PROJECT STABILIZATION AGREEMENT

For the

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

OAKLAND AIRPORT CONNECTOR PROJECT

This Agreement is made and entered into this _____ day of _____, 2009, by and between the San Francisco Bay Area Rapid Transit District together with other contractors and/or sub-contractors, who shall become parties to this Agreement by signing the "Agreement to be Bound" (Attachment A), and the Local Unions signatory hereto and the Alameda County Building & Construction Trades Council and its affiliated local unions who have executed this Agreement.

PURPOSE

The purpose of this Agreement is to promote efficiency of construction operations during the Project and 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 the Project.

RECITALS

WHEREAS, the successful completion of the Project is of the utmost importance to the general public in the San Francisco Bay Area; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the unions affiliated with the Alameda County Building and Construction Trades Council and any other Union which is signatory to this Agreement employed by contractors and subcontractors who are signatory to agreements with the Unions; and

WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the District, the Unions and Contractors 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 District, the Contractors and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractors, and further, to encourage close cooperation among the Contractors and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor and the affected Unions; and

WHEREAS, the contracts for the construction of the Project will be awarded in accordance with the applicable provisions of the California Public Contract Code, the District Act and applicable Federal, State and local requirements; and

WHEREAS, the District desires to provide opportunities for small, local business entities and local residents to participate in the Project; and

WHEREAS, the District has the absolute right to select as its Contractor the entity offering the best value to the District; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion the Project;

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

ARTICLE 1
DEFINITIONS

1.1 "Agreement" means this Project Stabilization Agreement.

1.2 "District" means the San Francisco Bay Area Rapid Transit District.

1.3 "Completion" means that point at which the District commences revenue service of the Oakland Airport Connector. "Punch list" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Project may be completed in phases and Completion of any such phase may occur prior to Completion of the entire Project.

1.4 "Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business

enterprise and has entered into a contract with the District or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Project.

1.5 "Construction Contract(s)" means all of the contract(s) for construction of this Project.

1.6 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.

1.7 "Project" means the District's Oakland Airport Connector Project which involves the construction of a rail line and stations connecting the Oakland Coliseum station to the Oakland International Airport.

1.8 "Union" or "Unions" means the Council and any other labor organization 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.

1.9 "Project Manager" means the person or persons or business entity designated by the District to oversee all phases of construction on the Project.

1.10 "Schedule A Agreement" means the local master labor agreement of a Union signatory to this Agreement and which is listed in Appendix A.

ARTICLE 2
SCOPE OF AGREEMENT

2.1 Parties: This Agreement shall apply and is limited to all Contractors and subcontractors performing Construction Contracts necessary for the Project, the District and the Council and any other labor organization signatory to this Agreement, acting in their own behalf and behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 Project Description: This Agreement shall govern the award of all of the Construction Contracts identified by the District as part of the Project. The District has the absolute right to combine, consolidate or cancel contract(s) or portions of contract(s) identified as part of the Project. Should the District remove any contract from the Project and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the District. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.3 of this Agreement.

2.3 Covered work:

2.3.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation, pipelines (including those in linear corridors built to serve the Project), site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.2 The Project includes work necessary for the Project and/or in temporary yards or areas adjacent to and dedicated to the Project, and at any on-site batch plant constructed solely to supply materials to the Project, when those sites are dedicated exclusively to the Project. This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.) This Agreement also covers all off-site fabrication work traditionally performed by the Unions that is part of the Project, provided such off-site fabrication work is covered by a provision of a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s). Further, any and all construction of any and all reinforced concrete support structures designed and specially fabricated for this Project, shall be considered on-site work and shall be covered by this Agreement. All of the work described in this paragraph is within the scope of the Project and this Agreement.

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of written request or as required by bid specifications.

2.3.4 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 of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. In such instances all provisions of this Agreement shall apply. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.4 Exclusions: The following shall be excluded from the scope of the Project:

2.4.1 This Agreement shall be limited to construction work necessary for the Project and is not intended to, and shall not govern other construction work performed by the District at anytime prior to the effective date, during or after the expiration or termination of this Agreement.

2.4.2 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the District which are outside the approved scope of the Project.

2.4.3 This Agreement is not intended to, and shall not affect the operation or maintenance of any of the District's facilities or rail system.

2.4.4 This Agreement shall not apply to a Contractor's executives, managerial employees, engineering employees, design employees, supervisors (except those covered by existing building and construction trades collective bargaining agreements), office and clerical employees.

2.4.5 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by the District or its contractors for work not part of the scope of this Project.

2.4.6 This Agreement shall not apply to the off-site maintenance of leased equipment or the on-site supervision of such work.

2.4.7 This Agreement shall not apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion.

2.5 Work covered by this Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms and conditions of the National Agreement of the International Union of Elevator Constructors except that Articles 4, 8, 12 and 13 of this Agreement shall prevail and be applied to such work.

ARTICLE 3
EFFECT OF AGREEMENT/SUBCONTRACTORS

3.1 By executing this Agreement, the Unions and the District agree to be bound by each and every provision of this Agreement.

3.2 By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.3 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party unless performing work within the scope of the Project.

3.4 It is understood that this Agreement, together with the referenced Schedule A Agreements, constitute an integrated, 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. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the Schedule A Agreements, shall be resolved according to the procedures set forth in Article 12 of this Agreement; provided, however, that should a dispute involve a single Schedule A Agreement and a Contractor signatory thereto, and not involve interpretation or application of this Agreement, then such dispute shall be processed and resolved pursuant to the grievance provisions of that Schedule A Agreement. Should there be a dispute in the first instance as to whether the provisions of Article 12 of this Agreement or the grievance procedures of a Schedule A Agreement apply, the dispute shall be presented initially to arbitrator Gerald McKay or, if Gerald McKay is unavailable, arbitrator William Riker, for resolution as to the applicable procedure. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and heard and decided within three (3) calendar days. Should the arbitrator hold that Article 12 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 12, or, absent mutual agreement, commence processing the dispute at Step 1 of that Article.

3.5 Subcontractors. At the time that any Contractor enters into a subcontract with any subcontractor of any tier for the performance of construction or construction trucking work within the scope of this Agreement, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified by the negotiating parties, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree to be bound by each and every provision of the Agreement prior to the commencement of work.

3.5.1 Each Contractor and Subcontractor shall evidence their agreement to be bound to this Agreement by executing the Agreement To Be Bound form attached hereto as Appendix A. A copy of the Agreement To Be Bound executed by the contractors and subcontractors shall be submitted to the Union(s) prior to both the commencement of work and the Pre-Job Conference. If the Contractor or Subcontractor refuses to execute the Agreement to be Bound, then such Contractor or Subcontractor shall not be awarded a Construction Contract to perform work on the Project. A Contractor or Subcontractor who executes the Agreement to Be Bound shall be considered a signatory party to this Agreement.

3.6 It is understood that the liability of each Contractor and Subcontractor and the liability of each Union under this Agreement shall be several and not joint.

3.7 With regard to any Contractor or subcontractor that is independently signed to any Schedule A Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Schedule A Agreement, except as specifically set forth in section 3.7.1 of this Agreement. Any such subcontracting clause in a Schedule A

Agreement shall remain and be fully enforceable between each craft union and its signatory employers and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft Unions and their respective signatory employers under a Schedule A Agreement, except as specifically set forth in section 3.7.1 in this Agreement.

3.7.1 If a craft Union ("Aggrieved Union") believes that an assignment of work on this Project 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 Schedule A Agreement, as permitted by section 3.7 of this Agreement, the Aggrieved Union may submit a claim under the jurisdictional dispute resolution procedure contained in Article 13 of this Agreement 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 Schedule A Agreement, as permitted under section 3.7 of this Agreement, 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 Schedule A Agreement conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio.*

ARTICLE 4
WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, District and Contractor agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or construction persons employed on the Project, at the job site of the Project or at any other facility of the District because of a dispute on the Project. Disputes arising between the Unions and Contractors on other District projects are not governed by the terms of this Agreement.

4.1.2 As to construction persons employed on the Project, there shall be no lockout of any kind by a Contractor covered by this Agreement.

4.1.3 If a Schedule A Agreement between a Contractor and the Union expires before the Contractor completes the performance of a Construction Contract and the Union or Contractor gives notice of demand for a new or modified Schedule A Agreement, the Union agrees that it will not strike, picket, hand-bill, slowdown or engage in any other disruptive activity against the Contractor and the Contractor will not lockout construction persons of the Union on said Construction Contract for work covered under this Agreement and the Union and the Contractor agree that the expired Schedule A Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Schedule A Agreement is reached between the Union and Contractor. If the new or modified Schedule A Agreement reached between the Union and Contractor provides that any terms of the new Schedule A Agreement shall be retroactive, the Contractor agrees to comply with any retroactive terms of the

new or modified Schedule A Agreement which are applicable to construction persons employed on the Project within seven (7) days.

4.2 Any party to this Agreement may institute the following procedure, in lieu of or in addition to any other action at law or equity, when a breach of this Article 4 is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify Gerald McKay whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, William Riker shall be the alternate arbitrator. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to the District, to the Council and to the involved local Union if a Union is alleged to be in violation.

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

4.2.3 The arbitrator shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said hearing shall be completed in one (1) session, which, with appropriate recesses at the arbitrator's discretion, shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of this Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or 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 a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article 4 and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above 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 4.2.4 of this Article 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 or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be paid by the losing party.

4.3 Liquidated Damages. If the arbitrator determines that a violation of Section 4.1 has occurred, the breaching party shall, within eight (8) hours of the issuance of the decision take all steps necessary to immediately cease such activities and return to work. If the breaching party involved does not cease such activities by the beginning of the next regularly scheduled shift following the expiration of the eight (8) hour period after the arbitrator's issuance of the decision, then the breaching party shall pay the sum of ten thousand dollars ($10,000) as liquidated damages to the District per shift until the breach is remedied. The arbitrator shall retain jurisdiction for the sole purpose of determining compliance with this obligation and determining the amount of liquidated damages, if any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

ARTICLE 5
PRE-JOB CONFERENCE

5.1 A Pre-Job Conference shall be held as soon as practicable, however the parties shall endeavor to have such conference at least twenty-one (21) days prior to the commencement of each Construction Contract and in all cases prior to commencement of work on such Construction Contract. The Pre-Job Conference shall be attended by a representative each from the participating Contractors, the Union(s) and the Project Manager. The Pre-Job Conference shall be held at the offices of the Alameda County Building and Construction Trades Council.

ARTICLE 6
NO DISCRIMINATION

6.1 The Contractors and Unions agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability against any person, or applicant for employment on the Project.

ARTICLE 7
UNION SECURITY

7.1 The Contractors recognize the Union(s) as the sole bargaining representative of all construction persons working within the scope of this Agreement.

7.2 All construction persons who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on the Project, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union with is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union construction persons from joining the local union.

ARTICLE 8
SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

8.1 The parties agree that BART certified DBE's shall be encouraged to participate in the construction of the Project. In order to achieve this, BART certified DBE's which meet the following qualifications shall be excluded from the Agreement:

8.1.1 Received gross revenues for the three (3) most recent fiscal years not exceeding twelve million nine hundred thousand dollars ($12,900,000): and

8.1.2 Are owned and operated by an individual with a net worth of less than $750,000; in determining an individual's net worth, an individual's ownership interest in the applicant firm and equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm) shall be excluded.

8.2 DBE's which meet these qualifications may participate in the Project and be excluded from this Agreement only insofar as:

8.2.1 No more than twenty million dollars ($20,000,000) of the total expended on the Project is awarded to such DBE's combined; and

8.2.2 No more than half of this twenty million dollars ($20,000,000) shall be awarded initially, and after this initial ten million dollars ($10,000,000) is expended, there shall be full disclosure of all relevant information concerning bid, award and contract performance; provided, however, that nothing herein shall be construed to require the District to disclose confidential information provided to the District by a DBE entity. The parties shall then meet and review whether the requirements of sections 8.1.1, 8.1.2 and 8.2.5 have been satisfied with respect to this initial ten million dollars ($10,000,000). If the requirements of this Article have been fulfilled, then the second ten million dollars ($10,000,000) may be expended. If there are any disputes concerning this, they shall be submitted to arbitration pursuant to Article 12 of this Agreement; and

8.2.3 Not more than ten percent (10%) of the work within the scope of work of each craft as described in each Schedule A Agreement shall be subject to this Article; and

8.2.4 There shall be full Union(s) access at all times to the worksite and construction persons performing any work performed under this Article; and

8.2.5 This Article shall not supersede any subcontracting clause in any Schedule A Agreement.

ARTICLE 9
LOCAL HIRE PROGRAM

9.1 The objective of the District in creating a Local Hiring Program is to enhance and encourage employment opportunities for residents of Alameda, Contra Costa, San Francisco and San Mateo counties ("Local Area Residents") and specifically residents of the Project Local Impact Area which shall be defined as residents of Oakland, to enable effective pathways into the construction industry and into Union Apprenticeship programs. To that end, as part of the Agreement, the District establishes goals for the hiring and retention of Local Area Residents.

9.2 Local Hiring Program. The District establishes the following Local Hiring Goals and Commitments:

9.2.1 Fifty percent (50%) of all hours worked on the Project, on a craft by craft basis, will be worked by Local Area Residents and twenty-five percent (25%) will be worked by residents of the Project Local Impact Area if such construction persons are available, capable and willing to work on the Project and are dispatched through the utilization of the normal Union hiring hall procedures.

9.2.2 Subject to any legal restrictions, the parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft hours worked on the Project unless an applicable Schedule A Agreement provides for a greater percentage. The Unions agree to cooperate with the Contractors in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with the provisions of the applicable Schedule A Agreement.

9.3 The parties agree to a goal that only Local Area Residents as defined in this section shall be utilized as apprentices and that fifty percent (50%) of all apprentice hours worked on the Project will be worked by residents of the Project Local Impact Area. The Contractors shall make good faith efforts to reach this goal through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the Contractors and community based organizations to achieve these goals. All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs.

9.4 Good Faith Efforts. A Contractor or subcontractor must take the following good faith steps to demonstrate that it has made every effort to reach the Local Hiring Program goals of the District. The Contractor or subcontractor shall attend scheduled Pre-Job meetings held under this Agreement and shall submit written workforce projections and projected work hours on a craft-by-craft basis.

9.4.1 Within seven (7) calendar days after Notice to Proceed, the Contractor or subcontractor shall meet with the Joint Administrative Committee to present its plan for reaching the Local Hiring Program goals.

9.4.2 The Contractor or subcontractor shall notify the Project Manager of the District by U.S. Mail or e-mail if a Union hiring hall cannot, upon request by the Contractor or subcontractor, dispatch Local Area Residents to the Project. It shall be the responsibility of the Contractor or subcontractor to retain all evidence of such good faith efforts.

9.4.3 The Contractor or subcontractor shall use the "Name Call", "Rehire" or other available hiring hall procedures to reach the goals of this Article 9.

9.4.4 The Contractor or subcontractor shall use local community-based organizations working in collaboration with the apprentice programs for recruiting Local Area Residents to apprentice programs specified in this Article 9, if a Union cannot provide Local Area Residents as requested and in conformity with the Union hiring hall rules.

9.5 Consequences of Non-Compliance with Goals.

9.5.1 District staff and the Joint Administrative Committee shall monitor the operation of the Local Hiring Program and shall consider allegations of non-compliance with the goals stated in this Article. If there is a determination by the Joint Administrative Committee that a Contractor or subcontractor has not complied with the goals or demonstrated good faith efforts to do so, the issue will be referred to arbitration as provided for in Article 12.

9.5.2 At any time during the process of compliance review, the Contractor or subcontractor can negotiate a settlement with the Joint Administrative Committee.

9.6 Funding. To cover the expenses related to the implementation and management of the Local Hiring Program and costs of services provided by community-based organizations located in the Project Local Impact Area, each Contractor and/or subcontractor shall contribute ten cents ($0.10) per hour worked or paid to each construction person performing work on the Project. The Joint Administrative Committee shall establish an account for the receipt and distribution of funds contributed under this Section 9.6 and shall establish administrative procedures to manage such resources.

ARTICLE 10
GRIEVANCE PROCEDURE

10.1 Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which has jurisdiction to consider and resolve disputes over the imposition of discipline or dismissal of its construction persons working on this Project shall be bound to the grievance procedure contained in the Schedule A Agreement of the craft representing the employee(s) involved in the dispute. For the purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered by this Agreement without just cause.

ARTICLE 11
JOINT ADMINISTRATIVE COMMITTEE

11.1 The parties to this Agreement shall establish a five (5) person Joint Administrative Committee. This Committee shall be comprised of two (2) representative selected by the District; two (2) representatives of the signatory Unions and Alameda County Building and Construction Trades Council; and one (1) representative selected by the Design/Build/Operate/Maintain entity (holder of the prime contract for the Project with the District) from within its organization; provided, however, such representative selected shall be subject to the approval of the District and the Alameda County Building and Construction Trades Council and such approval shall not be unreasonably withheld. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

11.2 The Joint Administrative Committee shall meet as required, but not less than once each quarter, to review the implementation of the Agreement and the progress of the Project including, but not limited to, compliance with Article 8, prevailing wage, Local Hire Program, safety, craft workforce levels and construction progress. Requests for certified payroll made by a Joint Labor/Management Committee to which the Union(s) signatory to this Agreement are a party shall be provided as allowed by law.

ARTICLE 12
GRIEVANCE ARBITRATION PROCEDURE

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party provides notice in writing to the signatory party with whom it has a dispute within seven (7) calendar days after becoming aware of the dispute, but in no event more than thirty (30) calendar days after it reasonably should have became aware of the event giving to the dispute. The limits in this Section 12.1 may be extended by mutual written agreement of the parties.

12.2 Grievances shall be settled according to the following procedures:

Step 1: Within seven (7) calendar days after the receipt of the written notice of grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, or representative of the construction person, and the representative of the involved Contractor shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step 1, either involved party may submit it within three (3) calendar days to a subcommittee of the Joint Administrative Committee consisting of one (1) person selected by the District and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to

resolve the grievance. If the dispute is not resolved within such time (seven (7) calendar days after its referral or such longer time as mutually agreed upon) it may be referred within seven (7) calendar days by either party to Step 3.

Step 3: Within seven (7) seven calendar days after referral of a dispute to Step 3, the representatives shall choose an arbitrator for final and binding arbitration. The parties agree that an arbitrator shall be selected by the alternate striking method from the following list. The party who shall strike the first name shall be selected by the toss of a coin.

1. Gerald McKay
2. Robert Hirsh
3. William Riker
4. Barbara Kong-Brown
5. Thomas Angelo

12.3 In the event that any of the above listed Arbitrators are unable or unavailable to serve, the parties shall immediately meet and confer to select a replacement arbitrator.

12.4 The Arbitrator shall arrange for a hearing no later than fourteen days (14) calendar days from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written option may be requested by a party from the presiding Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without the request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

12.5 The decision of the Arbitrator shall be binding by all parties. The Arbitrator shall not have authority to change, amend, add, or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.6 In order to encourage the resolution of disputes and grievances at Step 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

ARTICLE 13
JURISDICTIONAL DISPUTES

13.1 The Contractor/Employer(s) shall assign work on the basis of traditional craft jurisdictional lines.

13.2 There shall be no strikes, picketing, sympathy strikes, leafleting or work disruption or stoppages of any kind because of jurisdictional disputes.

13.3 When conflicting claims for work on the Project are submitted to a Contractor/Employer, the dispute shall be resolved pursuant to agreed upon Jurisdictional Dispute Procedures, as adopted by the National Building & Construction Trades Department, or by the Mechanical Allied Crafts (MAC), or by the Northern California Basic Crafts Alliance (NCBCA) Jurisdictional Dispute Resolution Procedures. It is understood by the parties that these Procedures might be amended from time to time. In the event a jurisdictional dispute arises between two or more Unions affiliated with the National Building & Construction Trades Department, such dispute shall be resolved by the procedure set forth in the Plan for the Settlement of Jurisdiction Disputes in the Construction Industry. In the event a jurisdictional dispute arises between two or more Unions affiliated with the MAC, such dispute shall be resolved under the MAC Procedure. In the event a jurisdictional dispute arises between two or more Unions affiliated with the NCBCA, such dispute shall be resolved under the NCBCA Procedure.

13.4 In the event a jurisdictional dispute arises between two or more Unions that are not stipulated to the same jurisdictional dispute resolution procedure, the dispute shall be handled in accordance with and resolved as follows:

13.5 In the event a jurisdictional dispute arises while the parties are attempting to negotiate an alternative resolution mechanism either party may refer the jurisdictional dispute to the General Presidents of the affected unions, and if the General Presidents cannot resolve the dispute within five (5) business days of the dispute being referred to them for resolution, the dispute shall be resolved as follows:

13.6 The dispute shall be submitted to arbitration before an arbitrator selected from the Panel of Permanent Arbitrators for resolution. The Panel of Permanent Arbitrators shall be composed of: David Nevins, Gerald McKay. Robert Hirsch, William Riker and Barry Winograd. The Arbitrator shall be selected by alternately striking the names of Arbitrators from the list of five (5) permanent Arbitrators. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The remaining Arbitrator shall serve as the Arbitrator who shall hear the dispute on an expedited basis and resolve the dispute. The Arbitrator shall render his decision within three (3) days of the hearing.

13.7 In rendering his decision, the Arbitrator shall determine:

1. First, whether a previous agreement of record or applicable agreement, including a disclaimer agreement, between the National and International Unions to the dispute governs;

2. Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the

prevailing practice in the locality in the past ten (10) years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality.

3. Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.

4. The Arbitrator shall comply with the Code of Professional Responsibility for Arbitrators of Labor Management Disputes jointly adopted by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and Conciliation Service. The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute. The Arbitrator's decision shall be in writing and provided to the parties and to the affected Contractor.

5. Unabrogated agreements of record are applicable only to the parties signatory to such agreements. Decisions of record are applicable to all trades.

6. The Arbitrator is not authorized to award back pay or any other damages for a mis-assignment of work. Nor may any party to this plan bring an independent action for back pay or any other damages, based upon a decision of an Arbitrator.

7. Each party to the arbitration shall bear its own expense for the arbitration and agrees that the fees and expenses of the Arbitrator shall be borne by the losing party or parties.

13.8. <u>ENFORCEMENT</u>

A. If the claims of the challenging trade are upheld in the decision of the Arbitrator, and work onsite is being performed on the eighth (8th) calendar day after the issuance of that decision, the assigned trade shall cede the work in question to the challenging trade and withdraw its members from said work, and the affected Contractor shall employ members of the challenging trade on said work. This shall be termed the effective date of the decision. If the eighth (8th) calendar day after the issuance of said decision falls on a weekend or on a holiday, the effective date shall be the next working day. Holidays shall include and be limited to New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.

B. The Arbitrator shall have no authority to undertake any action to enforce his decision after a hearing beyond informing the affected parties of his decision. Rather, it shall be the responsibility of the prevailing party to seek appropriate enforcement of a decision. The prevailing party in any enforcement proceeding shall be entitled to recover its reasonable costs and attorney fees from the non-prevailing party. In the event the Arbitrator is made a party to, or is otherwise required to participate in any such enforcement proceedings for whatever reason, the non-prevailing party shall bear all reasonable costs, attorney fees, and any other expenses incurred by the Arbitrator in those proceedings.

13.9 If there is a strike, sympathy strike, work stoppage, slowdown, picketing or otherwise advising the public that a labor dispute exists or interference with the progress of the Project by reason of a jurisdictional dispute, the Contractor/Employer (who has complied with the Arbitrator's decision) affected by said Union conduct, shall have the right to seek full legal redress in the Courts of California, including injunctive relief and damages.

ARTICLE 14
MANAGEMENT RIGHTS

14.1 The Contractor shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion except as otherwise limited by the terms of this Agreement and/or the Schedule A Agreements. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful manning provisions of the Schedule A Agreements shall be recognized.

ARTICLE 15
WAGES/BENEFITS

15.1 Wages. All construction persons covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in the applicable Schedule A Agreement for such craft work and in compliance with the applicable prevailing rate determination.

15.2 Benefits. Contractor agrees to pay contributions into established construction person benefit funds in the amounts designated in the appropriate Schedule A Agreement; provided, however, that each Contractor and Union agree that only such bona fide construction person benefits as included in the prevailing wage determination shall be included in this requirement and required to be paid by the Contractor under this Agreement; provided further, however, that this provision does not relieve Contractors signatory to a local collective bargaining agreement with a signatory Union which would be applicable to this Project from making any other fund contributions (including, but not limited to, those for contract administration), required by such

local agreement. Contractor shall not be required to pay contributions to any other trust funds to satisfy their obligation under this Article. By signing this Agreement, the Contractors adopt and agree to be bound by the written terms of the legally established Trust Agreements, specifying the detailed basis on which the payments are to be made into, and the benefits paid out of, such Trust Funds. If a contractor fails to pay wages or benefits, the District agrees to honor a properly submitted, legally enforceable Stop Notice. Nothing in this Agreement, however, shall be construed to limit or prevent the Unions or Trust Funds from asserting or enforcing legal rights to collect delinquent wages or benefit contributions.

ARTICLE 16
MODIFIED SCHEDULE A AGREEMENTS

16.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified Schedule A Agreements which are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Section 12 hereof.

ARTICLE 17
SAVINGS CLAUSE

17.1 The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by the court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

17.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

ARTICLE 18
ENTIRE AGREEMENT

18.1 This Agreement represents the complete understanding of the parties. The provisions of this Agreement, including the Schedule A Agreements, shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A Agreement, the provisions of this Agreement shall prevail. Where a subject is

covered by the provisions of a Schedule A Agreement and is not covered by this Agreement, the provisions of the Schedule A Agreement shall prevail. Nothing contained in a Schedule A Agreement, working rule, by-laws, constitution or other similar document of the Unions shall in any way affect, modify or add to this Agreement unless otherwise specifically set forth in this Agreement or mutually agreed to in writing executed by the parties.

18.2 The parties agree that this Agreement covers all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

18.3 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

ARTICLE 19
TERM

19.1 The Agreement shall be included as a condition of the award of the Construction Contracts.

19.2 The Agreement shall continue in full force and effect until the Completion of the Project as defined in Section 1.3 of this Agreement.

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