Agenda Report

DATE: July 15, 2014

TO: The Mayor and City Council

FROM: David A. White, City Manager
George R. Hicks, Director of Public Works

SUBJECT: Resolution of the City Council Approving the Project Labor Agreement (PLA) for the Construction of the City of Fairfield Intermodal Station Project and Directing Staff to Incorporate the PLA into the Plans and Specifications for the Fairfield Intermodal Station Project

RECOMMENDED ACTION
Adopt resolution.

STATEMENT OF ISSUE
At the April 15, 2014, meeting, the City Council directed staff to enter into negotiations with the Napa-Solano Building Trades Council on a Project Labor Agreement (PLA) for the upcoming Fairfield Intermodal Station Project (Project). These negotiations are complete and the PLA attached for City Council adoption. If the PLA is approved, it must be incorporated into the contract documents for the Project.

DISCUSSION
At the City Council workshop that was held on February 1, 2014, the City Council expressed an interest in having staff negotiate a PLA for the Fairfield Intermodal Station Project (Project). The Project includes an overpass of the UPRR tracks, widening of Peabody Road to 6 lanes from Huntington to Vanden, installation of 6,650 feet of new track, and construction of the platform, passenger amenities and site improvements for the Train Station. The City Council formally considered this issue at their meeting on April 15, 2014, and directed staff to enter into negotiations with the Napa-Solano Building Trades Council. In addition to approving a set of principles to guide negotiations, City Council asked that staff incorporate local-hire provisions and a helmets-to-hardhats program to put veterans back to work.
City staff has completed negotiations with the Napa-Solano Building Trades Council and has attached the PLA for the Project for City Council consideration. The following outlines some of the key elements of the PLA:

- As required by the Public Contract Code, the PLA contains prohibitions against strikes, work stoppages, and lockouts. One exception to this is the situation where a contractor or subcontractor fails to meet its weekly payroll, or make the required contributions to the union controlled benefit funds. In this situation, the affected union can withhold labor from the particular contractor or subcontractor until payment has been made.

- The scope of the work covered by the PLA is broad and includes all construction and testing work performed on site, any off-site work that is necessary for the Project, and the delivery of supplies and/or materials for the Project and off-hauling. Should City Council approve the PLA, the City will enter into a Side Letter with Operating Engineers to ensure that the City can perform soils and materials testing for quality control purposes. This work may be done by City employees or by consultants under consultant services agreements and not subject to the terms of the PLA.

- The PLA establishes an objective that not less than 25% of all hours worked on the Project be worked by residents of Napa and Solano Counties. The unions have agreed to exert their utmost efforts to achieve this objective.

- The PLA requires the unions and the contractor to coordinate with the Center for Military Recruitment, Assessment and Veterans Employment to identify veterans that are qualified to work on the Project.

- The unions are the sole source of craft labor on the Project. However, the contractor for the Project may employ up to a maximum of five employees from its own workforce if the employee demonstrates the following qualifications: possesses required licenses and certifications; has worked a total of at least 2,000 hours in the construction craft in the past two years; was on the contractor’s payroll for forty-five (45) consecutive business days (a minimum of 360 hours worked in the nine consecutive weeks); and lives in Napa, Solano, Contra Costa or Yolo Counties.

- While the City is already required to pay prevailing wages, the PLA also requires that the contractor make contributions to the vacation, pension, and deferred compensation plan, apprenticeship, and health benefit funds of the union.
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- No employee working under the PLA is required to join any union as a condition of being employed on the Project. However, the contractor is required to have employees that have worked on the Project for eight (8) consecutive or cumulative days, pay to the applicable union dues and fees required of union membership. Any employee who is a member of a union must maintain that membership in good standing while employed on the Project.

Finally, in many places, the PLA refers and incorporates the provisions of the Master Collective Bargaining Agreement (Master Agreement) of each craft union that is signatory to the PLA. The City has received copies of the Mater Agreements, but has not reviewed these voluminous documents. For this reason, staff’s recommendation of the PLA should not in any way be construed to approve or endorse the Master Agreements of any of the signatory unions.

The prime contractor for this Project will be required to hold a Class A, General Engineering Contractor’s License from the State of California. Given the fact that the vast majority of large, General Engineering Contractor’s in California employ a union workforce, the cost implications of a PLA on this Project will be minimized. City staff therefore recommends that City Council approve the attached resolution. In so doing, staff would be directed to incorporate the PLA into the bid documents for the Project. As a part of the contract award for the Project, which is anticipated in December 2014, the PLA would become binding on the prime contractors and all subcontractors.

FINANCIAL IMPACT
It is not possible to determine the cost impacts of a PLA on this Project. Given the probability that most of the contractors on this Project will be union affiliates, City staff believes that the PLA will not have a significant impact on costs of this Project.

PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION
N/A

ALTERNATIVE ACTION
City Council could choose not to approve the PLA. Alternatively, City Council could direct staff to make changes to the existing PLA. However, if the PLA is not approved by the end of July, the City will experience additional delays that could result in the loss of funding (unless City Council directs staff to proceed without a PLA).
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DOCUMENTS ATTACHED
Attachment 1: Proposed Resolution
Attachment 2: Project Labor Agreement

STAFF CONTACT
George Hicks, Director of Public Works
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Coordinated with: N/A
CITY OF FAIRFIELD

RESOLUTION NO. 2014-J

RESOLUTION OF THE CITY COUNCIL APPROVING THE PROJECT LABOR AGREEMENT (PLA) FOR THE CONSTRUCTION OF THE CITY OF FAIRFIELD INTERMODAL STATION PROJECT AND DIRECTING STAFF TO INCORPORATE THE PLA INTO THE PLANS AND SPECIFICATIONS FOR THE FAIRFIELD INTERMODAL STATION PROJECT

WHEREAS, the City is proposing to construct the Fairfield Intermodal Station Project ("Project"), which will include an overpass of the UPRR tracks, widening of Peabody Road to six lanes from Huntington to Vanden, installation of 6,650 feet of new track, and construction of the platform, passenger amenities and site improvements for the Train Station; and

WHEREAS, on February 1, 2014, the City Council expressed an interest in having staff negotiate a Project Labor Agreement ("PLA") for the Project; and

WHEREAS, at the April 15, 2014, City Council meeting, the City Council formally considered this issue and directed staff to enter into negotiations with the Napa-Solano Building Trades Council; and

WHEREAS, at the April 15, 2014, City Council meeting, the City Council adopted the following principles:

1) The PLA should tangibly add value to the City and the Project.
2) The PLA will enable the Project to consist of a workforce that will ensure the Project is completed in a timely matter.
3) The PLA should be flexible and ensure that the City is able to satisfy community expectations.
4) The PLA should not increase Project cost; and

WHEREAS, in addition to the principles approved at the April 15, 2014, City Council meeting, the City Council asked staff to incorporate local hire provisions and a helmets-to-hardhats program to put veterans back to work; and

WHEREAS, City staff has completed negotiations with the Napa-Solano Building Trades Council; and

WHEREAS, the draft Project Labor Agreement, in the form attached to the agenda report for this item, is generally aligned with the Council direction of April 15; and

WHEREAS, adoption of this Resolution would direct staff to incorporate the negotiated PLA into the bid documents for the Project, thereby making the PLA binding on the prime contractors and all subcontractors on the Project.
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The Project Labor Agreement for the construction of the Fairfield Intermodal Station Project, substantially in the form attached to the agenda report for this item, is hereby approved.

Section 2. The Director of Public Works is directed to incorporate the PLA into the bid documents for the Project.

Section 3. The City Manager and Director of Public Works are hereby authorized and directed to take all steps necessary to implement this Resolution.

PASSED AND ADOPTED this 15th day of July 2014, by the following vote:

AYES: COUNCILMEMBERS: ________________________________

NOES: COUNCILMEMBERS: ________________________________

ABSENT: COUNCILMEMBERS: ________________________________

ABSTAIN: COUNCILMEMBERS: ________________________________

ATTEST:

________________________________________

MAYOR

______________________________

CITY CLERK
PW
PROJECT LABOR AGREEMENT
FOR THE CONSTRUCTION OF THE
CITY OF FAIRFIELD INTERMODAL STATION PROJECT

This Agreement is entered into this _ day of ____________, 2014 by and between
the City of Fairfield (hereinafter, “City”), together with contractors and/or subcontractors, who
become signatory to this Agreement by signing the “Agreement To Be Bound” (Addendum A)
(all of whom are referred to herein as “Contractor(s)/Employer(s)”), 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”).

WHEREAS, the City of Fairfield is developing plans and specifications entitled
“Fairfield/Vacaville Train Station Project” for a proposed intermodal station to be located in
Fairfield, California.

WHEREAS, the timely and successful completion of the Project (as defined herein) is of
the utmost importance to City to meet the needs of City’s residents and to avoid increased costs
resulting from delays in construction; and

WHEREAS, the purpose of this Agreement is to promote efficiency of construction
operations during construction of the Project, and to provide for peaceful settlement of labor
disputes and grievances without strikes or lockouts, thereby promoting the public interest in
assuring the timely and economical completion of the Project.

WHEREAS, workers of various skills will be required in the performance of the construction
work, including those to be represented by Unions signatory to this Agreement and employed by
contractors and subcontractors who are also signatory 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, without an overriding commitment to maintain continuity of work;
and

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

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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 Contractor(s)/Employer(s) and affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with the collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contracts for construction work on the Project will be awarded in accordance with the applicable provisions of the Public Contract Code and other applicable California law; and

WHEREAS, City anticipates awarding only one construction contract for the Project, and anticipates that the Prime Contractor will have one or more subcontractors; and

WHEREAS, City has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contract on the Project; and

WHEREAS, City places high priority upon the employment of local area residents; 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:

1. DEFINITIONS

1.1 "Agreement" means this Project Labor Agreement.

1.2 "Arbitrator" means the arbitrator selected to resolve a dispute, pursuant to the provisions of Sections 4.2, 12.3 or 13.3.

1.3 "Business Day" means any day that City Hall of the City of Fairfield is open for business.

1.4 "City" means the City of Fairfield, its employees and agents.

1.5 "Contractor(s)/Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, and any of its contractors or subcontractors of any tier, that enters into a contract with City for the construction of any part of the Project, under contract terms and conditions approved by City and which incorporate this Agreement.

1.6 "Construction Contract" means the public works or improvement contract(s) awarded by City that are necessary to complete the Project, as well as subcontracts at any tier.

1.7 "Core Employee" means an employee who satisfies the conditions set forth in Section 8.4 of this Agreement.

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1.8 "Council" means the Napa-Solano Counties Building & Construction Trades Council.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto, a copy of which shall be provided to City upon request.

1.10 "Prime Contractor" means the Contractor/Employer who enters into a Construction Contract directly with City.

1.11 "Project" means the construction of the work as shown on the plans and specifications entitled "Fairfield/Vacaville Train Station Project", as such plans are approved by the City Council of the City of Fairfield at the time of the award of the Construction Contract between City and the Prime Contractor.

1.12 "Project Manager" means the person(s) or business entity(ies) designated by City to oversee construction on the Project and to oversee the implementation of this Agreement and who works under the guidance of City’s Authorized Representative.

1.13 "Subscription Agreement" means a legally adopted agreement by which a Contractor/Employer agrees to make contributions to the Trust Fund on behalf of employees.

1.14 "Trust Agreement" means the legally adopted agreement that governs a Trust Fund.

1.15 "Trust Fund" shall have the meaning ascribed in Section 9.1.

1.16 "Union" or "Unions" means the Napa-Solano Building & Construction Trades Council, AFL-CIO ("Council"), and any affiliated 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 ("Signatory Unions").

2. **SCOPE OF AGREEMENT**

2.1 **Parties:** The Agreement shall apply to and is limited to all Contractor(s)/Employer(s) performing construction contracts on the Project (including subcontractors at any tier), City, Council and its affiliated Signatory Unions.

2.2 **Project Description:** The Agreement applies to all Construction Contracts for the Project. City has the absolute right to combine, consolidate, or cancel contract(s) or portions of contract(s) identified as part of the Project. Once the Construction Contract is completed or otherwise terminated, it is no longer covered by this Agreement. For the purpose of this Agreement, the Construction Contract shall be considered completed upon acceptance of the work by City.

2.3 **Covered Work:** Subject to Sections 2.2 and 2.5, this Agreement covers, without limitation, the following:
2.3.1 All on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project, including, without limitation to the following examples: geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project. On-site work includes work done for the Project in temporary yards or areas adjacent to 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.

2.3.2 Any start-up, calibration, performance testing, commissioning repair, and operational revisions to systems and/or subsystems performed after completion, if within the scope of the Project, unless it is performed by City employees.

2.3.3 All on-site fabrication work for the Project over which City, 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, this Agreement covers any off-site work for the Project, including fabrication necessary for the Project defined herein, that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.3.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are 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 the 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 City as required by bid specifications or, if not required by bid specifications, within ten (10) days of written request.

2.4 Certain National Agreements. 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, 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 4, 12 and 13 of this Agreement shall apply to such work.

2.5 Exclusions. The following shall be excluded from the scope of this Agreement:

2.5.1 The Agreement is not intended to, and shall not affect or govern the award of public works contracts by City that are not included in the Project.
2.5.2 The Agreement shall not apply to a Contractor(s)/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 Master Agreements), staff engineers or other professional engineers, administrative and management personnel.

2.5.3 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.

2.5.4 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.5.5 City shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code.

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

3. EFFECT OF AGREEMENT

3.1 By executing this Agreement, Unions and City agree to be bound by each and all of the provisions of this Agreement.

3.2 By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, Contractor/Employer agrees to be bound by each and every provision of this Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement To Be Bound 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, Contractor/ Employer shall provide a copy of this Agreement, as it may from time to time be modified, to the subcontractor and shall require the subcontractor as a precondition of accepting an award of a construction subcontract to agree in writing, by executing the Agreement To Be Bound, 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 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 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 Union(s) and Contractor/Employer respecting compliance with the terms of this Agreement shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement.
3.5 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)/Employer(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including Schedule A's, which are the local Master 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 Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

4. WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 Unions, City and Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by Unions or employees employed on the Project, at the job site of the Project or at any other facility of City because of a dispute on the Project. Disputes arising between Unions and Contractor(s)/Employer(s) on other City projects are not governed by the terms of this Agreement or this Article.

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

4.1.3 If a master collective bargaining agreement expires before Contractor/Employer completes the performance of the Construction Contract and Union or Contractor/Employer gives notice of demands for a new or modified master collective bargaining agreement, Union agrees that it will not strike on work covered under this Agreement and Union and Contractor/Employer agree that the expired master collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified master collective bargaining agreement is reached. If the new or modified master collective bargaining agreement provides that any terms of the master collective bargaining agreement shall be retroactive, Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining agreement which are applicable to employees who were employed on the Project during the interim, with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, Union shall give City and Contractor/Employer(s) five (5) Business Days’ notice when nonpayment of trust fund contributions has occurred and two (2) Business Day’s notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of
insufficient funds, of the intent to withhold labor from Contractor/Employer(s)’ or their subcontractor’s workforce, during which time Contractor/Employer shall have the opportunity to correct the default. In this instance, the affected Union’s withholding of labor (but not picketing) from the Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.2 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:

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the party invoking this procedure shall notify Barry Winograd, as the alternate arbitrator. If neither is available, then a selection shall be made from the list of arbitrators in Section 12.3. Notice to the Arbitrator shall be by the most expeditious means available, with notices by facsimile or telephone to City and the party alleged to be in violation, and to Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of the notice, City will contact the Arbitrator designated pursuant to Section 4.2.1, who will attempt to 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, email or telephone of the place and time for the hearing. The hearing shall be completed in one (1) 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 the hearings shall not delay the hearing of evidence or the issuance of an 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 the 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) 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 and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. A party found to be in violation of the No Strike-No Lockout provisions in Section 4.1 of this Article shall cease such violation within eight (8) hours of the award of the Arbitrator.

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, 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
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 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.

4.3 Should either the permanent or the alternate arbitrator listed no longer work as a
labor arbitrator, the City and the Council shall mutually agree to a replacement.

5. **PRE-CONSTRUCTION CONFERENCE**

A pre-construction conference shall be held prior to the commencement of any work on
the Project. Such conference shall be attended by a representative each from the participating
Contractor(s)/Employer(s), including all subcontractors, Union(s) and the Project Manager. All
efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the
ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that
such conferences will be held at least seven (7) days before the work commences. There shall be
periodic meetings for the duration of the Project called by Council or the Project Manager to
discuss issues relating to the construction of the Project. The Primary Contractor shall attend all
such meetings.

6. **NO DISCRIMINATION**

Contractor(s)/Employer(s) 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.

7. **UNION SECURITY**

7.1 Contractor(s)/Employer(s) recognize 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 is required to join any Union as a
condition of being employed on the Project. However, all Contractor(s)/Employer(s) shall
require all employees who work on the Project 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 for union membership in the local Union that is a signatory to this
Agreement. 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 the Project.
7.3 Authorized representatives of Unions shall have access to the Project site whenever work covered by this Agreement is being, has been, or will be performed on the Project, so long as they comply with all reasonable safety rules, which under no circumstances shall include signing in.

8. REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Signatory Unions. Contractor/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 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 Contractor/Employer(s), Contractor/Employer(s) shall be free to obtain workers from any source. A Contractor/Employer 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 7 of this Agreement.

8.4 The Union(s) shall be the sole source of all craft labor employed on the Project.

8.4.1 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"):

8.4.1.1 Possess any license and/or certifications required by state or federal law for the Project work to be performed;

8.4.1.2 Have worked a total of at least two thousand (2000) hours in the construction craft during the prior two (2) years;

8.4.1.3 Were on the Contractor/Employer’s active payroll for at least the forty-five (45) consecutive business days (a minimum of 360 hours worked in the nine consecutive weeks) immediately prior to the contract award;

8.4.1.4 Have the ability to perform safely the basic functions of the applicable trade; and

8.4.1.5 Live in Napa, Solano, Contra Costa or Yolo Counties.
8.4.2 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).

8.4.3 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.

8.5 It is in the interest of the parties to this Agreement to facilitate employment of City of Fairfield and Local Area residents and to use resources in the Local Area in construction of the Project. The “Local Area” shall be defined as Napa and Solano Counties, the communities to be served by the Project. It is the objective of the parties that not less than twenty-five percent (25%) of all hours worked on the Project, be worked by residents of the Local Area. Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the contractor. The parties to this Agreement support the development of increased numbers of skilled construction workers from the Local Area.

9. **WAGES AND BENEFITS**

9.1 All Contractor(s)/Employer(s) agree to pay contributions to the vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds (“Trust Funds”) established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions.

9.2 By signing this Agreement, Contractor(s)/Employer(s) adopt and agree to be bound by the written terms of the legally established Trust Agreements for the Trust Funds described in Section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). Contractor(s) agrees to execute a Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

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 Master Agreement of the respective crafts, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be established as set forth in the applicable Schedule A.
10. **EMPLOYEE GRIEVANCE PROCEDURE**

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 Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

11. **COMPLIANCE**

It shall be the responsibility of Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractor(s)/Employer(s) on the Project. City shall monitor and enforce compliance with the prevailing wage requirements of the state, to the extent required by applicable law.

12. **GRIEVANCE ARBITRATION PROCEDURE**

12.1 **Project Labor Disputes:** All Project labor disputes involving the application or interpretation of the Master Collective Bargaining Agreement to which a signatory Contractor/Employer and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Collective Bargaining Agreement. All disputes relating to the interpretation or application of this Agreement shall be subject to resolution by the Grievance arbitration procedures set forth herein.

12.2 No grievance shall be recognized unless the grieving party (Local Union or District 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) Business Days after becoming aware of the dispute but in no event more than thirty (30) Business Days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 12.1 may be extended by mutual written agreement of the parties.

12.3 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) Business Days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, or the representative of the employee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) Business Days after the meeting to resolve the dispute in Step 1, the Union and the Contractor involved shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. Union(s) shall notify its international union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting.

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Meeting minutes shall be kept by Contractor. In the event that these representatives are unable to resolve the dispute, either involved party may submit the grievance in writing within five (5) Business Days to the Business Manager(s) of the affected Union(s) involved, the Manager of Labor Relations of Contractor/Employer involved or the Manager's designated representative, and the Project Manager for discussion and resolution.

Step 3: If the grievance is not settled in Step 2, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of the parties. Within five (5) Business Days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon Arbitrator for final and binding arbitration. The parties agree that if the permanent arbitrator or his alternate (as identified in Section 4.2) are not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. 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.

1. William Riker
2. Morris Davis
3. William Engler

Should any of the arbitrators listed above no longer work as a labor arbitrator, City and Council shall mutually agree to a replacement.

12.4 The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date 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 opinion may be requested by a party from the presiding Arbitrator.

12.5 The time limits specified in any step of the Grievance Procedure set forth in Section 12.3 may be extended by mutual agreement of the parties. 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.

12.6 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.

13. WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

13.1 The assignment of Covered Work will be solely the responsibility of 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 of the Building and Construction Trades Department of the AFL-CIO (the “Plan”) or any successor Plan.

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

13.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article 5, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator’s hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento. 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 Employer’s assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and the City will be advised in advance of all such conferences. The Primary Contractor shall attend all such meetings and the City and may participate if it wishes. Pre-job conferences for different Employers may be held together.

14. APPRENTICES

14.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, 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.

15. MANAGEMENT RIGHTS

15.1 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. 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 lawful manning provisions in the Master Agreement shall be recognized. Contractor/Employer(s) shall utilize the most efficient method of techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service. Subject to applicable law and consistent with the wages
and benefits provisions in the Master Labor Agreement, there shall be no limitations on the scheduling of employees and crews.

15.2 The Construction Contract for the Project may necessitate the performance of work during all hours including weekends and holidays. The scheduling and performance of such work is hereby authorized, as long as all such work is paid consistent with wages and benefits provisions of the applicable Master Agreement. However, in no event shall an employee be disciplined for declining to work outside of his or her regularly scheduled hours.

16. HELMETS TO HARDHATS

16.1 Contractor(s)/Employer(s) and 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. Contractor(s)/Employer(s) 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 Unions and Contractor(s)/Employer(s) 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 the Project. To the extent permitted by law, Unions will give credit to such veterans for bona fide, provable past experience.

17. DRUG & ALCOHOL TESTING

17.1 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.

17.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies set forth in each applicable Schedule A.

18. SAVINGS CLAUSE

18.1 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 this Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of this 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 word 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 this 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 this Agreement is invalid and/or enjoins City from complying with all or part of its provisions and City accordingly determines that this Agreement will not be required as part of an award to a Contractor/Employer, Unions will no longer be bound by the provisions of Article 4.

19. **TERM**

19.1 This Agreement shall be included in the bid documents as a condition of the award of all Construction Contracts for the Project.

19.2 This Agreement shall become effective on the day it is executed by the City and the Council.

CITY OF FAIRFIELD

By: _______________________________ Date: _______________________________

NAPA-SOLANO BUILDING & CONSTRUCTION TRADES COUNCIL

By: _______________________________ Date: _______________________________

Ben Espinoza, President
[SIGNATURE BLOCKS FOR UNIONS]
Addendum A: Agreement To Be Bound

[Addressee]
[Address]
[City and State]

Re: City of Fairfield Intermodal Station Project Labor Agreement.

Dear Mr. /Ms. ______________:

The undersigned party confirms that it agrees to be a party to and bound by the City of Fairfield Intermodal Station 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 Agreement to Be Bound, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, 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, and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by the City of Fairfield Intermodal Station Project Labor Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to be Bound.

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

CONTRACTOR/SUBCONTRACTOR: __________________________________________

Project Contract Number: __________________________________________

California State License Number: _______________________________________

or Motor Carrier (CA) Permit Number

Name and Signature of Authorized Person: ________________________________

(Print Name)

(Title)

(Signature)

(Date)
July 15, 2014

Mr. Dave Harrison District 04 Representative  
Operating Engineers Local 3  
2540 N. Watney Way  
Fairfield, CA. 94533

Re: Side Letter between City of Fairfield and Operating Engineers Local Union No. 3 for the Project Labor Agreement for Construction of the City of Fairfield Intermodal Station Project

Dear Mr. Harrison:

By this letter, the Parties agree that, notwithstanding Section 2.3.1 or any other provision of the Project Labor Agreement, the City of Fairfield has the right to conduct soils and materials testing and inspection work on the Project for quality control purposes only (i.e., to verify the accuracy of soils and materials testing and inspection work performed by the Prime Contractor or a subcontractor to the Prime Contractor), by the use of either consultants or City employees. All soils and materials testing and inspection craft work conducted by the Prime Contractor (as defined in the Project Labor Agreement), or a subcontractor to the Prime Contractor, however, is covered craft work under the Project Labor Agreement per section 2.3.1.

Date: ____________________________  
Signature: __________________________

By: David A. White, City Manager  
For the City of Fairfield

Date: ____________________________  
Signature: __________________________

By: Russell E. Burns, Business Manager  
For Operating Engineers Local Union No. 3