

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director

SUBJECT: Approve a Project Labor Agreement for the North Bay Operations and Maintenance Facility Project

Recommendation

Approve a Project Labor Agreement for waterside construction of the North Bay Operations and Maintenance Facility project.

Background

Project Labor Agreements (PLA) are a form of pre-hire agreement that is most often utilized on larger, long-term construction projects requiring multiple contractors or subcontractors who employ workers in multiple crafts or trades. These agreements, which are negotiated between a construction project owner and the local building and trades labor unions, are developed and utilized to promote efficiency of construction operations. They are contractually binding and become a part of the bid specification that all winning contractors must follow. Once put into place, a PLA remains in effect for the duration of project construction.

In Spring 2013, staff worked with the Napa-Solano Building & Construction Trades Council with the goal of developing a Project Labor Agreement for use on the North Bay Operations and Maintenance Facility Project. Due to timing constraints associated with funding for this project, the parties were unable to come to agreement on final PLA language in time to utilize a PLA for the landside component of this two-phased construction project. In July 2013, the Board directed staff to continue work towards developing a PLA for the waterside construction component of this project and to develop model project labor agreement language for the agency that could be used to facilitate development of future agreements for up-coming large construction projects such as the Central Bay Maintenance Facility and the Downtown San Francisco Ferry Berthing Expansion projects.

Discussion

Over the past several months staff has worked with Ben Espinoza from the Napa-Solano Building & Construction Trades Council to develop a project-specific PLA for use in the waterside construction component of the North Bay Operations and Maintenance Facility project. The PLA developed and recommended for Board approval, and provided as **Attachment 1** to this report, has been developed with the public interest of promoting labor harmony and project efficiency on this large construction project. In support of these goals, the proposed PLA:

- Provides for uniformity in bidding work by identifying pre-established wages, work rules, and benefits for the multiple crafts employed on a project;
- Requires a pre-job conference with all affected parties to review and clarify the work assignments up-front in order to avoid conflicts during construction;
- Identifies roles, responsibilities and procedures for addressing work disputes that may arise during construction in a timely and expeditious manner;

- Prohibits work stoppages, strikes and lockouts at the project construction site(s) and identifies a process for expedited arbitration and resolution in the event of a breach of this provision; and
- Identifies various mechanisms for labor and management cooperation on matters of mutual interest and concern such as productivity, quality of work, safety and health.

This PLA includes the following two additional provisions not included in the Model PLA:

- A Core Employee provision, identifying a process for contractors to utilize their own core workforce on the project; and
- A payment retention provision is included as an optional part of the dispute resolution process in order to facilitate expeditious closure of issues and minimize project disruption.

This agreement recognizes the Council's unions as the primary source of craft labor employed on the project. However, in the event that a contractor/employer has its own core workforce, the agreement allows for a limited number of "core employees" to be utilized on the project through a prescribed process. This and several other management rights provisions contained in the agreement are included to promote project work and cost efficiencies and to help ensure fair and open competition to all potential bidders.

If approved by the Board, the agreement would be between the Authority and the Council, and its signatory unions, for covered construction work to be performed by any of these groups on the project. The winning project construction contractor/employer, and any sub-contractors, would be required to comply with and be bound by the agreement through a Letter of Assent.

Fiscal Impact

There is no fiscal impact associated with this item.

END

**PROJECT LABOR AGREEMENT
FOR CONSTRUCTION OF THE SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION AUTHORITY NORTH BAY OPERATIONS AND
MAINTENANCE FACILITY PROJECT**

This Agreement is entered into this ___ day of _____, 2013 by and between the San Francisco Bay Area Water Emergency Transportation Authority (hereinafter, the "WETA" or "Owner"), together with contractors and/or subcontractors, who become signatory to this Agreement by signing the "Letter of Assent" (Addendum A) (all of whom are referred to herein as "Contractors/Employers"), and the Napa-Solano Building & Construction Trades Council ("Council") and its affiliated local Unions that have executed this Agreement (all of whom are referred to collectively as "Union" or "Unions").

The purpose of this Agreement is to promote efficiency of construction operations during construction of the WETA North Bay Operations and Maintenance Facility Project (defined below) by providing for the orderly and peaceful settlement of labor disputes and grievances without strikes, work stoppages or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project.

WHEREAS, WETA is developing a new ferry operations and maintenance facility located at Building 165 on Mare Island in Vallejo to moor and maintain vessels utilized in WETA services and provide passenger access to Mare Island; and

WHEREAS, this Agreement is intended solely for the Waterside Construction phase of the North Bay Operations and Maintenance Facility, which includes modifying and relocating the existing service float, constructing and installing new berths and gangways, and constructing associated infrastructure (the "Project"); and

WHEREAS, the timely and successful completion of the Project is of the utmost importance to WETA and the general public; and

WHEREAS, large numbers of workers of various skills will be required in the

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performance of the construction work, including those to be represented by the Unions signatory to this Agreement employed by contractors and subcontractors who are also signatories to this Agreement; and

WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, there is the potential for work disruption that could negatively impact the continuity of work and the Project schedule; and

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

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project thereby leading to labor disputes that could delay completion of the Project; 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/Employer(s) and the affected Union(s) except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the parties hereto are committed to constructing the Project safely and

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efficiently and the Unions are committed to staffing Project work with qualified craft workers; and

WHEREAS, the Project is funded with various grant funds and, as such, is subject to and must comply with a variety of local, regional, state and federal regulations imposed as a result of such funding sources; and

WHEREAS, this Agreement will be an exhibit to the contract for construction of the Project to be awarded by WETA in accordance with applicable provisions of the California Public Contract Code, Federal, State and local regulations, ordinances and laws; and

WHEREAS, WETA has the absolute right to select as its prime contractor the entity offering the best value to WETA; and

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

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

ARTICLE I

DEFINITIONS

1.1 "Agreement" means this Project Labor Agreement.

1.2 "Apprentice" means an individual registered and participating as an apprentice in a Joint Labor/Management Apprenticeship Program approved by the State of California, Department of Industrial Relations, Division of Apprenticeship Standards.

1.3 "Construction Contract" means the public works or improvement contract(s) awarded by WETA for Waterside Construction of the North Bay Operations and Maintenance Facility Project construction after execution of this Agreement that are necessary to complete the Project, including subcontracts at any tier, with respect to the Project work.

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

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enters into a contract with WETA or its Project Manager or any of its contractors or subcontractors at any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by WETA and which incorporate this Agreement.

1.5 "Core Employee" means an employee who meets the requirements set forth in Section 8.3.

1.6 "Council" means the Napa-Solano Building & Construction Trades Council and its affiliated local Unions.

1.7 "Letter of Assent" means the document, as set forth in Addendum A hereto, that formally binds the Contractor/Employer(s) to comply with all the terms and conditions of this Agreement and that operates as a pre-condition to performing work on the Project.

1.8 "Master Labor Agreement" or "MLA" means the Master Collective Bargaining Agreement of each craft Union signatory hereto, as listed in Addendum B, and a copy of which shall be submitted to WETA by the Council with its executed copy of this Agreement and retained on file with WETA for the duration of the project.

1.9 "Project" means the public work or improvement for the Waterside Construction phase of the North Bay Operations and Maintenance Project in Vallejo, California. WETA and the Council may mutually agree in writing to add additional components to the scope of work of the Project covered under this PLA.

1.10 "Project Manager" means the person(s) or business entity(ies) designated by WETA to oversee all phases of construction on the Project and to oversee the implementation of this Agreement and who works under the guidance of WETA's Authorized Representative.

1.11 "Trust Agreement" means an agreement for an established vacation, pension or other form of deferred compensation plan, apprenticeship and health benefit funds established by an applicable Master Labor Agreement as set forth in Section 9.1.

1.12 "Union" or "Unions" means the Napa-Solano Building & Construction Trades Council, AFL-CIO, ("the Council") and any affiliated labor organization signatory to this Agreement, acting in 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 ("Signatory Unions").

1.13 "WETA" or "Owner" means the San Francisco Bay Area Water Emergency Transportation Authority and its public employees, including managerial personnel.

ARTICLE II

SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply to and is limited to all Contractors/Employer(s) performing Construction Contracts (including subcontracts at any tier on the Project) who must execute a Letter of Assent, WETA, the Council and the Unions 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 ("Signatory Unions").

2.2 Project Description: The Agreement shall govern all Construction Contracts for the Project, as defined in Article 1 above. Once a Construction Contract is completed, it is no longer covered by this Agreement. For the purposes of this Agreement, a Construction Contract shall be considered completed upon the filing of a Notice of Completion, or as otherwise provided by applicable State law.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, painting or repair of buildings, structures and other works, and related activities for the Project, including geotechnical and exploratory drilling, and landscaping and temporary fencing that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, and including, without limitation to the following examples, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, start-up, modular furniture installation, and on-site soils and material inspection and testing to be performed to complete the Project. On-site work includes work done for the Project in temporary yards or areas adjacent to

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the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. 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.

2.3.1 This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion unless it is performed by WETA employees or by a WETA contractor for service and maintenance operations.

2.3.2 This Agreement covers all on-site fabrication work over which WETA, 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.) Additionally, it is agreed hereby that this Agreement covers any off-site work, including fabrication work necessary for the Project defined herein that is covered by a current MLA or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement, to the fullest extent allowed by law.

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 allowed by law and by prevailing wage determinations of the California Department of Industrial Relations. Contractor/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to WETA within ten (10) days of written request or as required by bid specifications.

2.4 Work covered by this Agreement 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,

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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 IV, XII and XIII of this Agreement shall apply to such work.

2.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work. However, it is recognized that installation of specialty items which may be furnished by the general Contractor/Employer(s) shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role. Should a vendor insist that its own personnel must perform installation in order to protect the manufacturer warranty, WETA shall advise the Council and the WETA and the Council will meet and confer to find a resolution. Should WETA and the Council be unable to find a resolution, the vendor's claim shall be subject to the grievance arbitration procedure, in which case the vendor must show; that this requirement is consistent with the original equipment manufacturer or vendor's standard warranty agreement for such equipment and is consistent with industry practice in the geographic area regarding the particular material or equipment involved, and that the construction persons available for employment under this Agreement are not capable of performing the installation with or without further training; provided, however, that any additional training shall not affect critical path items on the Project. In such instances all other provisions of this Agreement shall apply.

2.6 Exclusions

(1) The Agreement shall be limited to construction work on the Project.

(2) The Agreement is not intended to, and shall not affect or govern the award of public works contracts by WETA which are not included in the Project.

(3) The Agreement shall not apply to a Contractor/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing MLAs), staff engineers or other professional engineers, administrative

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and management.

(4) 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, city or other governmental bodies or their contractors; or by public or private utilities or their contractors.

(5) Except as otherwise permitted herein, the Agreement shall not apply to service contracts or operation, inspection, testing or maintenance contracts entered into by WETA, including any such contract relating to the Project or to other WETA owned or operated facilities or services after completion of the Project.

(6) The Agreement shall not apply to officers or employees of WETA or of State and local public agencies.

(7) The Agreement shall not apply to the work or persons or firms that perform consulting, planning, scheduling, design, environmental consulting, geological consulting, construction management, legal or similar professional consulting services related to the Project.

(8) The Agreement shall not apply to the furnishing of supplies, equipment or materials that are stockpiled for later use.

(9) The Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.7 Award of Contracts: It is understood and agreed that WETA shall have the absolute right to select any qualified bidder for the award of Construction Contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement.

ARTICLE III

EFFECT OF AGREEMENT

3.1 Notwithstanding anything to the contrary in this Agreement, the Agreement shall not become effective until it is approved and signed by: WETA and the Council. By executing

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the Agreement, all parties agree to be bound by each and every provision of the Agreement.

3.2 By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the 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 **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a pre-condition of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a contractor may not be evaded by subcontracting.

3.4 Each Contractor/Employer(s) shall give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either seven (7) days of entering such subcontract or before such Contractor/Employer(s) commences work on the Project, whichever occurs first. Such notice shall specify the name, address and the California State License Board license number of the subcontractor(s). Written notice at a preconstruction conference, as described in Section 5.1 of the Agreement, shall be deemed written notice under this provision for those subcontractor(s) listed at the preconstruction conference only.

3.5 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. Each Contractor/Employer(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor/Employer(s) respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s) party to this Agreement.

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3.6 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement 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 signatory Contractor(s) and the other Union(s) party to this Agreement.

3.7 The provisions of this Agreement, including MLAs, which are the local Master Labor Agreements of the signatory Unions having jurisdiction over the work on the Project, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which 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 applicable MLA shall prevail.

3.8 It is understood that this Agreement constitutes a self-contained, stand-alone agreement and that, by virtue of having become bound to this Agreement, a Contractor/Employer will not be obligated to sign any local, area, or national collective bargaining agreement as a condition of performing work within the scope of this Agreement.

ARTICLE IV

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, WETA and Contractor/Employers agree that for the duration of the Project:

(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 employees employed on the Project, at the Project site or any off-site facility of the Project covered by this agreement, or at any other facility of WETA because of a dispute on the Project. The Unions shall not sanction, aid or abet, encourage or continue any such prohibited activity at the job site of the Project, at any off-site facility covered

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by the Project under Article 2, or at any other facility of WETA because of a dispute on the Project, and shall take all reasonable means to prevent or terminate any such activity should it occur in violation of this prohibition. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, handbilling, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor/Employer on any other project. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor/Employers on projects other than the Project.

(2) Any employee who participates in or encourages any activity prohibited by paragraph (1) shall be subject to disciplinary action, up to and including discharge, in accordance with the applicable MLAs.

(3) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

(4) If a MLA between a Contractor/Employer and the Union expires before the Contractor/Employer completes the performance of a Construction Contract for work covered under this Agreement and the Union or Contractor/Employer gives notice of demands for a new or modified MLA, the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer 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 between the Union and Contractor/Employer. If the new or modified MLA reached between the Union and Contractor/Employer provides that any terms of the MLA shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified MLA which is applicable to employees who perform work on the project during the hiatus period, within seven (7) days after the effective date of the new or modified MLA.

(5) The withholding of employees, but not picketing, for failure of a

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Contractor/Employer(s) to tender trust fund contributions as required in accordance with Article 9 and/or for failure to meet its weekly payroll is not a violation of this Article; provided, however, that in each instance said impacted Union(s) shall give the affected Contractor/Employer(s) and WETA written notice seventy-two (72) business hours prior to the withholding of employees when failure to tender trust fund contributions has occurred. There shall be one (1) business days' notice when failure to meet weekly payroll has occurred or when paychecks are determined to be nonnegotiable by a financial institution normally recognized to honor such paychecks.

4.2 **Expedited Arbitration:** Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

(1) A party invoking this procedure shall notify Thomas Angelo, as the permanent arbitrator, or, Robert Hirsch, as the alternate arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Section 12.2. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, telephone or email (with same day confirmation received by sender) to WETA and the party alleged to be in violation and to the Council and involved local Union if a Union is alleged to be in violation.

(2) Upon receipt of said notice, WETA will contact the designated arbitrator named above, or his alternate, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

(3) The arbitrator shall notify the parties by facsimile, telephone, or email, with same day confirmation received by sender, of the place and time for the hearing. 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. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance

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of an award by the arbitrator.

(4) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation, 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.

(5) The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or certified or registered mail upon issuance. A party found to have violated the provisions of the No Strike-No Lockout section in this Article 11 shall cease such violation within eight (8) hours of the award of the Arbitrator. Should the violation continue past eight (8) hours, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

(6) 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, 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.

(7) Any rights created by statute or law governing arbitration proceedings that are inconsistent with the above procedure, or which interfere with compliance with such procedures are waived by the parties to whom they accrue to the extent such rights are waivable

under applicable law.

(8) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

ARTICLE V

PRE-JOB CONFERENCE

5.1 A mandatory pre-job conference, to include a representative from each of the participating Contractor/Employer(s), applicable Unions and the Project Manager, will be held prior to the commencement of work to review the scope of work in each Contractor/Employer(s)' contract and assignment of such work. The pre-job conference shall be held at the offices of the Council unless otherwise agreed to by WETA and the Council. WETA and the Council may mutually agree to waive the requirement to hold a pre-job conference for any particular contract.

5.2 The Contractor(s) performing the work shall have the responsibility for making work assignments in accordance with Section 13.1 of this Agreement.

ARTICLE VI

NO DISCRIMINATION

6.1 The Contractor/Employers and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII

UNION SECURITY

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

7.2 No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for work on a Construction Contract or the Project. However, any employee who is a member of a Union, at the time he or she is referred by the Union for work on a Construction Contract pursuant to Article 8 hereof, shall maintain that membership in good standing while employed on such Construction Contract.

7.3 The Contractor/Employers shall require all employees who work on a Construction Contract on or before eight days of consecutive or cumulative employment on the Project to comply with the applicable Union's security provisions, and to maintain compliance for the period of time they are performing work on the Project, which requirement shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by law.

7.4 Authorized representatives of the Unions shall have access to the Projects whenever work covered by this Agreement is being, has been, or will be performed on the Project, to the extent permitted by applicable law.

ARTICLE VIII

REFERRAL

8.1 The Contractor/Employers performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of applicable law. The Contractor/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable MLA.

8.2 The Contractor/Employer(s) shall have the unqualified right to select and hire

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directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 The Union(s) shall be the sole source of all craft labor employed on the Project. However, in the event that a Contractor/Employer(s) has its own core workforce, the Contractor/Employer may request by name, and the Union shall honor, referral of persons who have applied to the local Union for Project work and who demonstrate the following qualifications (“Core Employees”):

- a) Possess any license and/or certifications required by state or federal law for the Project work to be performed;
- b) Have worked a total of at least two thousand (2000) hours in the construction craft during the prior two (2) years;
- c) Were on the Contractor/Employer's active payroll for at least the sixty (60) consecutive calendar business days prior to the contract award;
- d) Have the ability to perform safely the basic functions of the applicable trade; and
- e) Live in Napa or Solano County.

8.3.1 The Union will refer to such Contractor/Employer two journeyman employees from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer's Core Employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer's crew requirements are met or until Contractor/Employer 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).

8.3.2 For the duration of the Contractor/Employer's work the ratio shall be maintained and when the Contractor/Employer's workforce is reduced, employees shall be reduced in reverse order and in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

8.3.3 Contractor/Employer's signatory to a Local, Regional, and/or National collective bargaining agreements with Union(s) signatory hereto shall be bound to use the hiring hall

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provisions contained in the MLA of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s) as they relate to such contractors.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain workers from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.5 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s).

ARTICLE IX

BENEFITS

9.1 All Contractor/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable MLA for each hour worked on the Project in the amounts designated in the MLA of the appropriate local Unions. The Contractor/Employers shall not be required to pay contributions to any other trust funds that are not contained in the published prevailing wage determination to satisfy their obligation under this Article, except that those Contractor/Employers who are signatory to the MLA with the respective trades shall continue to pay all trust fund contributions as outlined in such MLA.

9.2 By signing this Agreement, the Contractor/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in Section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out

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of, such Trust Funds. WETA shall not be liable for or required to make any contributions, deductions or payments to any such Trust Fund, nor shall WETA otherwise have any contractual, financial or other obligation in connection with any such Trust Agreement or Trust Fund.

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the MLA of the respective crafts, copies of which shall be on file with WETA, to the extent such MLA is not inconsistent with this Agreement.

9.4 Holidays: Holidays shall be established as set forth in the applicable MLA.

ARTICLE X

JOINT ADMINISTRATIVE COMMITTEE

10.1 The parties to this Agreement shall establish a six (6) person Joint Administrative Committee. This Committee shall be comprised of two (2) representatives selected by the WETA, two (2) representatives selected by the Union(s) and two (2) representatives selected by the general Contractor/Employer. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. The Joint Administrative Committee shall meet as required to review the implementation of the Agreement and the progress of the Projects.

10.2 There shall also be established a Joint Administrative Subcommittee consisting of one WETA representative, to be selected by WETA, and one Union(s) representative, to be selected by the Unions, for the purpose of convening to confer in an attempt to resolve a grievance that has been filed consistent with Article 12. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Subcommittee for resolution. The Joint Administrative Subcommittee shall meet as required to resolve grievances by majority (unanimous) vote with such resolutions to be final and binding on all signatories of the Agreement. A failure of any party or parties to attend

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said hearing shall not delay the hearing of evidence or issuance of an award by the Joint Administrative Subcommittee, if such award is made by a majority (unanimous) vote, and the hearing shall proceed *ex parte*.

ARTICLE XI

COMPLIANCE

11.1 It shall be the responsibility of the Contractor/Employers and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractor/Employers on the Project. WETA shall monitor Contractor/Employer(s)' compliance with the prevailing wage requirements of the state.

ARTICLE XII

GRIEVANCE ARBITRATION PROCEDURE

12.1 Employee Grievances: All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the MLA for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

12.2 Project Labor Disputes: All Project labor disputes involving the application or interpretation of the MLA to which a signatory Contractor/Employer and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the MLA. All disputes relating to the interpretation or application of this Agreement (with the exception of disputes subject to Articles IV and XIII) shall be subject to resolution by the Grievance arbitration procedures set forth in this Article.

No grievance shall be recognized unless the grieving party (Local Union or District

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Council, on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in this Article may be extended by mutual written agreement of the parties.

Step 1 : A representative of the grievant and the party against whom the grievance is filed shall meet and attempt to resolve the grievance.

Step 2: In the event the matter remains unresolved in Step 1 above, within five (5) working days, the grievance shall be reduced to writing and may then be referred to the other party for discussion and resolution.

Step 3: In the event that the representatives are unable to resolve the dispute within the five (5) working days after its referral to Step 2, either involved party may submit the dispute within five (5) working days to the Joint Administrative Subcommittee established in Section 10.2. The Joint Administrative Subcommittee shall meet within five (5) working days after such referral (or such longer time as is mutually agreed upon by the representatives on the Joint Administrative Subcommittee) to confer in an attempt to resolve the grievance. Regardless of which party has initiated the grievance proceeding, prior to the meeting of the Joint Administrative Subcommittee, the Union shall notify its International Union Representative(s), which shall advise both parties if it intends on participating in the meeting. The participation by the International Union Representative in this Step 3 meeting shall not delay the time set herein for the meeting, unless otherwise mutually agreed by the parties. A majority/unanimous decision by the Joint Administrative Subcommittee shall be final and binding. If the dispute is not resolved by the Joint Administrative Subcommittee, it may be referred within five (5) working days by either party to Step 4.

Step 4: In the event the matter remains unresolved in Step 3, either party may request, within five (5) working days, that the dispute be submitted to arbitration. The parties

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agree that the Arbitrator who will hear the grievance shall be selected from the following: Thomas Angelo, William Riker, Jeri-Lou Cossack, Barry Winograd and Robert Hirsch. 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, if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award. 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. 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.

Time Limits: The time limits set out in this procedure may, upon mutual agreement, be extended. Any request for arbitration, request for extension of time limits, and agreement to extend such time limits shall be in writing. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon 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.

Retention: At the time a grievance is submitted under this Agreement or any MLA, the Union(s) may request that WETA withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail.

The amount shall be retained by WETA until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this

Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE XIII

**WORK ASSIGNMENTS AND NORTHERN CALIFORNIA PLAN FOR THE
SETTLEMENT OF JURISDICTIONAL DISPUTES:**

13.1 The assignment of covered work will be solely the responsibility of the Contractor/Employer 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 (the “Plan”) or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Contractor/Employers 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 Contractor/Employers and Unions parties to this Agreement.

13.3 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, 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 Napa-Solano Building & Construction Trades Council. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor/Employer’s assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Contractor/Employer will conduct a pre-job conference with the Council prior to commencing work, as described in Section 5.1. The Project Manager

and WETA will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractor/Employers may be held together.

ARTICLE XIV

APPRENTICES

14.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor/Employer(s) 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.

14.2 The Apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

14.3 There shall be no restrictions on the utilization of Apprentices in performing the work of their craft provided they are properly supervised.

ARTICLE XV

MANAGEMENT RIGHTS

15.1 The Contractor/Employer(s) shall retain full and, exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion and to establish coordinated working hours and starting times, in accordance with the applicable MLAs. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that the lawful manning provisions in the applicable MLAs shall be recognized.

15.2 The Contractor/Employer(s) may use the most efficient methods or techniques of construction, tools, or other labor saving devices to accomplish Project work, in accordance with the applicable MLAs. There shall be no limit on production by workers or restrictions on the full use of tools or equipment, nor any restriction on efficient use of manpower other than

as may be required by applicable safety regulations.

15.3 The Contractor/Employer(s) shall be the sole judge of the number of employees required to perform the work covered by this Agreement, and shall have the sole right to hire, promote, suspend, discharge, or layoff employees at their discretion and to reject any applicant for employment, in accordance with the applicable MLAs.

15.4 The Contractor/Employer(s) shall have the right to award subcontracts to the lowest responsive and responsible bidder or the most qualified/highest ranked firm, in accordance with the applicable MLA for the craft involved.

ARTICLE XVI

HELMETS TO HARDHATS

16.1 The Contractor/Employers 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/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center) 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/Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for *bona fide*, provable past experience.

ARTICLE XVII

SAFTETY PROTECTION OF PERSON AND PROPERTY

17.1 Employees shall be bound by the reasonable safety, security and visitor rules

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established by the Contractor/Employer(s) and WETA. These rules will be published and posted in visible places throughout the work site. An employee's failure to satisfy his/her obligations under this Section will subject him/her to discipline, including discharge consistent with the applicable MLA.

17.2 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.

17.3 The Contractor/Employer(s) and Unions agree that the work site shall be a drug free workplace. Parties agree to recognize and use the Substance Abuse Program contained in each applicable Union's MLA.

ARTICLE XVIII

SAVINGS CLAUSE

18.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, including Presidential Executive Order, federal or state 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 a 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 work in question.

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

18.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins WETA from complying with all or part of its provisions and WETA accordingly determines that the Agreement will not be required as part of an award to a

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Contractor/Employer, the unions will no longer be bound by the provisions of Article IV.

18.4 In the event that WETA is made aware that this Agreement or portions thereof are inconsistent with the terms and conditions of any grant, loan, or contract with any Federal or State agency or with the instructions or directions of an authorized representative of a Federal or State agency regarding the requirements of any such grant, loan, or contract, WETA shall notify the Council. Within seven (7) days of notification, the parties shall meet and confer to attempt to modify the Agreement to avoid forfeiture of any funding or otherwise resolve the issue. Should the parties be unable to come to agreement, the Agreement or any inconsistent provision shall be subject to resolution by the grievance arbitration procedures set forth in Article XII. The foregoing notwithstanding, if the granting agency determines that the resolution of such grievance procedure will result in the forfeiture of material grant funds (meaning an amount that would threaten viability of the project) , then the Agreement may be modified or terminated in order to avoid the forfeiture.

ARTICLE XIX

TERM

19.1 The Agreement shall be included in the Bid Documents as a condition of the award of construction contracts for the Project.

19.2 The Agreement shall continue in full force and effect until the completion of the Project.

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION
AUTHORITY

By _____ Date _____

NAPA-SOLANO BUILDING & CONSTRUCTION
TRADES COUNCIL

By _____ Date _____

SIGNATURE BLOCKS

Asbestos Workers Local #16

Bricklayers & Allied Craftsmen Local #3

Boilermakers Local #549

Elevator Constructors Local #8

Northern California Carpenters Regional Council

Ironworkers Local #378

Cement Masons Local #400

Northern California District Council of Laborers

Electrical Workers Local #180

District Council 16 International Union of
Painters and Allied Trades

Plasterers & Cement Masons Local #300

Sheetmetal Workers Local #104

Plumbers & Steamfitters Local #343

Teamsters Local #490

Operating Engineers Local #3

Utility & Landscape Local #355

Sprinkler Fitters Local #483

Roofers Local #81

**ADDENDUM A
LETTER OF ASSENT**

[Date]

[Addressee]

[Address]

[City and State]

Re: WETA North Bay Operations and Maintenance Facility Project
Project Labor Agreement -- Letter of Assent

Dear Mr./Ms. _____:

The undersigned party confirms that it agrees and assents to comply with and to be bound by the WETA North Bay Operations and Maintenance Facility Project, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

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 assent and obligation to comply with and to be bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the WETA North Bay Operations and Maintenance Facility Project. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California State License Number: _____

Name and Signature of
Authorized Person:

(Print Name)

(Title)

(Signature)

(Telephone Number)

**ADDENDUM B
LIST OF MASTER COLLECTIVE BARGAINING AGREEMENTS**