exclusion from coverage of this Agreement under the Program will not exceed ten million dollars (\$10,000,000) over the duration of this Agreement. The Port has the discretion to exclude all or any portion of a bid package in compliance with this Article.
- 9.4 Program Cap Increase Option. If the JASTC determines, in its sole judgment, that the objectives of this Program will be furthered by the addition of up to five million dollars (\$5,000,000) to the Program's \$10,000,000 limit, it shall make such a decision, by majority vote. The MAPLA Administrator shall give notice to all JASTC members when it determines that the \$10,000,000 Program limit is being neared, and schedule the matter for inclusion on the JASTC's agenda.
- 9.5 Trade Cap. The Program may not exempt more than 20% of the total work performed by any particular craft over 5 calendar years from the effective date of this Agreement, unless mutually agreed upon by the Port and the Council. There is no annual limitation so long as exemptions do not exceed the overall 5-year trade cap.
- 9.6 MSBE Graduation. Any MSBE certified under the Program that has been awarded more than one million dollars (\$1,000,000) in work exempted from the Agreement under the Program shall be deemed "graduated" from the Program and may no longer qualify for an exemption. Such graduated MSBEs will thereafter be required to comply with the Agreement for all future contract awards within the Scope of this Agreement. If a subcontractor receives work under a contract subject to this Program, and if said subcontractor would exceed the aggregation limit, it must sign the Letter of Assent to the MAPLA, and the Contractor issuing the subcontract must so notify the subcontractor.
- 9.7 Annual Review. The Port and the Council shall annually review usage of the Program, including the levels of the Program Cap and the Trade Cap described in this Article, and may revise Program requirements upon mutual agreement.
- 9.8 This Article applies to subcontractors of any tier, as well as to the prime Contractor. This Article in no way limits the eligibility of any Contractor to bid for and receive work that is covered by MAPLA. This Agreement in no way limits the rights of signatory Unions to seek to organize and utilize legal and administrative remedies not precluded by this Agreement, according to applicable federal and state law, and to secure adherence to any such successful effort.

ARTICLE 10 UNION SECURITY

- 10.1 The Contractor(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

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- 10.2 All construction persons who are employed by the Contractors shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on Covered Project(s) be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for Union membership in the applicable Union signatory to this Agreement and shall stay current with such working dues and fees for the duration of Covered Project(s).
- 10.3 Authorized representatives of the Union shall have access to sites on which Covered Project(s) is/are performed, provided that such representatives fully comply with posted visitor, security, and safety rules, and the environmental compliance requirements of the Covered Project(s). It is understood that because of the geographical scope of the Covered Project(s) and the type of work being undertaken on the site(s) of the Covered Project(s), visitors may be limited to certain times, or areas, or to being accompanied at all times while on the site(s) of the Covered Project(s); with this in mind, however, the Contractor recognizes the right of access set forth in this Section and such access will not be unreasonably withheld from an authorized representative of the Union.
- 10.4 Union Stewards.
- 10.4.1 Each signatory Union shall have the right to designate a working journey person as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.
- 10.4.2 In addition to his/her work as an employee, the steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward shall be concerned with the employees of the steward's Contractor and if applicable, subcontractors, and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his/her Union duties.
- 10.4.3 When a Contractor has multiple, non-contiguous work locations on the site, the Contractor may request, and the Union shall appoint, additional working stewards to provide independent coverage of one or more such locations. In such cases a steward may not service more than one work location without the approval of the Contractor and the Union.
- 10.4.4 The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.
- 10.5 The Contractor agrees to notify the appropriate Union forty-eight (48) hours prior to the layoff of a steward, except in the case of disciplinary discharge for just cause. If a

steward is protected against such layoff by the provisions of any MLA, such provisions shall apply to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the appropriate Union shall be notified immediately prior to dismissal or discipline by the Contractor.

- 10.6 On work where the personnel of the Port may be working in close proximity to the construction activities, the Union agrees that the Union representatives, stewards and individual workers will not interfere with the Port personnel.

ARTICLE 11 MANAGEMENT'S RIGHTS

- 11.1 The Contractor retains the full and exclusive authority for the management of its operations. Except as expressly limited by other provisions of this Agreement, the Contractor retains the right to direct the workforce, including the hiring, promotion, transfer, layoff, discipline or discharge for just cause of employees; the selection of foremen; the assignment and schedule of work; the promulgation of reasonable work rules; and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices that limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction.
- 11.2 There shall be no limitation or restriction by a signatory Union upon a Contractor's choice of materials, design or manufacture, nor, upon the full use and utilization of equipment, machinery, tools, or other labor saving devices. The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the Owner shall be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role. In limited circumstances requiring special knowledge of the particular item(s), when the Contractor, contracting with the vendor, demonstrates as specified in Section 4.2(e) of Article 4 (Pre-Job Conferences) that the work cannot be done by the craft workers, the work may be performed by employees of the vendor or manufacturer where necessary to protect a manufacturer's warranty. On-site repair done pursuant to a manufacturer's warranty may be performed by employees of the vendor or manufacturer.
- 11.3 The use of new technology, equipment, machinery, tools and/or labor-saving devices and methods of performing work may be initiated by the Contractor from time-to-time. Consistent with law and safe practices, the Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 13 (Grievances).

ARTICLE 12 WORK STOPPAGES AND LOCKOUTS

- 12.1 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason (including disputes relating to the negotiation or renegotiation of the MLAs and disputes directed at non-construction services companies at the site(s) of the Covered Project(s)) by the Union(s) or employees at the site(s) of, affecting the site(s) of, or because of, a dispute concerning Covered Project(s) against any Contractor covered under this Agreement and there shall be no lockout by the Contractor for any reason. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to the Agreement, or by any other organization or individual at the site(s) of the Covered Project(s) is a violation of this Article. With respect to any dispute, complaint, or grievance that is subject to the grievance and resolution procedures under this Agreement, the Contractor agrees that it will not authorize any lockout, slowdown, or stoppage of work and the Unions will not authorize any strike, slowdown, or stoppage of work.
- 12.2 If an MLA expires before the Contractor completes the performance of the Construction Contract and the Union or Contractor gives notice of demands for a new or modified MLA, the Union agrees that it will not strike on work covered under this Agreement and the Union and the Contractor agree that the expired MLA shall continue in full force and effect for work covered under this Agreement until a new or modified MLA is reached. If the new or modified MLA provides that any wages and benefits of the MLA that accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified MLA that are applicable to employees who were employed on the projects during the interim, with retroactive payment due within seven (7) days of the effective date of the modified MLA.
- 12.3 The Contractor may discharge any employee violating Section 12.1 of this Article and any such employee will not be eligible for rehire under this Agreement for a period of up to 120 days. The Union shall take all steps necessary to obtain immediate compliance with this Article but shall not be held liable for conduct for which it is not responsible.
- 12.4 Notice to Alleged Violator.
- 12.4.1 If the Contractor contends that any Union has violated this Article or Section 14.4 of Article 14 (Jurisdictional Disputes) or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), it will notify in writing the Senior Executive of the Union(s) involved, setting forth the facts that the Contractor contends violate the Agreement at least twenty-four (24) hours prior to invoking the procedures of Section 12.5 (Expedited Arbitration), with copies of such notice to the Council and to the MAPLA Administrator. The Senior Executive will immediately instruct, order and use the best efforts of his/her office to cause the cessation of any violation of

the referenced Article. A Union complying with this obligation shall not be liable for unauthorized acts of its members.

12.4.2 If the Union contends that any Contractor has violated this Article or Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), it will notify the Contractor and the MAPLA Administrator in writing setting forth the facts that the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 12.5 (Expedited Arbitration). It is agreed by the Parties that the term "lockout" for purposes of this Agreement does not include discharge, termination, or layoff of employees by the Contractor, nor does it include the Contractor's decision to terminate or suspend Covered Project(s) or any portion thereof for any reason, provided the Union is given thirty (30) days' notice. This provision will not affect the Contractor's right to suspend or terminate work on any portion of Covered Project(s) for operational or special circumstances.

12.5 Expedited Arbitration. Any party, including the Owner, whom the Parties agree is a party in interest for purposes of this Article, or the MAPLA Administrator, shall institute the following procedure, in lieu of or prior to any other contractual procedure or any action at law or equity, when a breach of Section 12.1 of this Article, Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances) is alleged:

12.5.1 A party shall notify the MAPLA Administrator of its intent to invoke this procedure. Upon receipt of such notification, the MAPLA Administrator shall immediately contact Barry Winograd, the permanent arbitrator under this procedure, to ascertain his availability to hear this matter on an expedited basis. In the event of his unavailability, the MAPLA Administrator shall contact Robert Hirsch, the alternate arbitrator, to ascertain his availability. If neither arbitrator is available, then a selection shall be made from the list of arbitrators and pursuant to the process set forth in Article 13.2, Step 4. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email, or telephone to the Port, the Council, and the party alleged to be in violation, and to the involved Union if a Union is alleged to be in violation.

12.5.2 Upon receipt of said notice, the arbitrator shall convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

12.5.3 The MAPLA Administrator shall select the place and time of the hearing and so notify the parties. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties to the hearing. A failure of any party or parties to attend said hearings shall

not delay the hearing of evidence or the issuance of any award by the arbitrator.

- 12.5.4 The sole issue at the hearing shall be whether or not a violation of Section 12.1 of this Article, Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), as applicable, has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or, except as expressly provided by Section 12.5.8 of this Article, to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such Award shall be served on all parties by hand or registered mail upon issuance.
- 12.5.5 Such award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 12.5.4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.
- 12.5.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.
- 12.5.7 The fees and expenses of the arbitrator shall be borne and shared equally by the involved parties.
- 12.5.8 Liquidated Damages. If the Arbitrator determines that a violation of Section 12.1 of this Article or Section 14.4 of Article 14 (Jurisdictional Disputes), has occurred in accordance with Section 12.5.4, the Union(s) shall, within eight (8) hours of receipt of the Award, direct all of the employees they represent to immediately return to work. If the trade involved does not return to work by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's Award, and the Union(s) has not complied with Section 12.3 of this Article, then the Union(s) shall be required to pay liquidated damages to the Owner in an

amount not less than \$10,000, or more than \$15,000, at the discretion of the arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$15,000, at the discretion of the arbitrator, for each subsequent shift thereafter on which the trade has not returned to work. If the Arbitrator determines that a lockout has occurred in violation of Section 12.1, and the Contractor does not return the locked-out employees to work within eight (8) hours of the Contractor's receipt of the Award, then the Contractor shall be required to pay liquidated damages to the Owner in an amount not less than \$10,000, or more than \$15,000, at the discretion of the Arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$15,000, at the discretion of the Arbitrator, for each subsequent shift thereafter on which the employees have not been returned to work. The Arbitrator is empowered to award back pay to the employees who were locked out. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Section 12.3 of this Article.

- 12.6 Procedures contained in Article 13 (Grievances) shall not be applicable to any alleged violation of this Article, with the single exception that any employee discharged for violation of Section 12.1, above, may resort to the procedures of Article 13 (Grievances) to determine whether or not he or she was engaged in that violation and what remedy should be assessed.
- 12.7 Nonpayment of Wages or Trust Fund Contributions. In the case of nonpayment of trust fund contributions or wages on Covered Project(s), the Union shall give the Port and the Contractor(s) three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when non-payment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paychecks as a result of insufficient funds, of the intent to withhold labor from the Contractor's or their subcontractor's workforce, during which time the Contractor(s) shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from Contractor(s) who has/have failed to pay fringe benefits or to meet its/their weekly payroll shall not be considered a violation of this Article. The Port or the Contractor(s) may elect to issue joint checks for the disputed delinquencies. Upon written notification to the Union(s) of this election by the Port or Contractor, the Union(s) shall promptly order all employees to return to work, or if within the one (1) business day's or three (3) business days' notice period as applicable, shall not withhold labor from Contractor(s) with which the Union has a dispute over, respectively, payroll or trust fund contributions. In the event the Union or any of its members withhold their services from such Contractor(s) or subcontractor(s), the Port or the General Contractor(s) shall have the right to replace such Contractor(s) or subcontractor(s) with any other Contractor(s) or subcontractor(s) who execute(s) the Letter of Assent. The Union and the Contractor(s) agree to use their best efforts to resolve any disputes over payroll or trust fund contributions in a prompt and expeditious manner in order to minimize any disruption of Covered Project(s).

- 12.8 The Port is a party in interest in all proceedings arising under this Article, Article 13 (Grievances), and Article 14 (Jurisdictional Disputes), and shall be sent contemporaneous copies of all notifications required under these Articles, and, at its option, may initiate or participate as a full party in any proceeding initiated under these Articles.

ARTICLE 13 GRIEVANCES

13.1 General Provisions.

- 13.1.1 Any question arising out of and during the term of this Agreement involving its interpretation and application (other than trade jurisdictional disputes or alleged violations of Section 12.1 of Article 12 (Work Stoppages and Lockouts), Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues, which shall be handled under the expedited arbitration procedures set forth in Article 12 (Work Stoppages and Lockouts)) shall be considered a grievance and subject to resolution under the procedures in this Article.
- 13.1.2 The MAPLA Administrator shall administer the processing of the grievance, including the scheduling and arrangement of facilities for meetings at Step 3 and above, facilitation of the selection of the arbitrator to hear the case, and any other administrative matters necessary to facilitate the timely disposition of the case.
- 13.1.3 A grievance shall be considered null and void if not brought to the attention of the party against whom the grievance is filed within fifteen (15) working days after the charging party knew or should have known of the event giving rise to the dispute. All timelines in this Article may be modified in writing upon mutual agreement of the involved parties.

- 13.2 Grievances between the Parties regarding provisions of this Agreement shall be settled or otherwise resolved according to the following Steps and provisions:

Step 1. (a) Employee Grievances. All disputes involving discipline and/or discharge of employees working on Covered Project(s) shall be resolved through the grievance and arbitration provision contained in the MLA for the craft of the affected employee. To the extent consistent with the relevant MLA, no employee working on Covered Project(s) shall be disciplined or dismissed without just cause.

(b) Grievances Between Parties. A representative of the grieving party and the party against whom the grievance is filed shall meet and attempt to resolve the grievance. In the event the matter remains unresolved within ten (10) working days of the initial notice to the other Party:

- (i) If the dispute is between the Unions and the Port, the grieving party shall refer the dispute to the JASTC for resolution. If the grievance is not resolved through the JASTC within ten (10) working days of referral, the grieving party shall reduce the grievance to writing and proceed to Step 2; or
- (ii) If the dispute is between any other Parties, the dispute shall be reduced to writing and proceed to Step 2.

Step 2. The Union representative, together with the International Union's representative (at the discretion of the International Union), the representative of the involved Contractor, and the Port representative shall meet within seven (7) working days of the referral of the dispute to Step 2 to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the grieving party shall refer the dispute to Step 3 within seven (7) working days after the Step 2 meeting.

Step 3. Within ten (10) working days of referral of the grievance to Step 3, the Grievance Subcommittee of the JASTC shall meet to confer in an attempt to resolve the grievance. The decision of the Grievance Subcommittee shall be final and binding upon all Parties. If the Grievance Subcommittee does not reach a majority decision within twenty (20) working days of referral, the grieving party may, within thirty (30) working days of referral, refer the dispute through the MAPLA Administrator for resolution at Step 4.

Step 4. At Step 4, the dispute shall be submitted to arbitration.

(a) The Parties agree that the Arbitrator who will hear the grievance shall be selected from the following arbitrators: Thomas Angelo, Robert Hirsch, Barbara Kong-Brown, William Riker, and Barry Winograd. The parties shall flip a coin to determine who shall strike the first name and shall then alternately strike names from the list and the last remaining name shall be the neutral third party Arbitrator who shall have the power to resolve the dispute in a final and binding manner. Should a party to the procedure fail or refuse to participate in the hearing, and if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award.

(b) The Arbitrator's award shall be final and binding on all parties to the arbitration. The costs of the arbitration, including the Arbitrator's fee and expenses, shall be borne equally by the parties to the arbitration. In the event that an arbitration is cancelled and such cancellation results in a cancellation fee from the arbitrator and/or court reporter, the party initiating the cancellation request or causing the cancellation shall bear the full costs of the cancellation fee, unless the parties agree otherwise.

(c) The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify amend, alter, add to, or subtract from, any provisions of this Agreement.

(d) The Port and/or the Council are parties in interest in all proceedings under this Article, and must be notified by the involved Contractor of all actions at Steps 2 and 3 and shall, upon its request, be permitted to participate fully in all proceedings at these steps. The Port and/or Council shall not be liable for any costs under Step 4 unless it had initiated the grievance.

(e) Grievances between a Union(s) and a Union(s)' signatory Contractor(s) involving interpretation or application of the MLA shall be governed by the grievance procedures contained in the MLA.

- 13.3 Should an arbitrator listed in Article 12 (Work Stoppages and Lockouts) or this Article no longer be working as a labor arbitrator, the Port and the Council shall mutually agree to a replacement arbitrator.

ARTICLE 14 JURISDICTIONAL DISPUTES

- 14.1 The assignment of Covered Project(s) will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (as used in this Article, the "Plan") or any successor Plan.
- 14.2 All jurisdictional disputes on Covered Project(s) between or among the Building and Construction Trades Unions and Contractors parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.
- 14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article 5, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.
- 14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, sympathy strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individual employees violating this Section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference prior to commencing Covered Project(s). The Port and the

MAPLA Administrator will be advised in advance of all such conferences. The Prime Contractor shall attend all such meetings and the Owner may participate if it wishes. Pre-job conferences for different Contractors may be held together.

ARTICLE 15

WAGES, BENEFITS, AND WORKING CONDITIONS

- 15.1 General Provisions. The Unions and Council shall help monitor compliance with wages, hours, and working conditions. This Article shall apply consistent with all applicable laws, with the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision), and with the working conditions set forth in the February 2015 Port of Oakland Standard Contract Provisions for Public Works Projects. The wages, hours, and other terms and conditions of employment on the Covered Project(s) shall be governed by the MLA of the respective crafts to the extent such MLA is not inconsistent with this Agreement.
- 15.2 Wages. All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rate determination. If a wage increase negotiated in a local agreement becomes the prevailing wage under state law, the Contractor will pay that rate retroactive to the effective date of the locally negotiated wage increase. If the prevailing wage laws are repealed during the term of this Agreement, the Contractor shall pay the wage rates established under the MLAs, except as otherwise provided in this Agreement.
- 15.3 Wage Payments. All employees covered by this Agreement shall be paid by check or, at the employee's option, by direct deposit and shall be paid no later than the end of the work shift on Friday. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff. Notification of layoff shall be at the Contractor's discretion but shall not be given later than the end of the work shift on the date that the layoff is to be effective. Such notification may be verbal.
- 15.4 Benefit Funds.
- 15.4.1 The Contractor will pay contributions to the established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions and will make all employee-authorized deductions in the amounts designated; provided, however, that the Contractor and the Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be included in this requirement and be paid by the Contractor for Covered Project(s). With respect to other Fund contributions, such as, but not limited to, contract administration funds, Contractors who are signatory to MLAs are not excused from making such contributions by virtue of this Agreement. The Contractor shall make contributions only to those Funds that have submitted a written letter of commitment to contribute financial

support to the Social Justice Program of this Agreement to help defray the costs of the Program, in an account of the SJC's designation, an account that will be established with the concurrence of the JASTC. Such level of commitment must be acceptable to the Port. The Parties agree to use their best effort to secure such commitments of the Funds. Contractors who are not signatory to MLAs may voluntarily make payments to such Funds or, in lieu thereof, shall pay an equivalent amount monthly to the account established by the SJC. Bona fide jointly-trusted benefit plans or authorized employee deduction programs established or negotiated under the applicable MLA or by the Parties during the life of this Agreement may be added, subject to the limitations upon such negotiated changes contained in Section 20.3 (Changes to MLAs). Such contributions shall be made in compliance with the applicable prevailing wage determination and shall be due and payable on the due date contained in the applicable MLA.

15.4.2 The Contractor adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractor authorizes the parties to such Trust Funds to appoint Trustees and successor Trustees to administer the Trust Funds and hereby ratifies and accepts the Trustees so appointed as if made by the Contractor.

15.4.3 Contractors of whatever tier shall make regular and timely contributions required by this Section in amounts required by this Agreement and on the time schedule set forth in the appropriate MLA.

15.5 As some of the MLAs and applicable multiemployer plan documents provide for payment of contributions to such benefit plans for plan participants even when they are working as superintendents for the employer and thus excluded from the scope of MAPLA, the exclusion does not preclude or supersede the provision of any current MLA allowing for such contributions, to the extent they are permitted under such benefit plans. The payment of such contributions will not affect the exclusion of superintendents from MAPLA coverage nor will it require contributions on behalf of any superintendents who are not, at the time of their work on Covered Project(s), current participants in the relevant plans.

15.6 Work Day and Work Week. Eight (8) hours per day between the hours of 6:00 a.m. and 5:30 p.m., plus one-half (1/2) hour unpaid for lunch, approximately mid-way through the shift, shall constitute the standard workday. Forty (40) hours per week shall constitute a regular week's work. The workweek will start on Monday and conclude on Friday. A uniform starting time will be established for all crafts on each project or segment of Covered Project(s). Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week. The Union(s) shall be informed of the work starting time set by the Contractor at the pre-job conference, which may be changed thereafter upon three (3) working days' notice to the Union(s) and the workers and the MAPLA Administrator.

15.7 Overtime. Overtime will be paid in accordance with the requirements of the applicable General Prevailing Wage Determination. There will be no restriction on the Contractor's scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime. Steward overtime shall be as provided in the applicable MLA, provided the steward is qualified to perform the work available. There shall be no pyramiding of overtime pay under any circumstances.

15.8 Schedules.

15.8.1 Shift work may be performed at the option of the Contractor(s) upon three (3) days' prior notice to the Union, unless a shorter notice period is provided in the applicable MLA, and shall continue for a period of not less than five (5) working days. Saturdays and Sundays, if worked, may be used for establishing the five (5) day minimum work shift. If two shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the second shift shall consist of seven and one-half (7-1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period. Any third shift shall consist of seven (7) hours of continuous work exclusive of one-half (1/2) hour non-paid lunch period. All shifts shall be paid eight (8) hours straight time pay with any premium or differential paid at the applicable MLA rate of pay. Multiple shifts, if worked, will not be required on Covered Project(s). When multiple shifts are worked, the number of employees on each shift of the operation may vary according to the conditions applicable to each shift and nothing will require that there be a "person-for-person" relief in successive shifts.

15.8.2 The last shift starting on or before 6:00 p.m. Friday shall be considered Friday work time; while the first shift ending at or after 6:00 a.m. on Monday shall be considered Sunday work time. The shift starting at or after 6:00 a.m. is designated as the first shift, with the second shift following. Pay for the second shift shall be at the employee's base wage rate for first shift, plus the second shift differential, if any, established in the applicable MLA.

15.8.3 Special Shifts. The hours of work per work week day, including start times and end times, shall not apply with respect to work for which special hours of work have been established in contract specifications by the Owner where (1) necessary to accommodate Maritime or Airport operating requirements; (2) special construction requirements necessary to comply with regulations of state agencies having regulatory jurisdiction or permit authority over the work, or (3) mitigation measures specified in the final environmental impact report for the work. Any Contractor that performs work covered by an MLA that provides for a work week of less than forty (40) hours shall follow the provisions of that MLA regarding the work week and may stagger the crews so that it has a sufficient number of workers at the site for

forty (40) hours per week, provided that the use of such work schedule may not interfere with the scheduling of other Contractors or the full use of any other craft or crew.

- 15.8.4 Tide Work. All work requiring a Contractor to establish a starting time or other special conditions which will vary from the regularly scheduled starting time set forth in this Agreement and which is established due to the tide schedule shall perform such work under the applicable MLA "Tide Work" provisions of the Craft performing the work.
- 15.8.5 Alternate Work Week. To the extent permitted by law, the Contractor may, upon five (5) days' notice to the appropriate Union(s), establish a work week of four (4) consecutive ten (10) hour work days (exclusive of one-half hour unpaid lunch, approximately midway through the shift). Such work week shall consist of the same four days each week, with a fifth day available as a make-up day if needed and if permitted by the applicable MLA. Compensation for such shifts will be at the straight-time rate of pay for the first ten (10) hours of work with the addition of shift premium, and overtime levels, if any required by the applicable prevailing wage determination.
- 15.8.6 Uninterrupted Work. The Parties acknowledge that certain construction activities may pose unique work scheduling issues, including a requirement for continuous work 24 hours per day, seven days a week, particularly during the placement of concrete. The Parties agree to establish, in good faith, hours of work provisions to assure uninterrupted work on concrete placement in accordance with contract specifications for Covered Project(s).
- 15.9 Holidays. Recognized holidays shall be New Year's Day, Martin Luther King's Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day. Holidays that fall on a Saturday shall be observed on the preceding Friday and holidays that fall on a Sunday shall be observed on the following Monday.
- 15.10 Pay.
 - 15.10.1 Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification pursuant to an applicable MLA not to report to work, will receive two (2) hours pay at the regular straight time hourly rate. Employees who work beyond two (2) hours but not more than four (4) hours will receive four (4) hours pay. Employees who work more than four hours but not more than eight hours will receive eight (8) hours pay. Employees who work beyond eight hours will be paid for actual hours worked. Whenever reporting pay is provided for employees, they will be required to remain at the site(s) where Covered Project(s) is/are performed, available for work for such time as they receive pay, unless released earlier

by the principal supervisor of the Contractor(s) or their designated representative. Each employee shall furnish his Contractor with his current address and telephone number, and shall promptly report any changes in each to the Contractor.

- 15.10.2 One-Day Reporting Pay. When an employee is sent to the job site from the Union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for the shift, or when called out on the same day for one (1) day's work and appears within a reasonable time from the time of dispatch from the Union referral facility, the employee will be paid eight (8) hours.
- 15.10.3 Call Out Pay. Any employee called out to work outside of his shift shall receive a minimum of four hours pay at the appropriate rate, including any applicable premium. This does not apply to time worked as an extension (before or after) of the employee's normal shift.
- 15.10.4 Pay Under Discharge or Voluntary Departure from Job Site. When an employee leaves the job or work location of his own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 17.3 (Suspension of Work for Safety), the employee shall be paid only for the actual time worked.
- 15.10.5 Premium Rate Calculated. In all cases, if the employee is reporting on a day on which a premium rate is paid, reporting pay shall be calculated at that rate.
- 15.11 Time Keeping. The Contractor may utilize brassing systems to check employees in and out. Each employee must check himself in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.
- 15.12 Meal Period. The Contractor will schedule a meal period not more than one-half (1/2) hour duration at the work location at approximately the mid-point of the scheduled work shift (five hours), consistent with Section 15.6 (Work Day and Work Week); provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through his meal period, he shall be compensated in a manner established in the applicable MLA.
- 15.13 Travel and Subsistence.
- 15.13.1 Travel expenses, travel time, subsistence allowance and/or zone rates and parking reimbursements will be provided to the extent provided for in any applicable prevailing wage determination.

- 15.13.2 The Contractor shall provide workers with safe and secure parking at the site(s) of Covered Project(s). If such parking is not reasonably available, the Contractor shall provide a safe and secure remote parking site and transportation for workers between those remote parking area(s) and the employee's point of entry to the site(s) of Covered Project(s). Transportation for workers between such remote parking area(s) and the employee's point of entry shall be provided. Where employees are required to be transported to the site(s) of Covered Project(s), time shall begin and end at the remote parking area. Compensated time between the site(s) of Covered Project(s) and the parking area will be paid at the rate of pay (i.e., straight-time or overtime) at which the employee was working when the employee left the work site. Where an employee boards the last-scheduled vehicle for Contractor-provided transportation from the remote parking area before the scheduled starting time, the employee will be compensated from the starting time notwithstanding any unforeseen delay in arrival by the transport at the site.

15.14 Working Conditions.

- 15.14.1 There will be no organized breaks or other non-working time established during working hours unless provided for in a prevailing wage determination and/or Industrial Wage Order issued by the State of California. Individual nonalcoholic beverage containers will be permitted at the employee's work location.
- 15.14.2 The Owner and/or the MAPLA Administrator shall establish such reasonable rules as the Owner or the MAPLA Administrator deems appropriate and not inconsistent with this Agreement. These rules will be explained at the pre-job conference and posted at the site(s) where Covered Project(s) is/are performed by the Contractor and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge. In any dispute over the application of a rule, the grieving party may contest the reasonableness of the rule, the fact of the alleged violation, and the appropriateness of any discipline imposed.
- 15.14.3 There shall be no restrictions on the emergency use of any tools by any qualified employee; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.
- 15.14.4 Recognizing the nature of the work being conducted on the site, employee access by a private automobile may be limited to certain roads and/or parking areas.

ARTICLE 16
HELMETS TO HARDHATS

- 16.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center", as used in this Article) and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.
- 16.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans interested in working on Covered Project(s) and of apprenticeship and employment opportunities for Covered Project(s). To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 17
SAFETY

- 17.1 Safety. The Construction Safety Standards Manual (Document 00831) of the February 2015 Port of Oakland Standard Contract Provisions for Public Works Projects shall apply to all Covered Project(s).
- 17.1.1 Safe Working Conditions. It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Owner, the MAPLA Administrator or the Contractor. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Owner.
- 17.1.2 Rules. Employees shall be bound by the safety, security and visitor rules and environmental compliance requirements established by the Contractor, the MAPLA Administrator, or the Owner. These rules will be published and posted in conspicuous places throughout the work site. An Employee's failure to satisfy his obligations under this Article may subject him/her to discipline, including discharge.
- 17.1.3 Prohibited Items. The use, sale, transfer, purchase, and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited. Accordingly, the Parties agree to adopt appropriate procedures and safeguards for the testing of employees for prohibited or controlled substances. It is agreed, with respect to such testing procedures, that:

- (i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program;
- (ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time the person reported for the test(s);
- (iii) where a Contractor requests a person to report for purposes of a pre-hire substance abuse test, and does not intend to place the person in an active work position on that day, the person shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative; and
- (iv) once mutually agreed to by the Port and the Council, a uniform substance abuse prevention policy will become an Appendix to this Agreement. Until such a policy is mutually agreed to, the substance abuse policy attached as **Appendix E** will remain in effect.

17.1.4 Smoking. The Parties acknowledge that the environmental and safety restrictions governing conduct at the site(s) where Covered Project(s) is/are performed may prohibit smoking at any time in any location or facility. Violation of this restriction by any person may constitute grounds for removal from the site and may result in discipline, up to and including termination.

17.1.5 Security. The Parties acknowledge that some work within the scope of this Agreement will occur in restricted security areas of an operating airport and that employees who will be required to work in such areas will, as a condition of employment, be subjected to a personal background check and security clearance pursuant to Federal Aviation Authority regulations governing the Oakland International Airport. The Unions acknowledge that Union representatives will undergo the same clearance procedures as a condition to their access to these areas and therefore agree that such conditions will be imposed. Application and enforcement of such requirements may be grounds to terminate or deny an employee work on Covered Project(s) or to deny access of their representatives to areas necessary to the performance of Covered Project(s).

17.2 Inspections. The inspection of incoming shipments of equipment, machinery and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice. All employees shall comply with the security procedures established by the Owner, the MAPLA Administrator and/or the Contractor.

17.3 Suspension of Work for Safety. A Contractor may suspend all or a portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the Contractor requests

employees to remain at the site and be available for work, the employees will be compensated for the standby time at their basic hourly rate of pay.

- 17.4 Water and Sanitary Facilities. The Contractor is responsible to provide adequate supplies of drinking water and sanitary facilities for all employees. Proper notification of this requirement shall be provided to the Contractor at the pre-bid and pre-job conference mark-up to insure compliance with this Section.
- 17.5 Owner Controlled Insurance Program. All employees working under this Agreement shall be required to comply with the Owner Controlled Insurance Program whenever the Owner, in its sole discretion, requires it.

ARTICLE 18 NON-DISCRIMINATION

- 18.1 The Parties agree to comply with all non-discrimination requirements of federal, state, and local law for the purpose of protecting employees and applicants for employment for Covered Project(s).

ARTICLE 19 SAVINGS AND INTERPRETATION

- 19.1 Savings. If a court of competent jurisdiction determines that any article, provision, clause, sentence, or word of the Agreement is illegal, void, or in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect.
- 19.2 Partial Invalidation. If a court of competent jurisdiction invalidates, temporarily enjoins, or permanently enjoins the use of a portion of the Agreement in the bidding, awarding, or performance of Covered Project(s), the Parties agree negotiate as soon as possible in an effort to conform the Agreement to the terms of the court order and otherwise to keep the rest of the Agreement in full force and effect for Covered Project(s) to the maximum extent legally possible.
- 19.3 Total Invalidation. If a court of competent jurisdiction invalidates or enjoins the use of the entire Agreement, the Parties agree to negotiate as soon as possible in an effort to conform the Agreement to the terms of the court order and otherwise to keep the Agreement in full force and effect for Covered Project(s) to the maximum extent legally possible. For at least thirty (30) days following the court order (or a longer period mutually agreed to by the Parties), the Unions shall continue to fully comply with the provisions of Article 12 (Work Stoppages and Lockouts) and work without interruption, and the Port shall not solicit or advertise bids or proposals for work not covered by this Agreement if such work would have otherwise been Covered Project(s) had the Agreement not been invalidated or enjoined.
- 19.4 No Presumption Against Drafter. All Parties have participated equally in the negotiation and preparation of this Agreement, and therefore, the normal rule of construction that any

ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

- 19.5 Counterparts. This Agreement may be executed in counterparts (including copies by email or facsimile), each of which shall be deemed an original and all of which, together, shall constitute one agreement.

ARTICLE 20 DURATION

- 20.1 Subject to Section 20.1.1 below, this Agreement shall become effective on the date approved by the Board of Port Commissioners and executed by the Council (the "Effective Date") and shall continue in full force and effect for a period of five (5) years. At the expiration of the 5-year period, the Agreement shall roll over for an additional five (5) years, subject to approval by the Board. Prior to Board approval, the JASTC shall meet to consider the potential extension of this Agreement and make a recommendation to the Board. In no event shall Board approval be contingent upon meeting of the JASTC. This Agreement shall continue to apply through the Completion of any Covered Project(s) for Construction Contracts that have already been awarded and Tenant contracts for which the Port issued a building permit prior to expiration of the MAPLA. This Agreement shall also continue to apply where the Contractor is directed by the Owner to engage in start-up, repairs (including warranty work by the Contractor but excluding any warranty work as set forth in Article 11 (Management's Rights)), or punch list modifications to work by the Contractor. The MAPLA Administrator or Owner shall give notice to the Unions of Completion of each Construction Contract for any Covered Project(s).

20.1.1 The following Articles or Sections shall apply only to Construction Contracts awarded, and Tenant contracts for which the Port issued a building permit, on or after August 1, 2016: Section 2.2.4 (Construction Trucking); Sections 8.5 through 8.15 (regarding apprentices); and Article 9 (MAPLA Small Business Enterprise Program).

20.2 Termination of Application to Any Covered Project(s).

- 20.2.1 All obligations under this Agreement applying to any Covered Project(s) shall terminate with respect to that Covered Project(s) upon the receipt by the Union of a notice of completion from the MAPLA Administrator or the Owner, except as explicitly set forth herein.
- 20.2.2 Any claim for non-payment of wages or fringe benefits shall be governed by the applicable statutes of limitation (including but not limited to the California Labor Code, ERISA, or MLA) and shall not be affected by the provisions of this Section.

20.3 Changes to MLAs.

- 20.3.1 Incorporation. MLAs incorporated as part of this Agreement shall continue in full force and effect until the successor MLA becomes effective. The Union shall provide a copy of the successor MLA or the updated provisions to the MAPLA Administrator.
- 20.3.2 Limits to Incorporation. The Parties agree to recognize and implement such changes on their effective dates, provided, however, that any provisions negotiated in said MLAs will not apply to work covered by this Agreement if such provisions are less favorable to the Contractor for work covered by this Agreement than those uniformly required of contractors for construction work normally covered by those Agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement.
- 20.3.3 Retroactivity. As part of this understanding, the Contractor agrees and consents to pay the increased contributions to the relevant jointly administered trust funds pursuant to the provisions of any MLAs negotiated by the Unions during the performance of Covered Project(s) retroactively to the expiration date of the applicable MLA, provided, however, if the provisions of any such new MLA provide that said increases shall not become effective until a later date after the date following the expiration date, then that later date shall prevail, and provided, further, that such increased contribution does not exceed the corresponding fringe benefit component of the applicable prevailing wage rate then existing or as thereafter amended. In the event that the increased contribution exceeds the then-current prevailing wage fringe benefit component and the prevailing wage is subsequently adjusted upward, the fringe benefit contribution shall also be adjusted upward by an equal level to the applicable level of the MLA or the maximum prevailing wage determination level, whichever is less, and shall be paid retroactive to the effective date of the locally negotiated increase. This Section shall be interpreted consistent with the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision).

ARTICLE 21
FINAL AND ENTIRE AGREEMENT

- 21.1 This Agreement, all appendices hereto (which are incorporated into this Agreement), and the referenced MLAs shall constitute the final and entire agreement between the Parties and shall supersede all previous Maritime and Aviation Project Labor Agreements, letters of understanding, side letters, stipulations, judgments, or other agreements between the Parties regarding any subject covered or addressed in this Agreement, except that the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision) will apply. Each Party acknowledges that by entering

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into this Agreement it does not rely on, and shall have no remedies with respect to, any representation or warranty (whether made innocently or negligently) that is not set forth in this Agreement.

- 21.2 Notwithstanding the preceding Section, the Parties agree that past practice and past interpretations may be relevant in interpreting this Agreement.

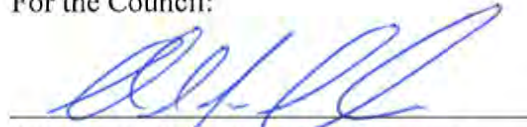
In witness whereof, the Parties have caused this Agreement to be executed and effective as of the day and year first above written:

For the Port:



J. Christopher Lytle, Executive Director
Port of Oakland

For the Council:



Andreas Cluyer, Secretary-Treasurer
Building and Construction Trades Council
of Alameda County

**THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY.**

Approved as to form and

legality this 1st day

of February, 2016



Port Attorney

Port Reso. No. 16-05

P.A.# 2016-15

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Signatory Local Unions:

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 16

By: _____

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 549

By: _____

International Union of Bricklayers and Allied Craftworkers, Local No. 3, Northern California

By: _____

Northern California Carpenters' Regional Council (on behalf of Carpenters Local 713, Carpenters Local 2236, Lathers Local 68L, Millwrights Local 102, and Pile Drivers Local 34)

By: _____

Plasterers' and Shophands' Local Union No. 66

By: _____

Plasterers' and Cement Masons' Local Union No. 300

By: _____

International Brotherhood of Electrical Workers, Local No. 595

By: _____

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local No. 378

By: _____

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Construction and General Laborers' Union Local No. 304

By: _____

Laborers' International Union of North America Local Union No. 67

By: _____

Hod Carriers Local Union No. 166

By: _____

International Union of Operating Engineers, Local Union No. 3

By: _____

District Council No. 16, International Union of Painters and Allied Trades (on behalf of Painters Local 3, Carpet & Linoleum Layers Local 12, Glass Workers Local 169, and Auto & Marine Painters, Local 1176)

By: _____

Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO

By: _____

Underground Utility and Landscape Irrigation, U.A. Local 355

By: _____

Sprinkler Fitters and Apprentices, U.A. Local 483

By: _____

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Sheet Metal Workers' International Association, Local Union No. 104

By: _____

United Union of Roofers, Waterproofers & Allied Workers, Local No. 81

By: _____

Teamsters Local 853

By: _____

International Union of Elevator Constructors Local Union No. 8

By: _____

Sign Display and Allied Crafts, Local 510

By: _____

APPENDIX A

LETTER OF ASSENT

_____, 20____

Danny Wan, Port Attorney
530 Water Street, 4th Floor
Oakland, CA 94607

Subject: Port of Oakland Maritime and Aviation Project Labor Agreement – Letter of Assent

Dear Mr. Wan:

The undersigned party confirms that it agrees to be a party to and bound by the Port of Oakland Maritime and Aviation Project Labor Agreement (the "Agreement" or "MAPLA") as entered into by and between the Port of Oakland and the Building and Construction Trades Council of Alameda County and their affiliated unions, dated February 1, 2016, as the Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. This Agreement includes the Addendum and Memorandum of Agreement governing Construction Trucking Work.

By executing this Letter of Assent, the undersigned party subscribes to, adopts, and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of this letter. The undersigned party agrees to execute a separate subscription agreement for those trust funds that so require.

MAPLA Project Name: Contractor / Subcontractor Name: California State License Number: 	Authorized Person: _____ (Print Name) _____ (Title) _____ (Signature) _____ (Telephone Number) _____ (Date)
--	--

cc: Jake Sloan
Davillier-Sloan, Inc.
1630 12th Street
Oakland, CA 94607

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APPENDIX B

LIST OF MASTER LABOR AGREEMENTS
(ON FILE WITH THE MAPLA ADMINISTRATOR)

1. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 16
2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 549
3. International Union of Bricklayers and Allied Craftworkers, Local. No. 3, Northern California
4. Carpenters Local 713
5. Carpenters Local 2236
6. Lathers Local 68L
7. Millwrights Local 102
8. Pile Drivers Local 34
9. Plasterers' and Shophands' Local Union No. 66
10. Plasterers' and Cement Masons' Local Union No. 300
11. International Brotherhood of Electrical Workers, Local No. 595
12. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local No. 378
13. Construction and General Laborers' Union Local No. 304
14. Laborers' International Union of North America Local Union No. 67
15. Hod Carriers Local Union No. 166
16. International Union of Operating Engineers, Local Union No. 3
17. Painters Local 3
18. Carpet & Linoleum Layers Local 12
19. Glass Workers Local 169
20. Auto & Marine Painters, Local 1176
21. Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO
22. Underground Utility and Landscape Irrigation, U.A. Local 355
23. Sprinkler Fitters and Apprentices, U.A. Local 483

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24. Sheet Metal Workers' International Association, Local Union No. 104
25. United Union of Roofers, Waterproofers & Allied Workers, Local No. 81
26. Teamsters Local 853
27. International Union of Elevator Constructors Local Union No. 8
28. Sign Display and Allied Crafts, Local 510

APPENDIX C

SOCIAL JUSTICE LABOR MANAGEMENT COOPERATION TRUST FUND

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) contains a provision (Section 6.4) that requires contractors to pay into the Social Justice Labor Management Cooperation Trust Fund. The Contractor shall implement and fulfill the requirements of Section 6.4 in the following manner:

1. In addition to paying established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions, pursuant to the MAPLA Section 6.4, contractors performing work under MAPLA shall pay thirty cents (\$0.30) per hour worked or paid into the Social Justice Labor Management Cooperation Trust Fund/EBCF (Social Justice Trust Fund) established to manage the MAPLA Social Justice Program.
2. The Contractor should include the payment referenced in Item 1 above and any administration costs associated with complying with the payment, in its bid.
3. Payment to the Social Justice Trust Fund shall be made monthly by the Prime Contractor (for its and all its subcontractors' workforce) and shall cover the hours reported on the Summary of Utilization of Construction Workforce Reports required to be submitted weekly to the Port by the last day of the month for which the payment is being made. Copies of the Summary Workforce Reports shall accompany each monthly payment.
4. The amount of the monthly payment to the Social Justice Trust Fund is the total number of workforce hours worked or paid shown on the Summary Workforce Reports submitted weekly during that month times thirty cents (\$0.30) per hour.
5. Monthly payment to the Social Justice Trust Fund shall be made within twenty (20) calendar days of the last day of the preceding month. Late payments shall be subject to interest charges of 1% per month on the unpaid balance.
6. Transmittal form must be filed monthly even if no hours have been worked or paid until a final payment statement has been sent.
7. Make checks payable to "Social Justice Labor Management Cooperation Trust Fund / EBCF". Mail check, associated Summary Workforce Reports, and transmittal letter to:

Social Justice Labor Management Cooperation Trust Fund / EBCF
c/o East Bay Community Foundation
DeDomenico Building
200 Frank H. Ogawa Plaza
Oakland, CA 94612

The transmittal letter (**Attachment A** to this Document) shall contain the following information:

- a) The name and address of the Contractor
- b) The title and contract number of the Port Project
- c) The period covered by the enclosed payment
- d) The payment amount calculation

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Copies of the transmittal letter and the Summary Workforce Reports shall be sent to:

Jake Sloan
Davillier-Sloan
Labor Management Consultants
1630 12th Street
Oakland, CA 94607

Port of Oakland
Social Responsibility Division
530 Water Street
Oakland, CA 94607
Attention: Public Works Unit

The provisions herein are applicable to any change order work negotiated.

8. If payments to the Social Justice Trust Fund are not made in a timely manner as stated above, the Port shall deduct and retain the estimated amount owed plus 25% of the estimated amount owed from the progress payment or from any other moneys due or that may become due the Contractor under the Contract Documents.

**ATTACHMENT A
SOCIAL JUSTICE TRUST FUND CONTRIBUTION
LETTER OF TRANSMITTAL**

_____, 20____

Social Justice Labor Management Cooperation Trust Fund / EBCF
c/o East Bay Community Foundation
DeDomenico Building
200 Frank H. Ogawa Plaza
Oakland, CA 94612

Subject: Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) Social Justice Trust Fund Contribution

Contract Title and Number: _____

Enclosed is a check in the amount of \$_____ for payment of the MAPLA Social Justice Trust Fund contribution for the period beginning _____ and ending _____. Copies of the Summary Workforce Reports covering the same period are also enclosed.

The payment amount is calculated as follows:

Social Justice Trust Fund Contribution	=	Total Number of Hours Worked or Paid	X	Hourly Contribution (\$0.30)
	=	_____ Hours	X	\$0.30
	=	\$ _____		(Amount Due)

Check if applicable:

☐ No hours worked or paid this period.

☐ This is the final payment under this contract.

I certify under penalty of perjury that the above calculation accurately reflects hours worked or paid.

Contractor: _____

Name and Signature: _____
(Print Name)

(Signature)

(Telephone Number)

Enclosures: Payment and Summary Workforce Reports
cc (transmittal letter and Summary Workforce Reports):

PORT OF OAKLAND MARITIME AND AVIATION PLA

Jake Sloan
Davillier-Sloan
Labor Management Consultants
1630 12th Street
Oakland, CA 94607

Port of Oakland
Social Responsibility Division
530 Water Street
Oakland, CA 94607
Attention: Public Works Unit

**Letter of Understanding Regarding Direct Owner-Operator and Owner-Operator
Hardship Exemptions**

February 1, 2016

Chris Lytle
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

Re: MAPLA Direct Owner-Operator and Owner-Operator Hardship Exemptions

Dear Mr. Lytle:

This letter clarifies the understanding of the Port of Oakland ("Port") and the Building and Construction Trades Council of Alameda County ("Council") regarding the circumstances in which an owner-operator directly contracting with the Port or with the Prime Contractor, or an owner-operator with a financial hardship, may be excluded from coverage by the Maritime and Aviation Project Labor Agreement ("MAPLA") under the MAPLA Small Business Enterprise Program ("MSBE Program"). The undersigned agree to the following understandings.

1. **Definition of Owner-Operator.** "Owner-Operator" means an individual natural person who owns and is the only driver of the power unit of a heavy duty commercial truck with a Gross Motor Vehicle Weight Rating of at least 26,001 pounds. A power unit is "owned" by a person if it is titled and registered to, insured by, and has its California Motor Carrier Permit number issued to by that person. However, a person is still considered an owner even if the power unit is titled and registered to a financial institution temporarily while the person is leasing the power unit and paying that financial institution for the purpose of eventually owning the power unit.
2. **Direct Owner-Operator Exemption.**
 - a. A "Direct Owner-Operator" is defined as an Owner-Operator who directly bids with and is awarded work by the Prime Contractor or the Owner, and personally performs such work. A Direct Owner-Operator does not include a person working for or subcontracting with trucking brokers, or a person who employs, contracts, or subcontracts with any other person or entity to perform trucking work for the Port or Tenant.
 - b. Direct Owner-Operators are exempted from MAPLA coverage under the MSBE Program for their work directly bid with the Prime Contractor or the Owner unless they choose to opt in to MAPLA coverage. Direct Owner-Operators shall

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notify the Port in writing that they are Direct Owner-Operators who are indeed exempted. Exempt Direct Owner-Operators shall remain exempted for their work directly bid with the Prime Contractor or the Owner until they reach the graduation limits of the MSBE Program or until they choose to opt-in to MAPLA coverage.

3. **Owner-Operator Hardship Exemption.** Owner-Operators, including those working through brokers, for whom coverage by the MAPLA will cause financial hardship may apply to the MAPLA Administrator for exemption before commencing work for a specific project. The MAPLA Administrator will then convene a meeting between one representative from the Port and one representative from the Council, which shall expeditiously decide (upon mutual agreement) if such Owner-Operators may be exempted under the MSBE Program because of the financial hardship for the specific project and/or future projects.
4. **MSBE Program Limits.** All dollar amounts of work performed by exempted Owner-Operators under this letter shall count toward the limits of the MSBE Program (such as the Program Cap, Trucking Trade Cap, and MSBE Graduation limits) as set forth in Article 9 of the MAPLA titled "MAPLA Small Business Enterprise Program."
5. **Enforcement.** Any violation or circumvention of the terms of this letter shall be considered a violation of MAPLA and shall be referred to resolution under the terms of Article 13 (Grievances).
6. **Notification.** Within fifteen (15) business days' request by the Union, the Port will provide information to the Union on all exempted work described in this letter and shall make available a copy of an Owner-Operator's bid for work that has been exempted from the MAPLA.

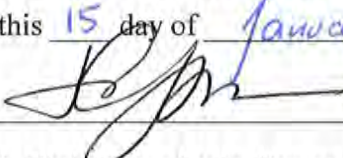
Sincerely,



Andreas Cluver, Secretary-Treasurer
Alameda County Building and Construction Trades Council

Acknowledged and agreed to

this 15 day of January, 2016



J. Christopher Lytle, Executive Director
Port of Oakland

PORT OF OAKLAND MARITIME AND AVIATION PLA

**PORT OF OAKLAND
MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)
UNIFORM SUBSTANCE ABUSE PREVENTION POLICY**

This Uniform Substance Abuse Prevention Policy (hereinafter referred to as "Policy"), has been adopted by the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners (hereinafter the "Port"), the Building and Construction Trades Council of Alameda County (hereinafter the "Council"), and its affiliated local Unions that become signatory to the Agreement (collectively referred to as "Unions") and is binding on the Contractors who agree to be bound by the Port of Oakland Maritime and Aviation Project Labor Agreement (the "Agreement" or "MAPLA").

The Parties agree and acknowledge that the United States Government may require differing testing and detection standards than those that are contained in this policy for certain projects that will be constructed under the MAPLA. To the degree that these federal policies differ in substance or procedure (including the use of random testing) the Parties acknowledge that the federal policies will prevail where required by law or regulation. Violation of any federal policy will result in the same consequences as a violation of this Policy.

POLICY

The Contractors and the Unions are committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees not be permitted to perform their duties while under the influence of drugs or alcohol.

This program supersedes any policies negotiated for any other work outside of the Project by Contractors and the Unions that might otherwise apply. Nothing in the MAPLA is intended to supersede or diminish more restrictive controlled substance or alcohol regulations imposed by federal or state agencies upon specific employee groups or categories of employees who are also covered by this Program. A summary of this Program will be provided to all dispatched employees. The full MAPLA will be made available to any Union representative or to Project employees upon request.

The intention of this Program is to comply with the Port of Oakland's Aviation and Maritime Project requirement of maintaining a drug and alcohol free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Program

have been carefully defined and intentionally restricted. The Substance Abuse Prevention Coordinator will retain oversight over the Programs and will monitor test procedures for consistency and Policy compliance.

In order to implement this Policy, the following agreements have been reached:

1. No employee may purchase, sell, transfer, furnish, possess, use or be under the influence of illegal drugs or any alcoholic beverage while working on any Project job site in connection with work performed under the MAPLA, or when using any Contractor vehicle.
2. The proper use of prescription drugs or over-the-counter medication as part of a medical treatment program and consistent with the terms of this Policy is not a violation of this Policy. The improper use of prescription drugs, over-the-counter medication or the use of designer or synthetic drugs that alters or affects an individual's motor function or mental capacity is prohibited and is a violation of this Policy. Employees who believe or have been informed that their use of any prescription drug or over-the-counter medication may present a safety risk are to report such use to the Contractor's supervision to insure the safety of themselves, other employees, and Contractor or Project property or vehicles.
3. Any employee, while employed on the Project, who tests positive for drug or alcohol abuse or who is convicted for selling illegal drugs off the Project will not be permitted to work on the Project and will be subject to discipline up to and including discharge, subject to the provisions of this Policy. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination and removed from the project and will not be eligible for rehire.
4. Any prospective or dispatched worker who fails the pre-employment testing required pursuant to this Policy will be denied employment and will not be eligible for referral to any Contractor on the Project until a period of not less than sixty (60) calendar days has passed and the applicant has provided a certification of rehabilitation and satisfactory participation in an approved counseling or rehabilitation program, which will be at the employee's expense.
5. Any prospective or dispatched worker/employee who refuses to submit to a properly administered drug or alcohol test will be treated as having tested positive on the test and will be subject to removal from the Project and will not be granted permission for a second drug or alcohol test for a period of ninety (90) days.

NOTICE

1. When calling the Union hiring hall for workers, the Contractor shall advise the Union dispatcher that the Contractor will require any dispatched worker to take a pre-employment drug and alcohol test, and that worker(s) will be subject to further testing in accordance with specified circumstances outlined in this Policy.

2. At the commencement of a contract, the Contractor shall also provide notice in advance of the first dispatch request either by certified mail, by facsimile transmission or by hand delivery.
3. The Contractor shall provide written notice to each employee, attached hereto as **Exhibit C**, of the major provisions of the drug and alcohol testing policy and its consequences.
4. A contractor that fails to provide notice to the dispatcher shall be liable for two hours show up pay for any dispatched worker that refuses to take a pre-employment test, and a dispatched worker's refusal to take the test may not be used in any adverse manner against that worker, except that no dispatched worker will be hired without having taken a pre-employment drug test.

TERMS / DEFINITIONS

For purposes of this Policy, the following terms/conditions will apply:

1. **Illegal Drugs:**

For the purpose of this Policy, the terms "illegal drugs" or "drugs" refer to those drugs listed in **Exhibit A**, except in those circumstances where they are prescribed by a duly licensed health care provider. **Exhibit A** lists the illegal drugs and alcohol and the threshold levels for which an employee/applicant will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration ("SAMHSA") (formerly the National Institute of Drug Abuse, or "NIDA") threshold levels, or U.S. government required thresholds where required, in effect at the time of testing. **Exhibit A** will be updated periodically to reflect the SAMHSA or the U.S. Government threshold changes, subject to mutual agreement of the parties.

2. **Prescription Drug:**

A drug or medication prescribed by a duly licensed health care provider for current use by the person possessing it that is lawfully available for retail purchase only with a prescription.

3. **Reasonable Cause:**

Reasonable cause to test (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) an employee for illegal drugs or alcohol will exist when specific, reliable objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while on the jobsite. These indicators will be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, and will be indicators not reasonably explained as resulting from causes other than the use of such controlled substances (such as, but not by way of limitation,

fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.) If cause results from an observation, the observation must be confirmed by a second member of the Individual Contractor's supervision and those Contractor representatives will endeavor to consult with the Contractor's Safety Representative or a jobsite management representative, one who must be trained in detection of drug use, and whose training will be documented. The specific behavioral, performance or on-the-spot physical indicators of being under the influence of drugs or alcohol on the job will be substantiated in writing by the use of an Incident Report Form (attached as **Exhibit E**).

The following may constitute some of the reasonable causes to believe that an employee is under the influence of drugs or alcohol.

- (a) Incoherent, slurred speech;
- (b) Odor of alcohol on the breath;
- (c) Staggering gait, disorientation, or loss of balance;
- (d) Red and watery eyes, if not explained by environmental causes;
- (e) Paranoid or bizarre behavior; or
- (f) Unexplained drowsiness.

4. Post-Accident Testing

A Contractor will require that an employee who is involved in an accident in the course of job duties resulting in serious damage to plant, property or equipment or injury to him/herself or others as defined below may be tested (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) for drugs or alcohol where the Contractor safety representative or designee concludes that:

- (a) the accident may have resulted from human error or could have been avoided by reasonably alert action; and
- (b) the employer's representative reasonably concluded that the employee(s) to be tested caused or contributed to the following circumstances:
 - (i) An OSHA recordable injury, i.e., medical treatment case, restricted work case or lost workday case;
 - (ii) Damage to equipment, vehicles, structures, or guarding resulting in repair costs that in the judgment of the Contractor will exceed \$2,500.00;
 - (iii) Loss of material containment resulting in an environmental spill notification; or
 - (iv) Any incident resulting in job site shutdown or involving a fatality; and
- (c) a basis exists to believe that the employee was under the influence of a drug or alcohol at the time of the accident.

5. Adulterated, Substituted or Dilute Specimens

This Substance Abuse Prevention Policy adheres to guidelines established in SAMHSA Public Document 035 dated September 28, 1998 for determining the validity of a specimen. This guideline is consistent with the Department of Transportation (DOT) regulations (49 CFR Part 40 and 382) that permit laboratories to conduct additional tests to determine the validity of a specimen.

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an "adulterant", "interfering substance" and/or "masking agent" or the sample is identified as a "substituted specimen" will be deemed a violation of the MAPLA and Policy and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an "adulterated", interfering substance", masking agent", or substituted" specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant shall be required to show certification of rehabilitation and satisfactory participation in a Substance Abuse Prevention Coordinator-approved rehabilitation program, not at the expense of the Contractor or Owner, as a condition of the employee's return to work at that time.

The guideline issued in PD 035, in the SAMHSA September 28, 1998 memo uses the following reporting protocols:

- (a) Adulterated Specimen: PD035 includes three definitions for Adulterated:
 - (i) if the nitrite concentration is equal to or greater than 500 mcg/mL.
 - (ii) If the pH is less than or equal to 3, or if it is greater than or equal to 11.
 - (iii) If a foreign substance is present, or if an endogenous substance (one that is normally found in urine) is present at a concentration greater than the normal physiological concentration.
- (b) Substituted Specimen: one that has a creatinine of less than or equal to 5mg/dL and a specific gravity less than or equal to 1.001 or greater than or equal to 1.020. These specimens do not exhibit the clinical signs or characteristics associated with normal urine.
- (c) Dilute Tests: Protocol covering dilute specimens will follow guidelines established by SAMSHA PD 035 in their memo dated September 28, 1998. Specimens identified by the testing laboratory as dilute will require the employee/applicant to be retested. A second test due to a dilute specimen will require the employee/applicant to submit to an observed test. Refusal to retest or noncompliance with drug testing procedures will result in the employee/applicant being prohibited from working on the Project for ninety (90) calendar days and the employee/applicant will be required to successfully complete a Substance Abuse Prevention Coordinator-approved rehabilitation program at his/her own expense as a condition of the employee's return to work at that time.

A "dilute specimen" is defined as: "one that has a creatinine reading less than 20 mg/dL, but greater than 5 mg/dL, and a specific gravity less than 1.003 but greater than 1.001.

6. Project.

The Project is defined as any construction activity that is undertaken under the terms of the Port of Oakland Maritime and Aviation Project Labor Agreement.

IDENTIFICATION AND CONSENT PROCEDURES

1. When a prospective employee or dispatched worker arrives at the job site for potential employment, he/she will be shown and sign a copy of the Pre-Employment Substance Abuse Prevention Testing Consent/Waiver Form attached as **Exhibit D** before taking a pre-employment drug or alcohol screening test. An employee who is working on the Project and has submitted to the pre-employment drug and alcohol test and has tested negative may thereafter be required to submit to drug or alcohol testing only if the Contractor has "reasonable cause" to believe that the employee is under the influence of drugs or alcohol in violation of this Policy or in connection with an accident as set out above in this Policy. The Contractor may order urine (or in the case of alcohol, breathalyzer) testing only.
2. If a management representative (preferably not in the bargaining unit) makes observations of an employee which may constitute reasonable cause for drug or alcohol testing, the supervisor shall immediately take the following actions:
 - A. Inform the employee that he/she may have a Union Representative present, if reasonably available. The employee will be shown the Substance Abuse Prevention Testing Consent/Waiver Form attached as **Exhibit B**.
 - B. Fill out the Incident Report Form, including a statement of the specific facts constituting reasonable cause to believe that the employee is under the influence of drugs or alcohol, and the names of the person(s) making the supporting observations;
 - C. Provide a completed copy of this Incident Report Form to the bargaining unit employee before he/she is required to be tested, (and one copy made available to the Union Representative, if present). After being given a copy of the Incident Report Form, the bargaining unit employee will be allowed enough time to read the entire document, to understand the reasons for the test.
 - D. Provide the employee with an opportunity to provide an explanation of his/her condition, including providing evidence (e.g., doctor's prescription or note, or prescription container) of existing medical treatment or reaction to a prescribed drug. If available, the Union Representative shall be present during such explanation; and will be entitled to confer with the employee before the explanation

is required;

- E. If the Management representative(s), after observing the employee, and hearing any explanation, concludes that there is in fact reasonable cause to believe that the employee is under the influence of drugs or alcohol, the employee may be ordered to submit to a drug and/or alcohol test and will be asked to sign the Consent/Waiver Form attached as **Exhibit B**.
- 3. Failure to follow any of these procedures will result in the elimination of the test results as if no test had been administered; the test results will be destroyed and no discipline shall be imposed against the bargaining unit employee. Refusal of the employee to submit to the test where these procedures have been followed will be treated as a positive test and subject the employee to discipline including removal from the Project and discharge.
- 4. Unless there is reason to believe that the person being tested has previously altered a sample, or unless there is agreement in writing, an individual will be allowed to provide the required specimen in the privacy of a stall or partitioned area.
- 5. A worker initially dispatched to a Project jobsite where this Policy is in effect will be required to submit to testing for illegal drugs or alcohol as defined in this Policy. The testing of such workers must be conducted in compliance with the "Drug Testing Procedures" described in this Policy, and be required of dispatched workers only on the first day of reporting to the initial jobsite. The urine drug and alcohol testing of these dispatched workers, is the only testing allowed under this Policy other than for "reasonable cause" or in connection with an accident as set out above in this Policy. Notwithstanding this provision, if a rehabilitation program or drug treatment program determines that periodic testing is appropriate or necessary for the employee who has tested positive under this Policy, then that employee will be subject to future urine drug testing as recommended by the rehabilitation program.

Except as set out in the Notice provision above, a worker initially dispatched to such jobsite who refuses to submit a urine sample for drug/alcohol testing will not be entitled to show-up pay for that day, and will be denied employment on the Project for a period of ninety (90) calendar days. If a worker who has refused a test returns to the same jobsite within ninety (90) calendar days, and is denied work, that worker will not be entitled to show-up pay. If a worker initially dispatched to the jobsite refuses to submit a urine sample or to take a breathalyzer test for drug/alcohol testing, and that worker is denied employment for ninety (90) calendar days, this Individual Contractor action will not be grievable under the MAPLA. If the worker tests negative for drugs and alcohol, he/she will not be drug tested again while employed by the Individual Contractor at any jobsite except for reasonable cause or post-accident as described in this Policy.

- 6. If the Individual Contractor has reasonable cause to believe an employee is under the influence of drugs or alcohol, or requires a post-accident drug or alcohol test, as set forth in this Policy, and the employee refuses to submit to a drug test, the refusal shall be treated as

a positive test result and the employee/applicant shall be subject to discipline, including removal from the Project and discharge.

7. The following rules control the pay for dispatched workers tested on the first day of their employment:
 - A. A dispatched worker who is put to work immediately after having passed the test shall be paid starting at the time the worker reported for the test(s).
 - B. Where a contractor requests a dispatched worker to report for purposes of a pre-hire substance abuse test, and does not intend to place the worker in an active work position on that day, the worker shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.
 - C. If the dispatched worker is not allowed to work until the results of the drug test are received, and the test results are positive, the dispatched worker is not entitled to any form of pay (including show-up pay).
 - D. If the dispatched worker is put to work, that dispatched worker is entitled to pay and benefits under the MAPLA for all hours worked, regardless of the results of the drug test.
 - E. Where a contractor fails to provide notice, pursuant to this Policy, to the Union hiring hall that the job site is a drug and alcohol testing site, a dispatched worker who refuses to take the pre-employment test will be paid two hours show up pay, except that no dispatched worker will be hired without having taken a pre-employment drug test.

DRUG TESTING PROCEDURES

1. The testing shall be done at a certified laboratory located in California. The collective bargaining parties retain the right to inspect the laboratory to determine conformity with the standards described in this Policy. The laboratory will only test for alcohol and the illegal drugs listed in the Definition Section of this Policy and **Exhibit A**. All testing will be at the Contractor's expense.

Testing procedures, including controlled substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol tests shall be by breathalyzer.

Any test revealing a blood/alcohol level equal to or greater than 0.08 or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or crane any test revealing a blood/alcohol level equal to or greater than

0.04 or the established California State standard for commercial motor vehicle operations, percent shall be positive and will be conducted under procedures consistent with California State law.

An employee/applicant presenting himself/herself at a Substance Abuse Prevention Coordinator- approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until he/she has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee/applicant being classified as “refusing to test” and being prohibited from working on the Project for a minimum of ninety (90) calendar days from the date of the scheduled test.

At the time the urine specimens are collected, two (2) separate samples shall be placed in separate sealed containers. One (1) of the samples collected in a separate container shall be kept refrigerated at the site where the sample is given. Upon request, this second sample shall be made available to the employee for testing by a certified laboratory selected by the employee at the employee's expense.

2. The specific required procedure is as follows:
 - A. Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee's option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.
 - B. Immediately after the specimen is collected, it will be divided into two (2) urine bottles which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
 - C. A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
3. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3)

ions. In order to be considered "positive" for reporting by the laboratory to the employer, both samples must be tested separately in separate batches and must also show positive results on the GC /MS confirmatory test.

4. All positive drug, alcohol or adulterant test results must be reported to a Medical Review Officer (MRO) appointed by the designated testing laboratory. The MRO shall review the test results and any disclosure made by the employee/prospective or dispatched worker and shall attempt to interview the employee/ prospective or dispatched worker to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the employee/applicant, but failing to make contact within two (2) working days, may deem the employee/applicant's result a "lab positive." After the issuance of a "lab positive", the employee/applicant will be barred from the Project until the employee/applicant makes contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of a negative result.
5. If the testing procedures confirm a positive result, as described above, the employee/dispatched worker and the Substance Abuse Prevention Coordinator will be notified of the results in writing by the MRO, including the specific quantities. If requested by the employee or the Union, (with the written consent of the member), the laboratory will provide copies of all laboratory reports, forensic opinions, laboratory work sheets, procedure sheets, acceptance criteria and laboratory procedures.
6. In the event of a positive drug or alcohol test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the request of the employee at his/her expense. Re-tests may be conducted by the same or any other approved laboratory. The laboratory shall endeavor to notify the MRO of positive drug, alcohol or adulterant tests results within five (5) working days after receipt of the specimen. The employee may request a re-test within five (5) working days from notice of a positive test result by the MRO. Costs of re- tests will be paid in advance by the requesting party.
7. The Substance Abuse Prevention Coordinator shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
8. All information from an employee's or dispatched worker's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.
9. Every effort will be made to insure that all employee substance abuse problems will be

discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in any disciplinary procedure, and those persons will be identified in writing at the time of the procedure.

No laboratory or medical test results will appear in the employee's Personnel File. Information of this nature will be kept in a separate, confidential file.

All necessary measures shall be taken to keep the fact and the results of the test confidential.

CONSEQUENCES FOR VIOLATING THE RULES AND PROVISIONS OF THIS POLICY

1. Prospective or dispatched workers: Dispatched workers who test positive to the pre-employment drug and alcohol test conducted pursuant to this Policy will be denied employment by the Individual Contractor until their test is confirmed to the dispatched worker in writing. Dispatched workers will be informed in writing if they are rejected on the basis of a confirmed positive drug test result. A dispatched worker may utilize the MAPLA grievance procedure to challenge the validity of a positive test result.
2. Employees: If the initial results of a drug or alcohol test administered by the Individual Contractor show that the employee was under the influence of drugs or alcohol while on duty, the employee will be removed from the Project until the test results have been confirmed by the procedures contained in this Policy.
 - (a) If the final test is negative, the employee will be reinstated with full back pay for lost time.
 - (b) If the initial positive test result is confirmed, the employee will be barred from the Project effective the date and time of the collection of the test specimen. The employee is subject to termination, subject to the provisions of this section below.
 - (c) Discipline imposed for a first positive test for an employee subjected to reasonable-cause testing, or subject to post-accident testing when in fact drugs or alcohol played no role in the accident, and any grievance filed in response thereto, will be held in abeyance pending voluntary participation by the employee in a Substance Abuse Prevention Coordinator-approved treatment program during an unpaid leave of absence.
 - (d) The employee may return to work if work is available after a certificate of either rehabilitation or satisfactory participation in the program. If the program determines that periodic testing is appropriate or necessary, the employee will be subject to future urine drug or alcohol testing, even on a random basis.
 - (e) If the employee successfully completes or participates in such a program or is not

disciplined for substance use, possession or being under the influence of drugs or alcohol for twenty-four (24) months following the initial confirmed positive test, the discipline shall be revoked.

- (f) A second positive test will result in the imposition of discipline, including termination and removal from the Project and the lifting of any suspension regarding discipline imposed for a first test less than twenty-four months preceding the date of the second positive test.

NOTICE AND CONSENT/WAIVER FORMS

Employees must execute a written consent and waiver to submit to the drug and alcohol tests and for the testing laboratory to release the report of test results to the Contractor. The individual to be tested will sign the form attached as **Exhibit D** at the time of submitting to a pre-employment test and the form attached as **Exhibit B** for any subsequent test. Signing the Consent/Waiver Form will not waive any individual rights available to the employee under federal or state law. The employee must also sign at the time of employment the Notice Form, attached as **Exhibit C**, describing the employee's obligations under this Uniform Substance Abuse Prevention Policy.

SUBSTANCE ABUSE PREVENTION COORDINATOR

The Port will designate a Substance Abuse Prevention Coordinator from candidates nominated by the parties to the MAPLA to monitor compliance with this Policy and to provide assistance to Project employees with questions concerning drug or alcohol test procedures, availability of approved counseling or rehabilitation or any other drug or alcohol matters. All inquiries to the Coordinator will be confidential. The parties are eager to help employees with drug and alcohol abuse problems. The Coordinator will be prepared to assist employees in discussing insurance coverage and locating available counseling, rehabilitation and community resources.

SUPERVISOR TRAINING

The Contractor shall develop and implement a program of training to assist Management representatives and stewards in identifying factors which constitute reasonable cause for drug testing, as well as a detailed explanation and emphasis on the terms and conditions of the drug policy.

EMPLOYEE VOLUNTARY SELF-HELP PROGRAM

An employee who engages in drug/alcohol abuse is encouraged to participate in an Employee Voluntary Self-Help Program. Employees who seek voluntary assistance for alcohol and/or substance abuse not arising out of or in connection with the occurrence of any testing incident or related disciplinary action may not be disciplined for seeking such assistance. Request by employees for such assistance shall remain confidential and shall not be revealed to other

employees or management personnel without the employee's consent. Such Voluntary Self-Help Program will not be at the expense of the Owner or Contractor. An Employee Voluntary Self-Help Program Counselor shall not disclose information on drug/alcohol use received from an employee for any purpose or under any circumstances, unless specifically authorized in writing by the employee.

The Contractor shall offer an employee affected by alcohol or drug dependency an unpaid medical Leave of Absence, for the purpose of enrolling and participating in a drug or alcohol rehabilitation program. Any employee who voluntarily submits to such Voluntary Self-Help Program may return to employment on the project upon successful completion of such a program, or upon a certification of rehabilitation and satisfactory participation in such a program, and provided that the employee passes a drug and alcohol test upon return to the project and agrees for a period of one (1) year thereafter, to submit to periodic drug and alcohol testing which shall be conducted in addition to any reasonable cause or post-accident testing otherwise conducted, if considered appropriate or necessary by the rehabilitation program.

The Substance Abuse Prevention Coordinator will work with the signatory Unions to develop an "approved" list of counseling and rehabilitation programs to be used by employees/applicants who test positive for illegal drugs, alcohol, adulterants or misuse of prescription drugs. The cost of counseling and rehabilitation will not be the responsibility of the Contractor or Owner.

GRIEVANCE PROCEDURE

All disputes concerning the interpretation or application of this Policy shall be subject to the Grievance procedure established by Article 13 of the MAPLA. Such disputes may be initiated at Step 2 of the Grievance procedure. Nothing in the grievance procedure may void this Uniform Substance Abuse Policy on the Port of Oakland Maritime and Aviation Project from continued utilization on Project work.

SAVINGS CLAUSE

The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule or regulation. Should any part of this Policy be determined contrary to law, such invalidation of that part or portion of this Policy will not invalidate the remaining portions. In the event of such determination, the parties to the MAPLA agree meet promptly to commence negotiations concerning the provision affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties hereto.

TERM OF AGREEMENT

This Policy constitutes the only agreement in effect between the parties to the MAPLA concerning drug abuse, prevention and drug testing. No revisions or amendments will be made to this Policy except with the written approval of the parties hereto. This Policy shall become effective for all work covered by the MAPLA upon the effective date of the MAPLA and shall

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remain in effect for the duration of the MAPLA unless terminated or amended by the mutual consent of the parties hereto.

The parties to the MAPLA agree to meet on an annual basis to review this Policy, to bring it into compliance with the law, if necessary, and to review other considerations which may arise during the course of the MAPLA. Changes in this Policy may be made only if mandated by law or agreed upon by the collective bargaining parties.

EXHIBIT A
SUBSTANCE ABUSE PREVENTION AND DETECTION
THRESHOLD LEVELS

CONTROLLED SUBSTANCE*	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml**	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	GC/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml**
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
Alcohol	EMIT	0.08 or 0.04 % as required	GC/MS	0.08 or 0.04 % as required

* All controlled substances including their metabolite components

** SAMHSA specified threshold

*** A sample reported positive contains the indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level. Testing levels may be changed to meet revised industry standards subject to mutual agreement.

EMIT – Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

**EXHIBIT B
EMPLOYEE DRUG TEST
CONSENT/WAIVER FORM**

TO: (Name of Contractor/Employer) _____
FOR: (Project Name) _____

Name of Dispatched Worker/Employee: _____

Social Security Number: _____

Home Address: _____

City: _____ **State:** _____ **Zip code:** _____

Home Telephone: _____

Other phone numbers: Pager _____ **Mobile** _____

Consent for Testing

I (write your name) _____ understand that my Employer has determined that there is probable cause to believe that I have been working at the job site under the influence of alcohol or drugs. In response to this, my Employer requires that I provide a urine (or breathalyzer) sample as is allowed under the Project drug testing policy.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be subject to discipline including discharge from employment.

I hereby consent and agree to give specimens of my urine or to take the breathalyzer test. **My refusal to provide such a specimen or take such a test will lead to termination of my employment.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read, understand and agree to the above:

Witness Signature

Employee Signature

Date: _____

Date: _____

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EXHIBIT C
UNIFORM SUBSTANCE ABUSE PREVENTION PROGRAM
NOTICE FORM

The Port of Oakland Maritime and Aviation Project Substance Abuse Prevention Program requires that:

- Use, possession or the sale of controlled substances at the Project site is prohibited. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination, removed from the project and not be eligible for rehire.
- Conviction for selling illegal drugs, while employed on this Project, even if off the Project, will cause me to be barred from the Project and will subject me to discipline, including discharge.
- Use of prescribed or over-the-counter medication is permitted if it will not affect work performance.
- If prescribed or over-the-counter may cause a safety risk, I must notify my Contractor- employer prior to using such substances on the job.
- If I refuse to submit to pre-employment screening/testing for controlled substances and alcohol as requested by the Contractor in accordance with the terms of the Program, I will not be eligible to retake the drug test for ninety (90) calendar days. I understand that nobody will be hired on the Project without taking and passing such a test.
- The presence of an adulterant in my system at or above the defined threshold levels will make me ineligible for employment, or will result in the termination of my employment and ineligibility for reemployment, for at least ninety (90) calendar days.
- I will not be hired if I fail the test because an illegal drug or alcohol is found in my system, and I will not be eligible to be employed for ninety (90) calendar days and unless I have participated successfully in a drug or alcohol rehabilitation program.
- I may be terminated for failing a drug or alcohol test, and I will be required to complete an approved counseling or rehabilitation program and to agree to periodic testing at that program's request in order to return to work.

I sign this acknowledgment voluntarily, with full knowledge and understanding of the Port of Oakland Project Substance Abuse Prevention Program and I agree to be bound by its terms.

(Employee Name) Print _____

Signature _____

Date _____

Contractor/Company Name

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**EXHIBIT D
PORT OF OAKLAND PROJECT
PRE-EMPLOYMENT DRUG TEST
CONSENT/WAIVER FORM**

TO: (Name of Contractor/Employer) _____
FOR: (Project Name) _____

Name of Dispatched Worker/Employee: _____

Social Security Number: _____

Home Address: _____

City: _____ **State:** _____ **Zip code:** _____

Home Telephone: _____

Other phone numbers: Pager _____ **Mobile** _____

Consent for Testing

I (write your name) _____ understand that the Port of Oakland Project to which I have been dispatched, or for which I am seeking employment, requires pre-employment drug and alcohol testing. The company to which I have been dispatched requires that I take and pass this test prior to commencing employment.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be ineligible for employment on the Project and will not be able to take a new drug or alcohol test for ninety (90) days.

I hereby consent and agree to give specimens of my urine. **My refusal to provide such a specimen will prevent me from gaining employment on the Project for ninety (90) days.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read, understand and agree to the above:

Witness Signature
Date: _____

Prospective/Dispatched Worker
Date: _____

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EXHIBIT E
INCIDENT REPORT FORM

Employer _____

Employee Involved _____

Date of Incident _____ Time of Incident _____

Location of Incident _____

Employee's Job Assignment/Position _____

Has employee been notified of
his/her right to Union representation? _____

Date/Time Notified _____

DATE

TIME

Employee's Initials _____

Witness to Incident _____

OBSERVATIONS _____

EMPLOYEE'S EXPLANATION _____

Action Recommended: _____

Action Taken _____

1. _____ 2. _____

Signature

Employer Representative

Signature

Union Representative (if present)

Title: _____ Title: _____

Date/Time/Action Taken: _____

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APPENDIX F

**Addendum and Memorandum of Agreement between
International Brotherhood of Teamsters Local 853
and
The Port of Oakland
Regarding Construction Trucking Work under the
Maritime and Aviation Project Labor Agreement (MAPLA)**

1. Preamble and Purpose

This Addendum is by and between the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, and International Brotherhood of Teamsters Local 853, a labor organization (respectively, "Port" and "Teamsters", together the "Parties"). This Addendum is in addition to the Maritime and Aviation Project Labor Agreement ("MAPLA") negotiated between the Building and Construction Trades Council of Alameda County and the Port. Specifically, this Addendum is intended to ensure that work covered by MAPLA ("Covered Project(s)") will be performed efficiently and without interruption. This Addendum is entered into by the Port for the proprietary purposes set forth in MAPLA. In addition, the Port has entered into this Addendum as a result of the particular concerns associated with the utilization of heavy trucking in a densely-populated urban environment, which requires particular attention to matters of safety, financial and environmental responsibility on the part of trucking contractors, adherence to prevailing wage, licensing and other laws that have been enacted for the protection of the public. Therefore, the Parties agree as follows.

2. Scope of Addendum

This Addendum shall govern the award of bids for, the contracting work for, and the performance of Construction Trucking Work (i.e., the delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble). The MAPLA, and not this Addendum, shall apply to all other work covered by MAPLA within the Teamsters' jurisdiction that is not Construction Trucking Work.

The MAPLA shall not apply to any Construction Trucking Work performed by drivers who are *bona fide* independent contractors, and any such excluded work shall not be subject to the limits of the MAPLA Small Business Enterprise Program set forth in Article 9 of the MAPLA. All drivers shall perform work as initially classified notwithstanding any pending disputes about the classification of such drivers, unless the Port determines that the drivers are improperly classified.

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Trucking brokers (including drivers who are *bona fide* independent contractors that subcontract with or employ other drivers to perform work for Covered Project(s)) shall be required to execute a Letter of Assent to the MAPLA prior to performing any work on Covered Project(s). The MAPLA Letter of Assent shall refer to and bind Contractors to the terms of this Addendum and attachments.

The Teamsters recognize and agree that the terms of Article 12 of the MAPLA (Work Stoppages and Lockouts) apply to this Addendum and that, among other things, the Teamsters may not engage in strikes, sympathy strikes, picketing, work stoppages, slowdowns, or other disruptive activity at the site(s) of the Covered Project(s) or because of a dispute concerning Covered Project(s).

3. Bidding of Work

The Port shall incorporate the material terms of the MAPLA Trucking Requirements, attached hereto as **Exhibit A**, into all future bidding documents for Covered Project(s) and shall include this Addendum with any bidding documents that involve or entail Construction Trucking Work.

4. Enforcement

The parties recognize that misclassification is a serious concern in the transportation industry. Misclassification and the failure to pay wages owed have the effect of undermining sources of public revenue, prevailing wage requirements, licensing and contracting laws, financial and environmental responsibility, and may contribute to the eruption of labor disputes and work stoppages. Accordingly, the provisions respecting enforcement of these requirements is intended to ensure the safety of the public and of drivers, accomplish the Port's environmental goals, and facilitate the timely and efficient completion of Covered Project(s).

In order to ensure the Parties and contractors are in compliance with MAPLA, state laws and regulations respecting government contracts, and this Addendum, the Port shall require all drivers engaged to perform work on Covered Project(s) to complete a questionnaire that incorporates the material terms of the MAPLA Driver Questionnaire, attached as **Exhibit B**, hereto. The purpose of the questionnaire is to ensure compliance with the Trucking Requirements and ensure that drivers are properly classified as independent contractors or employees. Responses to all questionnaires will be signed under penalty of perjury and will be public records, except for those portions marked confidential.

Disputes regarding whether a driver is a *bona fide* independent contractor and any related claim for nonpayment of wages and benefits because of misclassification shall be resolved through the MAPLA grievance procedure in Article 13, during which all applicable State law

standards and burdens shall apply. Notwithstanding the provisions of Section 13.2, Step 4(b) of the MAPLA regarding equally sharing costs of arbitration, an arbitration award regarding claims about the misclassification of drivers and/or claims for nonpayment of wages and benefits because of misclassification, may include an award of reasonable attorneys' fees and costs (but not penalties) to the prevailing party, subject to the discretion of the arbitrator and only to the extent authorized by State law. For all disputes under this Addendum other than misclassification – including, without limitation, disputes regarding nonpayment of wages for employee drivers – the MAPLA grievance procedure in Article 13 shall be the exclusive dispute resolution mechanism.

5. Savings and Supersession

The terms contained in this Addendum and its exhibits are valid and enforceable as if they were set forth directly in MAPLA, and shall supersede any inconsistent terms contained in MAPLA. In the event that any provisions set forth in this Addendum are found by a court of law to be void, all other provisions shall continue to remain in effect and the Parties shall meet and confer in good faith to address any such ruling.

The Parties agree that the timely, efficient, and economical completion of Covered Project(s) is of utmost importance. The Parties shall, in good faith, endeavor to resolve any operational issues that arise because of the implementation of this Addendum, the MAPLA Trucking Requirements, or the MAPLA Driver Questionnaire, and may make mutually agreed upon changes.

Accepted and Agreed to this 30 day of January, 2016

City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners

By:


J. Christopher Lytle
Executive Director

International Brotherhood of Teamsters, Local 853

By:


Rome Aloise
Secretary-Treasurer

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EXHIBIT A

MAPLA Material Haul Trucking Services Requirements

The material terms of the following requirements will be incorporated in bid specifications and/or the MAPLA Operating Procedures governing trucking services.

The following requirements apply to the delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble ("Construction Trucking Work" or "Work"). The word "Equipment" refers to both the truck and trailer used for hauling. These requirements are intended to ensure the Work is performed in accordance with professional standards of workmanship, safety and the health of not only the drivers performing the Work, but also of those around them, including other workers and the public, while minimizing the environmental impact on the high-density urban environment in which the Work will be performed. These requirements impose standards and procedures with which the contractor and any subcontractors performing the Work must comply. The requirements contained herein may apply to the individuals performing the Work and/or Contractors awarded the Work, respectively referred to as "drivers" and "Contractors" herein. The term "driver" is used without regard to whether the individual performing the work has been classified as an employee or as an independent contractor. These requirements are in addition to those set forth under MAPLA. The term "Union" means the International Brotherhood of Teamsters, Local 853.

Equipment

1. The Contractor is responsible for ensuring that the equipment utilized in the performance of the Work complies with the requirements set forth herein. The Contractor is responsible for ensuring all subcontractors adhere to these requirements. All equipment shall be maintained in good working condition, as determined by standards set forth by the State of California Highway Patrol. At any time, the Trucking Coordinator (as described below) may require inspection or servicing of any equipment that does not comply with the requirements set forth herein. The Trucking Coordinator shall immediately notify the Contractor and any subcontractors in writing of any equipment requiring inspection or servicing. The Trucking Coordinator's written notification shall identify: (i) the equipment requiring inspection or servicing; and (ii) the violation and/or deficiency. Failure to comply with the Trucking Coordinator's demand shall be grounds for removal of the driver and/or equipment from the job, subject to the discretion of the General Contractor.

2. The Contractor will ensure that each driver, prior to commencing Work, shall submit a completed questionnaire attached as **Exhibit B** to the Addendum. The questionnaires shall be signed under penalty of perjury. The Trucking Coordinator and/or Port will provide questionnaires to all drivers, who must complete and return them directly to the Trucking Coordinator or Trucking Coordinator's designee no later than five (5) business days after the driver first performs Work. Drivers who fail to return completed questionnaires within this five

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business day timeframe will not be permitted to perform Work unless they execute a Letter of Assent. Drivers who are so prohibited may be permitted to perform Work at the discretion of the Trucking Coordinator only after completing the questionnaire or executing a Letter of Assent. The Contractor, its subcontractors, the Port, and/or Teamsters shall not attempt to influence the driver to answer the questionnaire in any manner.

3. Equipment utilized in the performance of the Work must meet the CARB regulations in effect for On-Road Heavy-Duty Diesel Vehicles (13 C.C.R. § 2025).

4. To the extent consistent with the Port of Oakland Standard Contract Provisions for Public Works Projects, as amended, all equipment used for performing the Work shall be road worthy and shall be fully insured with minimum Commercial Automobile Liability insurance limits of \$1,000,000 combined single limit, each accident for bodily injury and property damage, from a fully bonded or reinsured insurance company licensed to do business in California. An active policy or policies for such insurance shall be maintained throughout the performance of the Work.

5. All Equipment used to perform the Work shall comply with the California Highway Patrol's requirements regarding Biennial Inspection of Terminals ("BIT") inspections both prior to and during the Project. The Contractor and any subcontractor shall not be permitted to use any equipment at the Project that is not maintained in accordance with the BIT Inspection regulations. Proof of compliance shall be provided to the Trucking Coordinator and furnished upon request to the Union.

6. The Contractor, any subcontractor, or driver shall not tamper with emission control equipment or the engine calibration software controlling engine performance on any equipment.

Driver

7. All drivers of heavy duty commercial trucks with a Gross Motor Vehicle Weight Rating of 26,001 pounds or more performing Work will be subject to the MAPLA's Substance Abuse Testing Policy. All such drivers will comply with the Trucking Coordinator's oversight or monitoring of the Substance Abuse Testing Policy. Failure to comply with such substance abuse testing shall be grounds for immediate removal from the Project.

8. All drivers performing the Work shall be required to possess, maintain and have in their possession the proper operator's license and medical examiner's certificate at all times, and shall present such licenses and certificates to the Trucking Coordinator upon demand.

9. To the extent required by law, all drivers must be covered by a workers compensation insurance policy. To the extent the Contractor or any subcontractor is self-insured, it must demonstrate compliance with the California Labor Code, including a copy of a current certificate of consent to self-insure issued by the Director of the California Department of Industrial Relations under Labor Code Section 3700(b), to the extent this is consistent with the Port of

Oakland Standard Contract Provisions for Public Works Projects, as amended. No driver may be permitted to perform Work unless proof of such a policy is provided.

10. All drivers performing Work must register with the Trucking Coordinator and provide proof of liability insurance and workers compensation coverage or exemption therefrom. The Trucking Coordinator shall ensure union security provisions are enforced and complied with to the same extent and degree as elsewhere on the Project. Contractors shall not be required to contribute to the Union's Health & Welfare and Pension Trusts on behalf of drivers who are *bona fide* independent contractors. Independent Contractors may elect to participate in the Union's Health and Welfare or Pension Trusts at their own expense. Drivers who are *bona fide* independent contractors shall not be required to be referred through the Union's hiring hall. In soliciting independent contractor drivers, no Contractor or subcontractor shall discriminate against a driver based on his or her referral from the Union hiring hall or participation in benefit plans.

11. The Union shall have standing to initiate and prosecute grievances under MAPLA Article 13 (Grievances) and the Construction Trucking Addendum (attached as Appendix F to the MAPLA) for the purpose of challenging the employment classification of drivers and remedying the non-payment of wages under the MAPLA on behalf of drivers.

Prevailing Wage

12. All drivers performing Work shall be paid applicable California State prevailing wage rates and shall be compensated in accordance with California law.

13. All drivers performing Work shall be monitored on-site by an employee of the Contractor.

14. The Port shall monitor Prevailing Wage and MAPLA compliance on work performed on Covered Project(s) and shall inform the Union of any discovered violations.

Health, Safety and Financial Responsibility

15. All drivers performing Work shall participate in the Contractor's safety training program, which shall include: (i) driving safety; (ii) hazmat training; and (iii) jobsite awareness and reporting of safety issues and suspicious or threatening activities.

16. The Contractor shall indicate whether it is currently the debtor in a bankruptcy case and whether it has filed a bankruptcy petition in the last seven (7) years.

17. Upon request by the Union, the Trucking Coordinator shall collect from the principal(s) of the Contractor the names of all prior trucking companies, proprietorships, or other entities in which they have held an ownership interest in the past three years. As used in this section, "principal(s) of the Contractor" means any person or entity holding at least a 25% ownership interest in the Contractor.

18. The Contractor shall indicate whether it, in the last five (5) years, had any civil claim filed in court, arbitration, administrative agency or other dispute resolution proceeding alleging violations of The Federal Hours of Service Rules; California Labor Code; California Public Contract Code; or alleged violation of any other rule or regulation promulgated by the Federal Motor Carrier Safety Administration, including rules regarding the proper transportation of hazardous materials.

19. The Contractor shall be subject to retention of progress payments to ensure performance of the Work. This retention may also be used, solely or in combination with progress payments due to the Contractor, for the purpose of securing payment of prevailing wage to all drivers employed, engaged or contracted by the Contractor or any subcontractor to perform the Work.

20. The Contractor shall be subject to audits of its books and records, including payroll, by the Port, which includes the Trucking Coordinator, for the purpose of monitoring and enforcing financial responsibility provisions and payment of prevailing wage to all drivers engaged or employed by the Contractor performing the Work whether employed or subcontracted by the Contractor.

21. In accordance with the Public Contracts Law, the Contractor must designate all subcontractors it anticipates utilizing, which shall hold valid contractors licenses issued by the State of California, as applicable.

Trucking Coordinator

22. The Trucking Coordinator shall be provided by the Port. Subject to all rules governing Port employment (including, without limitation, the City of Oakland Charter, the City of Oakland Municipal Code, and the Port's Personnel Rules), the Port shall select the Trucking Coordinator following consideration of qualified applicants, including those referred by the Union, and following consultation with the Union regarding the minimum qualifications required of the Trucking Coordinator and the requirements of the position. The same Trucking Coordinator may oversee more than one project covered by MAPLA. Subject to all rules governing Port employment, the Trucking Coordinator shall prioritize fulfilling his/her duties required hereunder.

23. The Trucking Coordinator shall not have the power to hire or fire on behalf of the Contractor or any subcontractors, but may recommend removal of drivers from the job upon notice to the Contractor and documentation of noncompliance by such driver or subcontractor with respect to these specifications, MAPLA or State prevailing wage law.

24. Subject to the terms of these specifications, the Trucking Coordinator shall independently exercise his/her discretion. The Contractor shall not improperly influence or attempt to improperly influence the Trucking Contractor in any manner. The Trucking Coordinator's duties shall include ensuring that these specifications, MAPLA and State prevailing wage law are enforced. The Trucking Coordinator may interact directly with drivers to ensure compliance with the duties identified above, so long as the Trucking Coordinator's actions do not unduly

disrupt the Work and comply with the Contractor's needs and practices. Upon findings of non-compliance with these specifications, the Trucking Coordinator shall inform the Contractor in order to allow the Contractor sufficient time to correct the noncompliance. If the Contractor is not able to resolve the noncompliance, the Trucking Coordinator or the Union may refer the issue to the Joint Administrative and Social Justice Trust Committee (as described in MAPLA Article 6) for resolution.

25. The Trucking Coordinator shall exercise his/her best efforts to maintain communication with the Union and to provide notice to the Union of any discovered non-compliance with these requirements.

EXHIBIT B
MAPLA Driver Questionnaire

[The Port reserves the right to streamline, reorganize, and make other non-substantive edits before publishing this questionnaire. Items marked "[CONFIDENTIAL]" below shall be segregated onto a separate page so that the questionnaire can be easily redacted before disclosure in response to a Public Records Act or similar request.]

I. GENERAL INFORMATION

1. Please list the following information for all driver(s) who operate the vehicle:
 - a. Name(s);
 - b. [CONFIDENTIAL] California Driver's License number(s);
 - c. Years of driving experience; and
 - d. Driver's License endorsements (if any).
2. Please provide the following information for your power unit ("Tractor"):
 - a. Tractor's Vehicle Identification Number.
 - b. The manufacturer and license plate number of the Tractor, as well as the year of manufacture for the chassis and engine.
 - c. Name and [CONFIDENTIAL] address of the legal owner of the Tractor that you will be driving, as listed on DMV documentation.
3. Please provide the following information for your trailer or material container(s) (dump box) of the load carrying equipment ("Trailer"):
 - a. Name and [CONFIDENTIAL] address of the legal owner of the Trailer listed on DMV documentation that will be used to perform work on the Port of Oakland project(s).
 - b. The manufacturer and license plate number of the Trailer(s), as well as the year of manufacture for the chassis

II. SAFETY INFORMATION

4. Please provide the following safety information for your Tractor:
 - a. Does your Tractor's engine meet the necessary California Air Resources Board ("CARB") requirements in effect for On-Road Heavy-Duty Diesel Vehicles (13 C.C.R. § 2025) to perform work on the Port of Oakland project(s)?

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- b. Has your Tractor's engine had an exhaust filter installed on it?
 - c. Do you have a procedure, policy or controls you have in place to ensure that scheduled runs do not require the driver to exceed speed limits or exceed maximum hours of service (as required by Vehicle Code Section 34501.3)?
 - i. State all individuals who administer the above-described procedure, policy, or controls and their relationship to you.
5. Please provide the following BIT Program Information
- a. For each terminal designated as the location where your vehicle will be inspected under the Biennial Inspection of Terminals ("BIT") program administered by the CHP, list the terminal's [CONFIDENTIAL] address and owner, and the vehicle(s) designated for each terminal.
 - b. Have any of the prior terminal inspections been performed through administrative review? If yes, indicate the designated terminal representative who signed the request for administrative review, and his/her relationship to you.
6. Have you ever had your license revoked for driving under the influence?
7. Have you been involved in any vehicular accidents within the past 2 years?
- a. If so, was there any injury to any party involved?
 - b. If so, were you cited by law enforcement for the accident(s)?
8. In the last 5 years, have you ever been placed "Out of Service" by the California Department of Motor Vehicles ("DMV") or the California Highway Patrol ("CHP") due to the following reasons?
- a. Excessive Hours?
 - b. Logbook Violations?
 - c. Equipment Violations?
9. Are you paid under a W-2? If yes, please skip the rest of this questionnaire (Sections III through V) and sign at the end.

III. FINANCING INFORMATION

Tractor

10. Do you lease the Tractor from another person for a term of more than 4 months?
11. If you are financing the Tractor, please provide:
- a. The name and [CONFIDENTIAL] address of the person or financial institution carrying the loan; and
 - b. A list of all guarantors of the loan, if any, on the Tractor and their relationship to you.
12. Do you operate the Tractor exclusively for another person or entity? If yes, what is the name of the person or entity?

Trailer

13. If you are financing the Trailer(s), please provide:
- a. The name and [CONFIDENTIAL] address of the person or financial institution carrying the loan;
 - b. A list of all guarantors of the loan, if any, on the Trailer(s) and their relationship to you.
14. Can you use the Trailer(s) for anything and/or at any time that you wish to?

IV. COMPENSATION INFORMATION

Work Through Brokers

15. Did you obtain work on the Port of Oakland project(s) through a Broker? If no, skip this Section IV.
- a. If yes, what is the name of the Broker?
 - b. How long (in years and months) have you been obtaining work through the Broker?
 - c. How many other brokers have you worked for in the past 2 years?
16. Do you have a written contract with the Broker?
- a. [CONFIDENTIAL] If yes, please attach a copy of the contract.
17. Do you pay a referral fee to the Broker? If yes:
- a. How much is the referral fee? (0% – 4%; 5% – 9%; 10% – 14%; 15% – 19%; 20% or more)

18. Does the Broker provide you any training? Does the Broker maintain your Tractor and/or Trailer to ensure you are up to date with BIT and CARB inspections?

Pay Practices

19. Please indicate how you are paid (e.g., by the hour, by tonnage rates, by the load).

20. If you are paid by a Broker:

- a. Are you paid weekly?
- b. Are you paid monthly?
- c. Do you have to wait for more than 30 days for payment for work performed?
- d. Do you receive any benefits from the Broker (e.g., health insurance, vacation pay, pension)?
- e. Does the Broker reimburse you for any expenses in addition to what you are paid? If so, what expenses? Do you receive reimbursement for labor and equipment in separate checks?

21. Do you receive standby pay or pay for time-worked when waiting for loads?

Job Performance

22. In the course of work, are you directed on any of the following:

- a. What specific time to arrive at the job?
- b. What specific time the load is to be delivered by?
- c. What routes to take to and/or from the job or location of the delivery?
- d. Any directions relating to transporting hazardous materials?

23. Who gives the directions described above?

V. INSURANCE AND BUSINESS INFORMATION

24. State the insurer and [CONFIDENTIAL] policy number of any insurance covering your Tractor, your Trailer(s), or your operations, and the name of the insured.

25. Do you have Workers' Compensation insurance?

26. What is your CHP Carrier Identification Number ("CA Number")?

- a. How long have you had this CA Number?
- b. How many vehicles do you have under this CA Number?

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- c. If you are self-insured for workers' compensation, please provide the certification submitted to the Board for purposes of self-insurance.

27. Do you have a Business License Number? If so, what is it and in which locality was it issued?

28. Do you haul anything other than construction materials (including construction fill) with your Tractor(s) and/or Trailer(s)?

- a. If yes, please describe the other materials that you haul.

29. Do you advertise for your services?

- a. If yes, where and how do you advertise for your services?

I certify under penalty of perjury that the information provided above is true and correct.

Date:

Signature:

Printed Name:

[CONFIDENTIAL] Address:

[CONFIDENTIAL] Telephone:

[CONFIDENTIAL] Email: