

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: July 14, 2016**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute an agreement between the Transbay Joint Powers Authority (“TJPA”) and the International Brotherhood of Teamsters, Local 853 (“Teamsters”) (collectively, the “Parties”) governing off-haul trucking in Phase 2 of the Transbay Transit Center Project (“Project”), an issue that was arbitrated pursuant to a side letter agreement to the Project Labor Agreement (“PLA”).

SUMMARY:

In November 2011, TJPA entered into a PLA establishing terms and conditions of employment for Phase I and Phase II of the Project. Among other provisions, the PLA prohibits strikes and lockouts, establishes dispute resolution procedures for grievances and jurisdictional conflicts, standardizes general work rules, and provides equal employment opportunities. PLA signatories are construction labor organizations, the San Francisco Building and Construction Trades Council, primary Project contractors, and TJPA (see Attachment 3: October 13, 2013 Staff Report for additional PLA background).

For most aspects of the project, the PLA is currently in effect. Staff have found that the PLA has functioned well, and been successful in preventing work disruptions. The San Francisco Building and Construction Trades Council has worked closely with TJPA staff in the few instances in which problems have arisen. The PLA has provided the mechanism to resolve a major jurisdiction dispute that arose during the work, as well as an unauthorized picket line.

Prior to the adoption of the PLA, the TJPA and Teamsters negotiated but were unable to reach agreement as to whether off-haul trucking could permissibly be included in the PLA. The Parties agreed to execute the PLA, which excludes off-haul trucking, but also simultaneously executed a side letter agreement allowing the legal question to be arbitrated (see Attachment 4: November 2, 2011 Arbitration Side Letter), and providing that off-haul trucking would be covered by the PLA to the extent legally permissible as may be determined by the arbitrator.

On April 27, 2012, the Parties engaged in arbitration under the side letter to determine whether the PLA could be applied to off-haul trucking. On July 27, 2012, the arbitrator issued an Opinion and Award (see Attachment 2 - Exhibit A: Arbitration Decision) holding that the PLA could include off-haul trucking legally, but only to the extent that the off-haul truck drivers were employees of a contractor and not self-employed “owner-operators” who are independent contractors.

While the Arbitration Decision constituted a final determination of the legal issues, applying the terms of the Arbitration Decision has presented significant challenges. Of concern to the Teamsters was the proper classification of drivers who may or may not be independent contractors. In particular, the Teamsters assert that some off-haul truck drivers are, in reality, not independent contractors but employees of the trucking brokers who procure their services. The TJPA takes no position on this issue but does have a proprietary interest in ascertaining the employment classification of off-haul trucking drivers to be able to administer the Arbitration

Decision. Accordingly, the Parties conferred over the practical impact of the Arbitration Decision on future off-haul trucking and developed a proposed agreement that will be applicable solely to Phase 2 and any subsequent work.

The proposed agreement provides that, for work in Phase 2 and any subsequent phases, the PLA will cover off-haul trucking only to the extent that it is performed by drivers who are employees of a trucking contractor, and not independent contractors. To ensure that off-haul drivers are properly classified, the proposed agreement includes a document labeled “Off-Haul Driver Topics,” which is a questionnaire that provides information relevant to determining whether drivers are appropriately classified as independent contractors or employees. In addition, to ensure safe and environmentally-sound trucking practices and a level playing field for drivers regardless of classification, the TJPA agreed to issue certain “Off-Haul Trucking Requirements” applicable to all off-haul trucking in Phase 2 (see Attachment 2 - Exhibit B: Off-Haul Trucking Requirements).

The proposed agreement satisfies the side letter in full and provides greater clarity as to how off-haul trucking will be addressed on future Project work. The proposed agreement supersedes the Arbitration Decision and is considered to be a term of the PLA that may be enforced through the PLA’s grievance and arbitration procedures.

This agreement was not completed in time for Phase 1 bidding, and therefore, was not approved by the TJPA Board at the time the original PLA was approved. Rather, the Board approved the sideletter committing the TJPA to arbitrate the issue. The arbitration is now complete, as is negotiation over how to effectuate the result.

We bring this matter before the Board now because it is unfinished business from Phase 1, and, consistent with the prior sideletter, TJPA is obligated to amend the PLA in accordance with the results of the arbitration. This is the sole remaining issue affecting the PLA that covers both Phase 1 and 2.

Resolution of this outstanding issue is a high priority for the Teamsters and is critical to ensuring labor peace on the Project. Further, approving the agreement now will put potential bidders in Phase 2 on notice of what TJPA will require of truckers in the bidding process.

This agreement recognizes what TJPA believes is the current state of the law: i.e. most off-haul trucking is performed by owner-operators who consider themselves to be independent, and who are recruited by trucking brokers. However, as is the case in the ride sharing industry, Teamsters challenge this characterization and have been attempting to challenge the prevailing legal view of owner-operators as independent contractors.

In staff’s view, the legal question of how off-haul truckers are characterized is appropriately left to the unions, brokers and owner-operators to determine through legislation, litigation or both. In recent years, Teamsters have been seeking to establish a prevailing wage rate for owner-operator off-haul truckers, and there has been litigation surrounding the issue.

This agreement maintains TJPA’s neutrality in the dispute, while giving all parties the ability to file challenges as the law evolves. Importantly, the agreement assures that whether or not challenges are filed, TJPA’s operations will not be disrupted.

Because of the currently fluid state of the law in this area, arriving at mutually agreeable terms for trucker classification and PLA applicability to trucking work has required significant efforts on the part of both TJPA and the Teamsters. This agreement, which represents a fair compromise for both parties, will ensure that the PLA terms remain consistent with state and federal law. By preserving the ability of both bona fide independent contractors and employee-drivers to perform work on the Project, the agreement advances competition and reduces TJPA's legal vulnerability.

Finally, and importantly, nothing in this agreement commits TJPA to a particular construction alignment for Phase 2. The agreement is limited to compensation for construction work.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute an agreement with the Teamsters regarding off-haul trucking in Phase 2 of the Project.

ATTACHMENTS:

1. Resolution
2. Partially Executed Off-Haul Agreement
 - a. Exhibit A: Arbitration Decision
 - b. Exhibit B: Off-Haul Trucking Requirements
 - c. Exhibit C: Off-Haul Driver Topics
3. October 13, 2011 Staff Report (PLA Background)
4. November 2, 2011 Arbitration Side Letter

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On November 10, 2011, the Board of Directors of the Transbay Joint Powers Authority (TJPA) adopted the Project Labor Agreement (PLA) between the TJPA, the primary Transbay Transit Center Project (Project) contractors, construction labor organizations, and the San Francisco Building and Construction Trades Council; and

WHEREAS, The PLA advances the goals of the TJPA and the interests of the public by controlling costs, increasing efficiency, providing safe working conditions, preventing disruptions due to labor strife, and maintaining the highest quality of construction work on the Project; and

WHEREAS, The International Brotherhood of Teamsters, Local 853 (Teamsters), a union signatory to the PLA, and the TJPA had a disagreement unresolved by the negotiations over the PLA as to whether “off-haul” trucking could permissibly be covered; and

WHEREAS, At the same time the PLA was executed, the parties executed a side letter agreement that allowed Teamsters to request binding arbitration to determine whether off-haul trucking may be legally included in the PLA and providing that off haul trucking would be included in the PLA if found to be legally permissible by the arbitrator; and

WHEREAS, Pursuant to Teamsters’ request, the parties have now engaged in arbitration and the arbitrator, Barry Winograd, rendered a binding determination on July 27, 2012; and

WHEREAS, The arbitration decision finds that the PLA may legally include off-haul trucking in the PLA subject to certain conditions set forth therein; and

WHEREAS, Teamsters and the TJPA have met and conferred regarding appropriate rules necessary to implement the arbitration decision; and

WHEREAS, Off-haul trucking drivers, many of whom are owner-operators, may be either independent contractors or employees of a contractor; and

WHEREAS, In order to implement the arbitration decision, it is necessary for the TJPA to determine whether owner-operator off-haul drivers are, in fact, independent contractors or employees; and

WHEREAS, The TJPA has a proprietary interest and related contractual obligations to ensure that the arbitration decision is applied to the Project in a manner that is unambiguous and legally sound; and

WHEREAS, This proprietary interest is directly furthered by establishing a means of ascertaining the proper employment classification for off-haul truck drivers; and

WHEREAS, The TJPA, as the developer of a project designed to encourage the use of clean and efficient public transportation, also has a proprietary interest in establishing appropriate off-haul trucking requirements to ensure that the construction work complies with applicable environmental regulations and is performed safely; and

WHEREAS, It is appropriate to require in bidding documents that trucks utilized to haul debris and soil off of the job site meet minimum environmental and safety standards; and

WHEREAS, To implement the Arbitration Decision, the TJPA and Teamsters have negotiated an Agreement Pursuant to Side Letter on Off-Haul Work with Teamsters (“Off-Haul Agreement,” incorporated herein as ATTACHMENT A) addressing the above issues; and

WHEREAS, The Off-Haul Agreement satisfies the side letter agreement in full, supersedes the arbitration decision, and fully resolves all present disputes between Teamsters and the TJPA regarding the requirements of the PLA; and

WHEREAS, The Off-Haul Agreement applies only to off-haul trucking to be performed in Phase 2 or subsequent phases of the Project; and

WHEREAS, Teamsters and the TJPA wish to ensure that the Off-Haul Agreement is enforceable as if set forth directly in the PLA; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds that these recitals are true and correct; and be it further

RESOLVED, That the TJPA Board of Directors approves and authorizes the Executive Director to execute the Off-Haul Agreement and accompanying attachment.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 14, 2016.

Secretary, Transbay Joint Powers Authority

ATTACHMENT 2



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

January 15, 2016

Rome Aloise
Principal Officer, Secretary-Treasurer
International Brotherhood of Teamsters
Local 853
2100 Merced Street, Suite B
San Leandro, CA 94577

Re: *Transbay Transit Center Project – Agreement Pursuant to Side Letter on Off-Haul Work*

Dear Mr. Aloise:

This letter memorializes the agreement reached by Teamsters Local 853 and the Transbay Joint Powers Authority (together, the “Parties”) regarding how the future removal of debris, refuse, and excess fill material and/or mud from the construction site of the Transbay Transit Center Project (the “Off-Haul Work”) will be covered by the Project Labor Agreement (“PLA”).

Pursuant to a side letter to the PLA executed on November 10, 2011, the Parties have arbitrated whether Off-Haul Work may be covered by the PLA. On July 27, 2012, the arbitrator issued an Opinion and Award on this matter (the “Arbitration Decision”, attached as **Exhibit A**). Subsequently, the Parties have met and conferred regarding the impact of the Arbitration Decision on future Off-Haul Work and have come to an agreement on how to implement the principles of the Arbitration Decision.

The terms of the Parties’ agreements are as follows:

1. It is understood that TJPA will award off-haul trucking services through a competitive bidding process and that responsive bidders may be either brokers or employers. Notwithstanding Article 4.9(h) of the PLA, the PLA shall apply to Off-Haul Work performed by drivers who are bona fide employees of trucking companies. The PLA shall not apply to drivers who are bona fide independent contractors.
2. The TJPA shall incorporate the material terms of the Transbay Transit Center Project Off-Haul Trucking Requirements (attached as **Exhibit B**) into future bidding documents for bids that include Off-Haul Work and/or TJPA operating procedures governing Off-Haul Work. These requirements are intended to implement the principles of the Arbitration Decision, ensure the safety of the

public and of drivers, accomplish TJPA's environmental goals, and facilitate the timely and efficient completion of the Project.

3. The TJPA shall require all drivers to complete a questionnaire that incorporates the material terms of the Transbay Transit Center Project Off-Haul Driver Topics (attached as **Exhibit C**) before the drivers commence future Off-Haul Work. These topics are intended to ensure compliance with the Off-Haul Trucking Requirements and ensure that drivers are properly classified as independent contractors or employees. Responses to the questionnaire will be public records to the extent allowable by law.
4. The provisions mentioned above shall only apply to Off-Haul Work to be performed in Phase 2 and any other subsequent phases of the Project.

Additionally, the Parties share the following understandings:

1. The terms contained in this letter and its exhibits supersede the Arbitration Decision and constitute full satisfaction of the requirements in the Side Letter Agreement between the TJPA and Teamsters, Local 853 executed on November 10, 2011.
2. The terms contained in this letter and its exhibits are valid and enforceable as if they were set forth directly in the PLA. Accordingly, the grievance and arbitration procedures set forth in Article 17 of the PLA shall apply to all disputes between the TJPA and Teamsters, Local 853 arising hereunder.
3. Should there be a later change or revision in law that brings the terms of this letter or its exhibits into doubt, either party may resubmit the issue to arbitration. Pursuant to Article 24 (Savings Clause) of the PLA, in the event the Arbitration Decision or any term contained in this letter or its exhibits is determined to be illegal or void by a court of competent jurisdiction, the remainder of the PLA shall remain in full force and effect.

This agreement shall be effective upon execution by all Parties and approval by the TJPA Board of Directors.

Very truly yours,

Mark Zabaneh, Interim Executive Director
Transbay Joint Powers Authority

Transbay Transit Center Project – Agreement Pursuant to Side Letter on Off-Haul Work

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Agreed and accepted this 10th day of February, 2016
International Brotherhood of Teamsters, Local 853

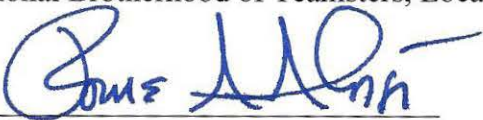
By: 
Rome Aloise
Principal Officer, Secretary-Treasurer

EXHIBIT A

BARRY WINOGRAD
Arbitrator and Mediator
1999 Harrison Street, Suite 1400
Oakland, CA 94612
(510) 465-5000

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:)	
)	
TEAMSTERS LOCAL 853)	Arbitrator's
)	File No. 11-244-LA
and,)	
)	
TRANSBAY JOINT POWERS AUTHORITY)	ARBITRATION
)	<u>OPINION AND AWARD</u>
[Re: Off-Haul Dispute])	(July 27, 2012)
)	

Appearances: Teague P. Paterson and John E. Varga (Beeson, Tayer & Bodine), attorneys for Teamsters Local 853; Jonathan V. Holtzmann and Kelly R. O'Donnell (Renne Sloan Holtzmann Sakai), attorneys for the Transbay Joint Powers Authority.

INTRODUCTION

This dispute arises under a project labor agreement (PLA) involving the Transbay Joint Powers Authority and Teamsters Local 853, a signatory to that agreement. At issue is whether the PLA

may legally cover the removal of dirt, debris and other material - known as "off haul" work - on a major public sector construction project.

In a side letter to the PLA, the parties agreed to arbitrate the dispute as a condition for the Teamsters becoming a party to the agreement. (Jt. Exhs. 1 (Stip. 22), 1.C.) Prior to the arbitration hearing, the parties provided stipulated facts and exhibits (Jt. Exhs. 1, 2; Tr. 10-35), and two rounds of prehearing briefs. A hearing was conducted on April 27, 2012 in Oakland, California. At the hearing, the parties examined and cross-examined witnesses, and introduced relevant documentary evidence. The matter was deemed submitted for decision upon receipt of the final posthearing brief on June 27, 2012.

ISSUES

The parties agreed to the following issues for resolution:
Is the inclusion of off-haul work within the coverage of the Project Labor Agreement legally permissible; if so, what are the limits on the inclusion of such work, if any? (Jt. Exh. 1.C.)
The parties agreed that if off-haul coverage is permissible, the PLA will be amended to comply with the decision on a prospective

basis for contracts that have not yet been awarded. (Jt. Exh. 1, Stip. 22.)

FACTUAL ANALYSIS

This dispute concerns a PLA for a major transportation construction project in San Francisco. To carry out the project, a consortium of public sector entities formed the Transbay Joint Powers Authority (TJPA). (Jt. Exh. 1, Stips. 2, 4.) The TJPA, as a public entity, is excluded from the definition of "employer" under the National Labor Relations Act (NLRA).¹ (Id., Stip. 3.) Under the auspices of the TJPA, a downtown San Francisco transportation center, and connecting tunnels and lines, are being built to provide a multi-use facility of regional significance involving eight counties and 11 transit systems. (Jt. Exh. 1, Stips. 5-7.)

The project involves two major phases, beginning in 2008 and expected to last more than a decade. (Jt. Exh. 1, Stips. 5-10.) The above-ground phase is approaching completion, and a vast underground phase will follow. Construction of the new transportation center will cost more than four billion dollars,

¹ 29 U.S.C. Section 152(2).

require over 12 million hours of work, involve hundreds of contractors and subcontractors, and generate about 125,000 jobs. To complete the second phase of the project, when most of the remaining off-haul work will be needed, approximately 1.75 to 2.0 million tons of debris will be removed from the site, requiring up to an estimated 86,000 separate hauling trips. (Jt. Exh. 3, Para. 14; Tr. 182, 189.) When finished, it is projected that the center will serve more than 100,000 passengers a day, and more than 45 million a year.

The PLA was negotiated by the TJPA with the San Francisco Building and Construction Trades Council and 28 separate unions, including Teamsters Local 853. (Jt. Exh. 1, Stips. 12-17.) The stated purpose of the agreement reflects the interest of the consortium in constructing the facility, particularly by insuring labor relations stability that will preserve the availability of skilled labor, save costs, and minimize project delays. (See, generally, Jt. Exhs. 1.B, 2.D.) The project also has ancillary benefits such as supporting small businesses, assisting disadvantaged communities, and affording work opportunities for youth, women, military veterans, and others.

To accomplish the PLA's objectives, several key terms are included in the agreement, among them: a no strike-no lockout

assurance at the project site (Jt. Exh. 1.A, Art. 9; Tr. 175.); use of union hiring halls for union and for non-union employers (Jt. Exh. 1.A, Secs. 7.1, 7.3); a grievance and arbitration procedure to resolve disputes (id., Art. 17); and, uniform work rules, hours, and holidays (id., Art. 11). Wages and benefits for covered employees are to be paid by contractors in accord with master labor agreements for the signatory unions. (Id., Secs. 4.11, 10.1-10.3, Sch. A.)

The PLA obliges contractors working on the project to execute letters of assent agreeing to the PLA's terms, with subcontractors working for them also being bound. (Id., Art. 5.) In effect, by the letters of assent, contractors are parties to the PLA, and, even if otherwise non-union, they agree to abide by the terms of the master bargaining agreement for each craft in order to participate in project work. (Jt. Exh. 1.A, Secs. 3.4, 4.7; Tr. 158.) If a hiring hall cannot provide sufficient skilled workers - drivers in this instance - the contractor can use a different source for labor. (Jt. Exh. 1.A, Sec. 7.2; Tr. 57, 145-146, 170-171, 192-193, 206, 210-211.)

Off-haul work for construction projects in the San Francisco Bay Area is provided to a significant extent by owner-operators of trucks of various types and sizes. (Tr. 81-82, 152-154, 184-185; Jt. Exh. 3.C.) In addition, construction contractors can

use employee-drivers to handle off-haul work, although this does not appear to be as common as relying on non-union brokerage agreements to provide hauling service. (Tr. 51-54, 58-59, 117-120, 203-204; Jt. Exhs. 3 (Paras. 3-7), 4 (Paras. 9-12).) At times, owner-operators are treated as independent contractors, not employees, and are retained by brokers who pay the drivers a lump sum to cover time and use of equipment, rather than a prevailing wage under the master bargaining agreement. (Tr. 126-129, 164-166.)

It contrast to off-haul trucking, the PLA expressly covers "on haul" work. (Tr. 145, 162-163, 187, 207-208, 217-219; Jt. Exh. 1.A, Sec. 4.9(h).) On-haul work, which is not at issue in this case, involves material being transported from off-site locations to be incorporated into the construction at the site; for example, ready-mix or aggregate delivered to the location. During the project, owner-operators who are independent of a principal contractor also can be utilized for on-haul work, such as water truck drivers, but the circumstances and extent of owner-operator use relative to other drivers is not shown on this record. (Tr. 207-208; Jt. Exh. 4, Para. 13.)

Under a master contract in the construction industry applicable to Teamsters Local 853, a distinction is drawn for drivers who work on-site and off-site, for unionized companies

and employees, and for independent owner-operators. (See, e.g., Jt. Exh. 2.C, Secs. 1.E, 6.B, 6.C, 7, Letter of Understanding (p. 73); Tr. 93-100.) The Union has about 11,000 members in its northern California region. (Jt. Exh. 1, Stip. 3.) From the evidence presented, it is not clear how many engage in off-haul work, whether as independent owner-operators or as employees. (Tr. 124-125; Jt. Exh. 2, Stips. 4.d, 4.9, 4.h.) Individual owner-operators are permitted to become members of the Union; other drivers, without becoming members, also can pay a service fee for work referrals through the Union's hiring hall. (Tr. 113-116.) Under the Union's master agreement, some benefits and protections are available for owner-operators performing work on-site, without also applying to off-site work. (Jt. Exh. 2.C, Sec. 7.Q; also see id., Letter of Understanding (p. 73).)

Absent an explicit exclusion, owner-operators engaged in off-haul work who are employees for contractors and subcontractors can be subject to the PLA. (See, e.g., Jt. Exh. 2, Stip. 4.b.) The union security provision of the PLA, which applies to "all" covered employees, states:

All employees who are employed by Contractors to perform Project Work subject to this agreement will be required to become members and maintain membership in the appropriate Union on or before the eighth (8th) day of continuous or cumulative employment on the Project or, in the alternative, the obligation may be satisfied by the tendering of periodic dues and fees uniformly and non-discriminatorily required to the extent allowed by law. (Jt. Exh. 1.A, Sec. 6.2.)

Similarly, the Union's master agreement distinguishes in its union security provision between employees working on-site and those who are not, and, as to the latter, employees are subject to the security clause within 31 days of work rather than within eight days for those on-site. (Jt. Exh. 2.C, Sec. 1(E).)

Testimony by Stuart Helfer, a Union business agent, demonstrated that off-haul work is covered under several PLA's in the Bay Area and elsewhere in California. (See, e.g., Tr. 60-68, 137-143; Jt. Exhs. 8.B (Art. 2 Side Letter), 8.G (Sec. 2.3.3), 8.E (Sec. 2.06.a), 8.F (Sec. 2.3.3), 8.I (Sec. 2.4.3).) However, other PLAs introduced by the TJPA expressly exclude off-haul work from coverage or are silent on the subject. (See, e.g., Jt. Exhs. 9.A (Sec. 2.4), 9.B (Sec. 2.2.c), 9.D (Sec. 2.3.3), 9.E (Art. 2), 9.F (Sec. 2.4.c).)

As to the Union's hiring hall being a satisfactory source of supply for off-haul labor, skepticism was expressed by Robert Beck, an experienced construction manager working for the TJPA and formerly an official for building projects undertaken by the City and County of San Francisco. (Tr. 161-162, 190-192; Jt. Exh. 3, Paras. 15-16.) Mr. Beck's skepticism is based on what he views as the predominant role of independent owner-operators who function through brokers to provide service to contractors. Mr.

Helfer's testimony for the Union offered assurance that the Teamster hiring hall was a satisfactory source of labor for the needs of the TJPA. (Tr. 56-58; Jt. Exh. 4, Paras. 19-26.) Mr. Beck's testimony on cross-examination underscores the difficulty of making a clear finding on this point:

Q....Let's say that the Transbay PLA did cover off-haul work;....Your declaration then hypothesizes that you would have a labor shortage. Is that a correct formulation of your declaration?

A. Well, that we could.

Q. That you could have a labor shortage?

A. We could.

Q. Could you not have a labor shortage?

A. We also could not have a labor shortage.

Q.When you say "labor shortage," do you mean insufficient numbers of individuals to perform the work referred out of the union hiring hall? Is that what you mean?

A. Yes....Again, we think that - from my experience, the bulk of off-haul drivers are independent owner-operators, and being unclear from my experience how they might or could sign up through the union hall and be referred out, it was - it has been unclear to me what number of drivers would be available for referrals. Recognizing that...the PLA does have a provision that if the union's unable to make referrals, then the contractor can go wherever he or she needs to.

Q. So, you don't think that the project would grind to a halt if the PLA were found to be applicable - permissibly applicable to off-haul?

A. No....In some form things would go forward. (Tr. 161-162.)

DISCUSSION

As a threshold observation, this decision recognizes the important goal of a project labor agreement in balancing the

potentially competing interests of the TJPA and signatory unions as to cost-containment and worker compensation. This balance is achieved by providing a steady supply of skilled labor receiving prevailing wages and benefits, but without the risk of strikes, lockouts, or other concerted activity that can disrupt and delay millions of dollars of planned work. As a result of this balance, labor unrest is avoided, anti-competitive practices among supplying contractors and subcontractors are kept in check, particularly the risk of undercutting each other on skills and wages, and the community's interest is served in promoting valuable public works. The importance of these objectives is evident in a series of cases upholding the utility and legality of public sector prehire project labor agreements against preemption challenges based on federal labor law.²

In the setting just described, the Union contends that the TJPA has legal authority, based on its proprietary interest as a

² The seminal decision approving public sector project labor agreements is *Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218 (1993) ("Boston Harbor"). Other leading decisions on the subject cited by the parties include: *Cardinal Towing and Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686 (5th Cir. 1999); *Johnson v. Rancho Santiago Community College Dist.*, 623 F.3d 1011 (9th Cir. 2010) ("Rancho Santiago"); *American Trucking Associations, Inc. v. City of Los Angeles*, 660 F.3d 384 (9th Cir. 2011); *Building Industry Electrical Contractors Assn. v. City of New York*, 678 F.3d 184 (2nd Cir. 2012). As a federalized construction project, the TJPA is subject to the purposes and requirements of Executive Order 13502 (Feb. 6, 2009).

purchaser in the commercial marketplace, to extend PLA coverage to off-haul work, and, indeed, to any type of work related to the project. Consistent with this view, the Union points to hauling to the site as an example of the scope of covered work. To support this perspective, the Union also cites evidence of off-haul coverage under other public sector PLAs to show that it is legally permissible. According to the Union, the TJPA, as a public entity exercising its proprietary interest, can cover off-haul work under the PLA without interfering with federal labor law principles or statutory authority under the National Labor Relations Act (NLRA).³ The NLRA governs labor relations for private not public employers, and, for this reason in the Union's view, it is inappropriate to apply Section 8(e) dealing with so-called hot cargo prohibitions or Section 8(f) dealing with prehire agreements in the construction industry.⁴

³ 29 U.S.C. Sections 151-169.

⁴ 29 U.S.C. Sections 158(e), 158(f). Section 8(e) permits agreements "...in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction...." (Emphasis added.) Section 8(f) generally prohibits the execution of labor agreements to cover employees before they are hired, except for "an employer engaged primarily in the building and construction industry."

The TJPA counters by urging that extending the PLA to cover off-haul construction work would contravene federal preemption principles under the NLRA.⁵ Although the TJPA as a public entity is not directly covered by the NLRA, the TJPA nevertheless views the preemption doctrine as prohibiting it from doing what a private industry developer would be barred from doing; that is, authorizing off-haul work under the PLA that is not "at the site." In this respect, the TJPA points to the site-specific language in Section 8(e) and the construction industry exception in Section 8(f) of the NLRA as confining prehire agreements to on-site work only, thereby establishing an outer limit for a public entity PLA. In addition, if the PLA departs from this restriction and covers off-haul work, the TJPA asserts that it would have a de facto regulatory impact on labor relations affecting private employers subject to the NLRA, including contractors signing letters of assent to work on the project. Moreover, according to the TJPA, expansion of the PLA to off-haul work would pose a risk to the stability of the project due to the

⁵ In arguing that the Union seeks to extend the PLA beyond the principles established in *Boston Harbor* (supra, n. 2), the TJPA relies on two distinct lines of preemption analysis spelled out in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) and in *Machinists v. Wisconsin Employment Relations Comm.*, 427 U.S. 132 (1976). The *Garmon* preemption doctrine applies to disputes that are arguably protected or prohibited by the NLRA. For *Machinists* preemption, state action outside the direct coverage of the NLRA may be barred if it would interfere with the balanced regulatory design of federal labor law.

uncertain availability of independent contractor owner-operators through the Union's hiring referral system.

Based on the evidence and arguments offered by the parties, it is concluded that the TJPA's position is persuasive to the extent that the PLA would require owner-operators to be channeled as non-employee independent contractors through the Union and its hiring hall. However, this conclusion does not compel the exclusion of all off-haul work from coverage under the PLA. It also is determined, consistent with preemption principles, that off-haul referrals are permitted for employees of Union and non-union contractors, including brokers operating as employers, who work as signatories to the Union's master labor agreement, or under letters of assent, and who hire drivers as employees. The reasons supporting this outcome follow.⁶

⁶ Given the conclusions stated above, other arguments advanced by the TJPA are collateral to the central question presented by the parties, and are not determinative. These issues are whether the Union has jurisdiction over this work, whether limitations arise from competitive bidding requirements, and whether an outcome favoring the Union would contravene anti-trust laws. As to the jurisdictional issue, the evidence of the Union's jurisdiction is implicit based on off-haul work being covered, at least in part, by the Union's master agreement, by trucking industry practice, and by the absence of any contrary evidence showing an inter-union dispute. The other issues - competitive bidding and anti-trust - lose their potential force in the context of a conclusion confining the PLA's union security coverage to employees undertaking off-haul work for the TJPA. This limitation preserves the TJPA's recourse to secure labor from independent sources, including non-union companies and brokers, if employee referrals through the Union are insufficient. So construed, the PLA falls within the traditional

It is undisputed that the TJPA, a public entity, is not an employer as defined by the NLRA, and, as such, the Union urges that the TJPA is not subject to the constraints of that statute. However, the Union reaches too far with this argument. While the TJPA is excluded from the jurisdiction of federal labor law, that law is not irrelevant, particularly in terms of well-established private sector precedent under Section 8(e) and Section 8(f) of the NLRA. In this respect, the Union acknowledges that a bargaining agreement for parties subject to the NLRA could not extend coverage to the removal and trucking of material to an off-site location if that work is incidental to private sector construction activity.⁷

In analyzing the issues presented and the Union's position, the limits of federal labor law preemption doctrine are reached when a public entity goes beyond its role as a market participant that is exercising its proprietary interest, and, instead, enters into a regulatory domain. Viewed in this light, the Union cannot

realm of protected labor-management activity under both competitive bidding and anti-trust precedent. (See, e.g., *Associated Builders and Contractors, Inc. v. San Francisco Airports Comm.*, 21 Cal. 4th 352; *American Fed'n of Musicians v. Carroll*, 391 U.S. 99 (1968); *Teamsters Union v. Oliver*, 358 U.S. 283 (1959).)

⁷ See, generally, *Jt. Council of Teamsters, No. 42 v. NLRB*, 702 F.2d 168 (9th Cir. 1983); *General Truck Drivers, Chauffeurs, Warehousemen and Helpers of America, Local 957 v. NLRB*, 934 F.2d 732 (6th Cir. 1981).

use a project labor agreement as an umbrella to extend a public entity's proprietary interest in a construction project to off-site activity in a way that exceeds the public's interest or that undermines labor relations under federal law. Permitting the Union to use the TJPA and the PLA to operate in this fashion amounts to invoking the leverage of a public sector setting for a purpose at odds with the NLRA.

Applying the proprietary-regulatory distinction, the Teamsters propose that off-haul work by independent contractors can be covered by the PLA, urging that owner-operators also can be employees at the same moment in time, even if self-employed. This approach, however, when stretched to its maximum extent, contemplates a regulatory consequence that would expand coverage to those who are not employees of others; in effect, forcing others to restructure independent operations to conform to the PLA's mandate. If adopted without constraint, the Union's view of the broad reach of the PLA would pose an unacceptable risk of interference with federal labor law by potentially influencing how the non-union and private off-haul segment of the construction industry is organized, and by all but obliterating the distinction between employees and independent contractors.

This conclusion is at the heart of the TJPA's apprehension as detailed in Mr. Beck's testimony. Limiting the reach of the

Union's argument also is consistent with the Union's master agreement in the construction industry. Under the terms of that agreement, in tandem with the PLA, industry employers are permitted to employ non-union drivers, while independent owner-operators are in a different class. This distinction in the master contract highlights the potential adverse impact if coverage under the PLA extends to non-employee owner-operators who operate as independent contractors excluded from coverage under the NLRA.⁸ Even if, as the Union argues, the PLA involves a public entity, there are risks associated with authorizing Union representation of independent owner-operators by compulsion under the PLA.

These risks for the project include the possibility of concerted activity at the off-site locations of private employers, a prospect that, depending on the circumstances, might be beyond the prohibitory language of Article 9 of the PLA that applies to the "Project site."⁹ This possibility could arise,

⁸ 29 U.S.C. Section 152(3). See, e.g., *Local 814, International Brotherhood of Teamsters v. NLRB*, 512 F.2d 564 (D.C. Cir. 1975). California law also distinguishes independent contractors from employees. (See, e.g., Lab. Code Secs. 2750.5, 3357.)

⁹ Section 9.1 of the PLA states, in relevant part:

Until final termination of this Agreement...there shall be no strikes, sympathy strikes, work stoppages, slowdowns, labor disputes or other disruptive activity for any reason by the Unions or employees, including

for example, if the Union does not have representational status with an off-site employer or broker, but, in the context of an organizing drive, engages in secondary activity that is unlawful under Section 8(b)(4) or that is at odds with constraints on recognition picketing activity under Section 8(b)(7) of the NLRA.¹⁰ In addition, the extension of coverage proposed by the Union raises concern about whether the union security provision in Section 6.2 of the PLA, which deals solely with employees and with fee payers working as employees, would be applied too broadly, thereby interfering with the protected right of individual non-employees to refrain from Union representation under Section 7 of the NLRA.¹¹

Nevertheless, as the Union urges, the scope of a public sector PLA is not necessarily confined to the outer limit of a

disputes relating to the negotiation or renegotiation of any Schedule A agreement or disputes directed at non-construction service companies or Contractors not subject to this Agreement at the Project site. There shall be no picketing, handbilling, or otherwise advising the public that a labor dispute exists by the Unions or employees at the Project site because of a dispute on or related to the Project or for any other reason. (Jt. Exh. 1.A, Sec. 9.1; emphasis added.)

In parallel fashion, Section 9.3 of the PLA provides: "There shall be no lockout of any kind of employees at the Project site by a contractor." (*Id.*, Sec. 9.3; emphasis added.)

¹⁰29 U.S.C. Sections 158(b)(4), 158(b)(7)

¹¹29 U.S.C. Section 157.

private sector prehire agreement.¹² In this instance, as construed by the arbitrator, labor law principles should be applied to a public sector prehire agreement to permit coverage of work that is functionally integrated with, and vital to the success of, on-site construction activity. As noted in the *Rancho Santiago* decision, the validity of a public entity PLA is not determined by its commercial soundness or political motives, but by showing that the PLA reflects a proprietary interest in the efficient procurement of goods or services, or that the PLA is narrow in scope and not regulatory.¹³

In this proceeding, a conclusion permitting off-haul work under the PLA to be carried out by employees of contractors and subcontractors who are signatory or assenting employers, whether unionized or not, provides a direct link between employee status and the public sector proprietary interest under the PLA. As such, coverage of off-haul work is closely and narrowly confined to functionally significant activity at the workplace. More generally, this limit is consistent with the need for labor relations stability, timely completion of the project, development of a readily available pool of skilled labor, and protection of the wage and benefit levels for project workers

¹² *Rancho Santiago*, supra, 623 F.3d. at 1027.

¹³ Id., at 1024-1026.

within craft jurisdictions, including the Teamsters.¹⁴ An extension of the PLA to cover employees engaged in off-site hauling also may assist the parties in avoiding labor relations entanglements that could affect the project as a whole.

Evidence offered by the Union shows that there are several other public sector PLAs that expressly encompass off-haul work. This industry practice supports a conclusion that the provision sought by the Union is legally permissible, at least in part. Granted, there are some public sector agreements that exclude off-haul work, as the TJPA seeks in this instance, but the mixed nature of the coverage under other agreements suggests that this is a subject for negotiation rather than a hard-and-fast legal rule. Viewed from this perspective, the application of the TJPA to on-haul work is, for present purposes, an indistinguishable functional equivalent. This follows from labor law precedent under the NLRA that is relied on by the TJPA and that applies to both types of work.¹⁵

Adding weight to this analysis, by statute effective January 2012, California has extended the prevailing wage requirement for

¹⁴ *Cf. Eisenmann Corp. v. Sheet Metal Workers Internat. Assn. Local No. 24*, 323 F.3d 375 (6th Cir. 2003) (arbitration award applying union standards under PLA to off-site contractor employees).

¹⁵ See, n. 7, *supra*.

public works projects to cover the hauling of refuse.¹⁶ By eliminating a wage differential that could affect contractor bidding calculations, this new law weakens a contention that an adverse impact on project costs could follow from expanding the coverage of the PLA to off-haul work. Similarly, by adopting an employee-driver standard for PLA coverage, the prospect of a wage related regulatory impact on the non-PLA owner-operator market is greatly reduced, in accord with preemption principles.

Given the analysis provided above, there is no need at present to resolve the TJPA's objection that the specific authorization in this decision will undermine a stable source of supply. At this stage, the evidentiary record does not support a finding that the Union's hiring hall will be unable to fulfill its important role in making referrals. The possible difficulty of adapting to an employment structure for off-haul work that may depart from the commercial practice and preferences of some private contractors is not, standing alone, a reason to reject the Union's claim in its entirety in light of the TJPA's market participation.¹⁷ Moreover, under the PLA, the TJPA also can utilize independent owner-operators to the extent the Union

¹⁶ Labor Code Section 1720.3.

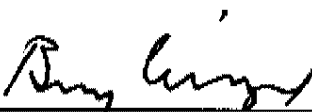
¹⁷ *Building Industry Electrical Contractors Assn.*, supra, 678 F.3d at 1017-1018.

hiring hall and employers working with the hall do not provide the required labor.

AWARD

Based on the evidence and argument presented, and the findings and conclusions stated above, the undersigned renders the following Award: Off-haul work is legally permissible within the coverage of the PLA, subject to the Union providing a sufficient supply of drivers to carry out the work who are hired as employees working for contractors and subcontractors on the project.

Dated: July 27, 2012



BARRY WINOGRAD
Arbitrator

EXHIBIT B

Transbay Transit Center Project Off-Haul Trucking Requirements

The material terms of the following requirements will be incorporated in bid specifications and/or the Contractor's Project Manual governing off-haul trucking.

The following requirements apply to the off-hauling of debris, refuse or excess fill material from the Project site ("off-haul trucking" or "Work".) The word "Equipment" refers to both the truck and trailer used for off-hauling. These requirements are intended to ensure the Work is performed in accordance with professional standards of workmanship, safety and the health of not only the drivers performing the Work, but also of those around them, including other workers and the public, while minimizing the environmental impact on the high-density urban environment in which the Work will be performed. These requirements impose standards and procedures with which the Contractor and any subcontractors performing the Work must comply. Requirements apply to the drivers themselves – i.e., the individuals performing the Work, regardless of whether they are independent contractors or employees – only where specified. Such requirements must be complied with no later than seven (7) days after the driver or Equipment is first used to perform Work.

Equipment

1. The Contractor is responsible for ensuring that the Equipment utilized in the performance of the Work complies with the requirements set forth herein. The Contractor is responsible for ensuring all subcontractors adhere to these requirements. All Equipment shall be maintained in good working condition, as determined by standards set forth by the State of California Highway Patrol. At any time, the Trucking Coordinator (as described below) may require inspection or servicing of any Equipment that does not comply with the requirements set forth herein. The Trucking Coordinator shall immediately notify the Contractor and any subcontractors in writing of any Equipment requiring inspection or servicing. The Trucking Coordinator's written notification shall identify: (i) the Equipment requiring inspection or servicing; and (ii) the violation and/or deficiency. Failure to comply with the Trucking Coordinator's demand shall be grounds for removal of the driver and/or Equipment from the job.
2. The Contractor will ensure that each driver, prior to commencing Work, shall submit a completed questionnaire as to his or her relationship with the Contractor or subcontractor under whom he or she works. The questionnaire shall be signed under penalty of perjury. To the extent a questionnaire is incomplete or

contains false statements, the Contractor and subcontractor shall be severally and jointly liable for liquidated damages in the amount of \$500 per violation per day that the driver is onsite performing the Work after the seven-day period in which to return the completed questionnaire. Such liquidated damages are enforceable under the grievance and arbitration procedures of the PLA. Such questionnaire will inquire as to the traditional factors used to determine whether an employment relationship exists, and will be drafted and agreed to by the TJPA's and Local 853's representatives. A copy is attached hereto. The Contractor, Trucking Coordinator, and/or the TJPA will provide questionnaires to all drivers, who must complete and return them directly to the Trucking Coordinator or Trucking Coordinator's designee no later than seven days after the driver first performs Work. Drivers who fail to return completed questionnaires within this seven-day timeframe will not be permitted to perform Work. Drivers who are so prohibited may be permitted to perform Work at the discretion of the TJPA, Contractor, or subcontractor only after completing the questionnaire. The Contractor, its subcontractors, the TJPA, and/or Teamsters Local 853 shall not attempt to influence the driver to answer the questionnaire in any manner.

3. Trucks with a Gross Motor Vehicle Weight Rating over 26,000 pounds utilized in the performance of the Work must meet all CARB regulations in effect for heavy duty commercial vehicles according to the schedule specified in the current applicable regulations.

4. All trucks used for performing the Work shall be road worthy and fully insured with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, from a fully bonded or reinsured insurance company licensed to do business in California.

5. All Equipment utilized to perform the Work shall have been inspected by the California Highway Patrol no greater than 180 days prior to the date that such Equipment is used in the performance of the Work. The Trucking Coordinator shall ensure compliance with this provision, and no truck or apparatus may perform any Work unless the Contractor or any subcontractor first provides proof of passing such inspection to the Trucking Coordinator. Upon good faith grounds, the Trucking Coordinator may require additional CHP inspection at any time during the performance of Work.

6. All terminals of Equipment used to perform the Work shall comply with the California Highway Patrol's requirements regarding Biennial Inspection of Terminals ("BIT") inspections both prior to and during the Project. The Contractor and any subcontractor shall not be permitted to use any Equipment, which terminal

is not maintained in accordance with the BIT Inspection regulations. Proof of compliance shall be provided to the Trucking Coordinator.

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

Driver

8. All drivers of heavy duty commercial trucks with a Gross Motor Vehicle Weight Rating over 26,000 pounds performing Work will be subject to the Substance Abuse Policy in Appendix F of the PLA, which shall comply with Department of Transportation regulations including random testing. All such drivers will comply with the Trucking Coordinator's oversight or monitoring of the Substance Abuse Testing Policy. Failure to comply with such substance abuse testing shall be grounds for immediate removal from the Project.

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

10. To the extent required by law, all drivers must be covered by a workers' compensation insurance policy. To the extent the Contractor or any subcontractor is self-insured, it must demonstrate compliance with the California Labor Code, including a copy of a current certificate of consent to self-insure issued by the Director of the California Department of Industrial Relations under Labor Code section 3700(b). No driver may be permitted to perform Work unless proof of such a policy is provided.

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

or subcontractor shall discriminate against a driver based on his or her referral from the Union hiring hall or participation in benefit plans.

12. The Union reserves the right to challenge the employment classification of drivers under the grievance and arbitration procedures of the PLA.

Prevailing Wage

13. All drivers performing Work shall be paid California State prevailing wage rates for off-haul trucking.

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

Health, Safety and Financial Responsibility

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

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

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

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

19. The Contractor shall be subject to audits of its books and records, including payroll, by the TJPA for the purpose of monitoring and enforcing financial responsibility provisions and payment of prevailing wage to all drivers engaged or

employed by the Contractor performing the Work, whether employed or contracted by the Contractor.

Trucking Coordinator

20. The Trucking Coordinator shall be an employee of the Construction Management Oversight entity (“CMO”) for the Project and shall be selected after consultation with the Union.

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

22. Subject to the terms of these specifications, the Trucking Coordinator shall independently exercise his/her discretion, without interference or undue influence by the Contractor. The Trucking Coordinator’s duties shall include ensuring that these Off-Haul Trucking Requirements, the PLA, and State prevailing wage law are enforced. The Trucking Coordinator may also interact with drivers to ensure compliance with the duties identified above, so long as the Trucking Coordinator’s actions do not materially disrupt the Work. The Trucking Coordinator is obligated to inform the Contractor in writing before exercising any action authorized under these specifications in order to allow the Contractor sufficient time to correct the noncompliance. If the Contractor is not able to resolve the noncompliance within 48 hours of such notice, the matter shall be referred to the TJPA, which shall attempt to resolve the issue within 24 hours and independently determine whether the contemplated action would materially disrupt the timely performance of the Work.

EXHIBIT C

Transbay Transit Center Project Off-Haul Driver Topics

I. DRIVER INFORMATION

1. Please list the following information for all driver(s) who operate the vehicle:
 - a. Name(s);
 - b. California Driver's License number(s);
 - c. Years of driving experience; and
 - d. Driver's License endorsements (if any).
2. Have you ever had your license revoked for any reason? (do not disclose any revocations that have been judicially set aside or stayed.)
3. Have you been involved in any vehicular accidents within the past 2 years?
 - a. If so, was there any injury to any party involved?
 - b. If so, were you cited by law enforcement for the accident(s)?
4. Have you ever been placed "Out of Service" by the California Department of Motor Vehicles ("DMV") or the California Highway Patrol ("CHP") due to the following reasons?
 - a. Excessive Hours?
 - b. Logbook Violations?
 - c. Equipment Violations?
5. Do you have your own business related to the operation of your truck(s)? If so:
 - a. Is your business incorporated?
 - b. Is your business registered with the Secretary of State?
 - c. Do you operate under a fictitious business name and, if so, in what counties is it registered?
 - d. Does your business currently have any employees? Has your business ever had employees?
 - e. Do you maintain your own books and records? If not, who does?

II. TRACTOR INFORMATION

Tractor Ownership

6. Please provide:
 - a. The name of the legal owner of the power unit (“tractor”) that you will be driving, as listed on DMV documentation;
 - b. The tractor’s manufacturer and license plate number, and year of manufacture of the chassis and engine;
 - c. The date the tractor was acquired; and
 - d. The tractor’s Vehicle Identification Number.
7. If you are not the legal owner of the power unit, do you lease it from another person or Broker (not including financial institutions)? If yes:
 - a. Please provide the name and address of the person or Broker (not including financial institutions) carrying the loan, if any.
 - b. Is the lease for a term of more than 4 months?
 - c. Who are all of the guarantors of the loan, if any, on the tractor and their relationship to you?
8. Do you operate the tractor exclusively under the authority and direction of another person or entity?
 - a. If yes, what is the name of the person or entity?

BIT Program Information

9. For each terminal designated as the location where your vehicle will be inspected under the Biennial Inspection of Terminals (“BIT”) program administered by the CHP, list the terminal’s address and owner, and the vehicle(s) designated for each terminal.
10. Have any of the prior terminal inspections been performed through administrative review?
 - a. If yes, indicate the designated terminal representative who signed the request for administrative review, and his/her relationship to you.

Other Tractor Information

11. Does your tractor’s engine meet the necessary California Air Resources Board (“CARB”) requirements to perform work on the Transbay Transit Center Project?
12. Has your tractor’s engine had an exhaust filter installed on it?

13. Describe the procedure, policy or controls you have in place to ensure that you or your drivers comply with Vehicle Code section 34501.3 (i.e., ensuring that scheduled runs do not require the driver to exceed speed limits or exceed maximum hours of service).

- a. State all individuals who administer the above-described procedure, policy, or controls and their relationship to you.

III. TRAILER INFORMATION

14. Provide the name of the legal owner of all trailer(s) or material container(s) (dump box) of the load carrying equipment (“trailer”) listed on California DMV documentation that will be used to perform work on the Transbay Transit Center Project.

15. When was/were the trailer(s) acquired?

16. If you are not the legal owner of the trailer, do you lease it from another person or Broker (not including financial institutions)? If yes, please provide:

- a. The name and address of the person or Broker (not including financial institutions) carrying the loan, if any;
- b. The manufacturer and license plate number of the trailer(s), as well as the year of manufacture for the chassis;
- c. A list of all guarantors of the loan, if any, on the trailer(s) and their relationship to you.

17. Can you use the trailer(s) for anything that you wish to?

18. Can you use the trailer(s) at any time that you wish to?

IV. INSURANCE AND BUSINESS INFORMATION

19. State the insurer and policy number of any insurance covering your tractor, your trailer(s), or your operations, and the name of the insured.

20. Do you have Workers’ Compensation insurance?

21. What is your CHP Carrier Identification Number (“CA Number”)?

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

22. What is your Business License Number and in which locality was it issued?

23. Do you haul anything other than construction materials (including construction fill) with your tractor(s) and/or trailer(s)?

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

24. Do you advertise for your services?

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

V. COMPENSATION INFORMATION

Work Through Brokers

25. Did you obtain work on the Transbay Transit Center Project through a Broker? If no, skip this section and proceed to Section IV (Tractor Information).

- a. If yes, what is the name of the Broker?
- b. How long (in years and months) have you been obtaining work through the Broker?
- c. How many other brokers have you worked for in the past 2 years?

26. How would you describe your employment status with the Broker – do you consider yourself an employee of the Broker or an independent contractor of the Broker?

27. Do you have a written contract with the Broker?

- a. If yes, please attach a copy of the contract.

28. Do you pay a referral fee to the Broker? If yes:

- a. How much is the referral fee? (0% – 4%; 5% – 9%; 10% – 14%; 15% – 19%; 20% or more)

29. Does the Broker provide you any training?

Pay Practices

30. If you are paid by a Broker:

- a. Are you paid weekly?
- b. Are you paid monthly?
 - i. If you are paid monthly, do you receive your pay in the month following the month in which the work is performed (e.g., if you work in July, are you paid in August)?
- c. Do you wait for more than 30 days for payment for work performed?
- d. Do you receive any benefits from the Broker (e.g., health insurance, vacation pay, pension)?
- e. Does the Broker reimburse you for any expenses in addition to what you are paid?

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

32. Do you bid how much you will be paid?

33. Do you receive standby pay or pay for time-worked when waiting for loads?
34. Do you receive a payment for labor separate from tractor and/or trailer costs?
35. Do you receive payment for your tractor and/or trailer costs and labor in one check?

Job Performance

36. Do you transport hazardous materials?
37. In the course of work, are you directed on any of the following:
 - a. What specific time to arrive at the job?
 - b. What specific time the load is to be delivered by?
 - c. What routes to take to and/or from the job or location of the delivery?
38. Who gives the directions described above?
39. What are the consequences if you do not follow the directions described above?

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

ATTACHMENT 3

STAFF REPORT FOR CALENDAR ITEM NO.: _____
FOR THE MEETING OF: October 13, 2011

TRANSBAY JOINT POWERS AUTHORITY

SUMMARY:

The Transbay Transit Center Project (“Project”) is a \$4 billion transportation and housing project that will replace the former Transbay Terminal with a modern transit station connecting eight Bay Area counties through 11 transit systems. The Project consists of two interconnected phases. Phase I of the Project commenced in December 2008 and is expected to be completed in 2017. Phase II is scheduled to begin when full funding is identified and is estimated have a 7-year construction period. In total, the Project will create more than 125,000 jobs. Once completed, it is estimated that the new Transit Center will serve more than 100,000 passengers daily and more than 45 million people per year.

In the spring of 2011, TJPA staff initiated negotiations with the San Francisco Building and Construction Trades Council and its affiliated construction craft unions, the Northern California Carpenter’s Union and the Laborers Local 261 over a Project Labor Agreement (“PLA”) for the Project. Following six months of negotiations, the parties have successfully reached agreement on the terms of a proposed PLA, attached.

This report provides the TJPA Board of Directors information regarding why adoption of the parties’ proposed PLA will advance legitimate governmental interests, such as access to skilled labor and the promotion of labor harmony, and mitigation against construction delays. In light of evidence presented in this report, staff has concluded that specific challenges unique to the Project support the adoption of the PLA and is presenting the PLA today to the Board for comment from the Board and the public

OVERVIEW OF PROJECT LABOR AGREEMENTS (“PLAs”)

PLAs are pre-hire agreements that establish the general terms and conditions of employment for a specific construction project, prior to the engagement of labor. Negotiated by the owner or project sponsor and construction craft unions, a PLA establishes a framework for common conditions and project-wide labor relations not otherwise attained through existing collective bargaining agreements. The PLA applies to all contractors and subcontractors who are awarded work by the project sponsor, after the PLA is adopted and becomes effective.

PLAs are used on both public and private contracts and their specific provisions are tailored by the signatory parties to meet the needs of a particular project. PLAs have been used successfully since the New Deal to complete major public works projects and have retained relevance because they provide many benefits to both workers and owners. In particular, PLAs:

- Standardize working conditions;
- Eliminate the risk of work stoppages;
- Promote productive labor relations;

- Ensure that disputes concerning the terms and conditions of employment, as well as jurisdictional disputes between unions are resolved very quickly, without resort to litigation or delays in work;
- Reduce the likelihood of cost over-runs; and
- Increase productivity and job site safety.

PLAs achieve these results by establishing uniform benefits and workplace rules and procedures for all contractors and subcontractors on a particular project. In general, most PLAs contain the following features:

No Strike Provisions: An agreement by the union signatories not to conduct any strikes or work stoppages during the duration of the project, while contractors and subcontractors, in turn, agree to refrain from engaging in lockouts during the length of the construction project. Typically, expedited dispute resolution procedures are also included in the event of a dispute.

Hiring through Union Halls: A requirement that a contractor hire all workers through union halls or those referred by union hiring halls. Most provisions requiring hiring through union halls allow for alternate hiring mechanisms, including retention of a contractor's "core" or key employees.

Uniform Benefits: PLAs guarantee that workers employed on the project are provided health, welfare and pension benefits while employed on the project. This is typically effectuated through required enrollment into collectively-bargained joint labor-management trust funds.

Uniform Procedures: Most PLAs require a uniform workday, workweek, overtime, holiday and payday schedules as well as standardized work rules and safety regulations. They also often require drug and alcohol screening. Critically, PLAs typically include standardized dispute resolution or "grievance" procedures in order to resolve employee, contractor and/or craft jurisdiction disputes.

Apprenticeship: PLAs promote apprenticeship programs to facilitate the entry into the building and construction trades of young people, women and economically disadvantaged individuals.

TJPA staff, in consultation with legal counsel, has carefully considered these issues and addressed them in the proposed PLA. Moreover, staff believes that, based on analysis to date (notwithstanding upcoming public comments), the benefits of using a PLA on this Project strongly support its adoption.

GUIDELINES FOR ASSESSING WHETHER A PLA IS APPROPRIATE

As a matter of law, the TJPA is required to determine whether the adoption of a PLA would advance legitimate governmental interest such as mitigation against construction delays, ensuring access to skilled labor, and other issues that could reasonably be addressed through negotiation and adoption of a PLA.

In 2009, President Obama issued Executive Order No. 13501 that encourages the use of PLAs for federal projects valued at \$25 million dollars or more. The stated purpose of the Executive Order is to encourage the consideration of PLAs for large-scale construction projects in order to

achieve efficiency and economy in federal construction as well as enhance labor-management stability.

Following the passage of the Executive Order No. 13501, the Federal Acquisition Regulatory Council adopted regulations establishing criteria for federal agencies to use in assessing whether a PLA is an appropriate choice for a given project. In particular, those regulations establish the following factors for an agency to use in determining whether a PLA is appropriate:

- Does the project require multiple construction contractors and/or subcontractors in multiple crafts or trades?
- Does a shortage of skilled labor exist in the region?
- Will completion of the project require an extended period of time?
- Whether project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic region?
- Whether a project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs?

TJPA staff has relied on them as guidelines in assessing the propriety of a PLA for the Project – particularly, given the significant amount of federal funding involved in the Project and that the TJPA follows federal rules. As demonstrated below, these factors support adoption of the PLA proposed herein.

REASONS WHY TJPA SHOULD ADOPT THE PROPOSED PLA

A. The Project's Size, Scope, Uniqueness and Complexity Justify the Use of a PLA

As discussed above, the Project is divided into two principal phases. The elements of Phase I and II currently consist of construction of a temporary terminal (completed), demolition of the former Transbay Terminal (completed), utility relocation to facilitate construction of the new Transit Center, construction of the Transbay Transit Center Building, bus ramps and other structures, , construction of AC Transit Bus Storage facilities, construction of the underground downtown extension, and construction of an underground station.

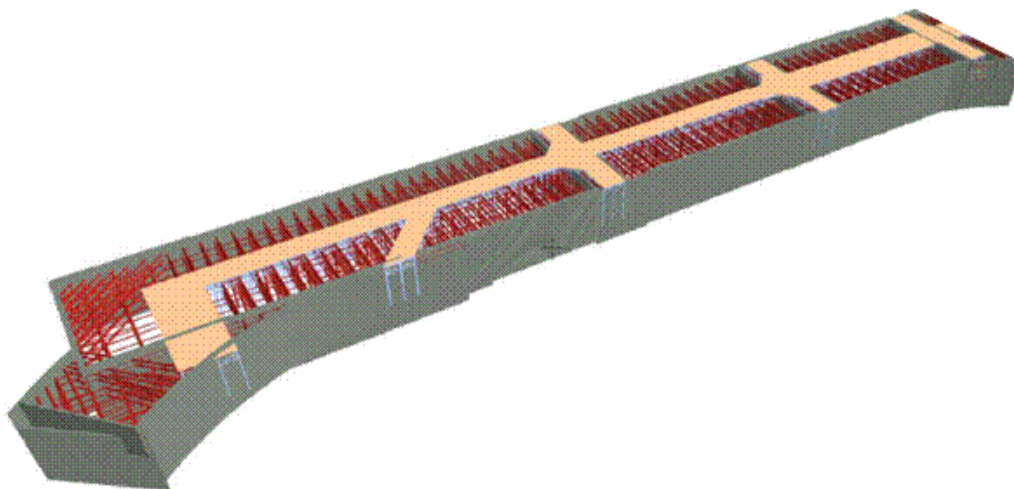
Significantly, the new Transit Center Building and Bus Ramps are located within a comparatively compact four block area (from Beale to Second Streets) between Mission and Howard Streets. The above-grade and below-grade elements (including the Train Box and Downtown Rail Extension) of the Transit Center Building require complex construction methods such as buttressing, excavation and bracing, shoring and underpinning.

To complete the elements of Phase I and II construction, there will be approximately 50-60 different trade packages on which contractors and subcontractors will bid. Staff estimates that, for the next six years, the TJPA will need to employ approximately 250 subcontractors of various tiers in order to complete Phase I the Project on time and within budget.

Moreover, staff estimates that completion of Phase I of the Project will require a total of 4,672,000 direct labor hours through 2017. The construction of the Downtown Rail Extension (“DTX”) is expected to require an additional 8,154,667 direct labor hours. At any given time, the Project will employ thousands of workers across a number of crafts and trades, including: sheet metal workers, pipe fitters/plumbers, electricians, laborers, ironworkers, glazers, electricians, carpenters, bricklayers, cement masons, teamsters, and others. Jurisdictional and other disputes have historically existed among some of these crafts and trades.

Working conditions will differ throughout the Project’s various phases. For example, most of the below grade construction work in Phase 1 will be performed off of a trestle system (see image below) about 30 feet wide that will run the entire length of the site. During this time, there will be fewer contractors on site. However, this still creates close quarters for workers from different crafts and trades.

Figure 1: 30 Foot Trestle



At later stages, there will be more space, as well as substantially more subcontractors on site. Any labor disputes that could disrupt productivity or delay completion of the Project would be very costly.

Given the size, complexity and duration of the Project, the use of the PLA proposed herein – which has been narrowly tailored solely to on-site Project work – is necessary to ensure structure and stability, thereby promoting the Project’s efficient and expeditious completion.

B. By Adopting the Proposed PLA, TJPA Will Enjoy Substantial Cost Savings and Minimize the Risk of Delays on the Project

Through adoption of the proposed PLA, TJPA will enjoy substantial cost savings, not only by maximizing economies of operations (e.g., having uniform workplace rules and procedures applicable for all employees), but primarily by avoiding direct delays on Project work.

An event that impedes critical activity may quickly result in delays in the overall Project duration. The TJPA costs alone (not including contractor costs) associated with such delays during Phase I are estimated to be around \$85,000 to \$90,000 per calendar day, or approximately

\$2.6 million per month. This figure does not include the costs to the public associated with prolonging the disruption to the downtown area due to construction or the costs to the public of not having a fully functional transit center. Presently, the old Transbay Terminal has been demolished, and bus services are being provided in minimal temporary quarters.

Work stoppages stemming from labor disputes represent a significant delay exposure to projects of this scope and duration. The proposed PLA deals with this issue by expressly prohibiting work stoppages, strikes, sympathy strikes by the unions or lock outs of any employees at the Project site by a contractor for any reason. This includes disputes relating to the negotiation of master collective bargaining agreements (Schedule A agreements), all of which will be renegotiated (typically, every 2 to 3 years) during the comparatively long period of time the Transit Center is under construction and Phase II is completed. It also includes disputes between unions over jurisdictional issues – disputes regarding the appropriate craft or trade to which work is assigned are common in large projects such as this.

Further, because union and non-union contractors may be working side by side, the proposed PLA obviates the risk that union workers refuse to perform work, or the need for reserve gates – which, as explained later, would be virtually impossible to utilize effectively in the small footprint of the construction zone. The proposed PLA also prevents disputes directed at non-construction service companies or contractors not subject to the PLA at the Project site. Moreover, as discussed fully below, the proposed PLA contains several types of dispute resolution mechanisms to address any disruptions that may arise due to labor relations issues or grievances.

C. The Proposed PLA Ensures a Guaranteed, Skilled Labor Pool

Given the significant number of direct labor hours necessary to complete the Project, a guaranteed labor pool is essential. The proposed PLA guarantees a labor pool of the requisite workers during each critical phase of construction. Under the proposed PLA, each signatory union will be the primary source of craft labor employed on the Project. Unions are required under the PLA to exercise their best efforts to draw from their extensive networks to recruit skilled workers from other geographic regions to supplement the local workforce if shortages develop. Through these networks, support from local and national unions – including access to hiring halls and apprenticeship programs – is expected.

D. The Proposed PLA Does Not Discriminate Against Non-Union Contractors

The most common objection to PLAs is that they exclude non-union participants. This stems from the fact that private sector PLAs often prohibit the use of contractors who are not signatories to collective bargaining agreements with unions. However, such limitations are impermissible in the public sector because they run afoul of competitive bidding and open participation requirements.

The proposed PLA addresses this issue by encouraging any contractor to bid regardless of its union status, provided, of course, that the contractor agrees to abide by the terms of the PLA. All employees (both union and non-union) who are employed by contractors will be required to pay union dues when they are performing Project work. In paying union dues, registered employees will receive equal standing with other union members dispatched from the hiring hall. Employees are entitled to all the rights and benefits that are accrued under the union collective

bargaining agreement including Schedule A wage rates and health benefits. Contractors will be required to pay hourly wage rates and benefits pursuant to the applicable Schedule A agreement.

E. The Proposed PLA Promotes Labor Harmony

One concern for many projects is the creation of overall labor harmony on the construction site. This is especially true here, given that there will also be non-union employees who will be working on the job site, side-by-side with union labor. In this environment, the potential for work disruption is substantial. The proposed PLA seeks to curb such disruption and promote labor harmony in the following ways.

1. Uniform Work Rules, Hours, and Holidays

The Project poses unique work scheduling challenges. Completing the work within the time period allotted will require working two and three shifts – 24-hours per day, 7 days per week – for significant periods, and a high level of coordination between and stacking of trades. Given the number and variety of trade workers (both union and non-union) that will be employed on the Project, standardized work schedules, hours, and holidays are a crucial component to keeping the Project critical path moving toward substantial completion in October 2017.

For the trade unions that will be signatory to the PLA, there are approximately 33 different labor agreements (Schedule A agreements) that govern work rules and many of these rules are not standardized. Moreover, all the Schedule A agreements will expire over the course of the Project and will be renegotiated, potentially resulting in different terms and conditions of employment.

Without a uniform schedule of hours, overtime, pay schedules and holidays adhered to by all employers and their workforce, work rules will be governed by each collective bargaining agreement. Such differences could significantly impact and/or interfere with management of the Project. The PLA is therefore an important workforce management tool to establish standardized work rules and regulations that will provide for increased productivity and speed of construction.

To standardize work rules, the proposed PLA establishes a standard workday, work week, and holiday schedule and clarifies which rules supersede Schedule A agreements. The proposed PLA also provides that Contractors have the express right and sole discretion to establish different shift schedules for employees “as reasonably required to meet the operational needs of the Project or otherwise mitigate adverse affects of construction activity on the affected communities.” This flexibility is critical to ensure against delays that can be caused by work interruptions and scheduling conflicts.

The proposed PLA also provides uniform health and safety standards that are applicable to all employees on the jobsite. The PLA includes requirements for contractor and employee safety and safe work practices, including a prohibition against the possession, use, sale, purchase, or transfer of controlled substances or alcohol and a procedure for testing applicants and workers for such substances.

Finally, the proposed PLA simplifies the procedures for non-union contractors to coordinate and cooperate with the Unions on registration of “core” employees with the Unions. Specifically, procedures may be established so that the core employees do not have to register in person at the Union hiring hall.

2. Comprehensive Dispute Resolution Procedures

The proposed PLA provides comprehensive and binding alternative dispute resolution procedures to resolve all forms of grievances or disputes that may arise under the Agreement. With each process, the Union commits to continuing work without picketing, protests, or stoppages during the process or in response to an arbitration ruling. Specifically, the proposed PLA includes the following procedures:

- a. **Schedule A Disputes:** Where a subject is covered by both the proposed PLA and a Schedule A agreement, the PLA prevails. In the event of dispute as to whether the PLA or Schedule A provision applies, the dispute shall be presented to an arbitrator for an expedited hearing (within 48 hours of notice to invoke the procedure) in accordance with the PLA grievance procedure.
- b. **Violation of Article 9 -Work Stoppages:** If the TJPA, Contractor, or Union contends that any party violated the prohibition on work stoppages, strikes, sympathy strike and lockouts, the proposed PLA provides for a procedure to immediately resolve the issue and to minimize the impact of any disruptive activity on Project Work. To expedite dispute resolution, a hearing before an arbitrator will be held within 24 hours and must be completed within 24 hours. The arbitrator will issue a decision within 3 hours after the close of hearing.
- c. **Joint Administrative Committee:** The proposed PLA provides for a four person Joint Administrative Committee (JAC) comprised of two TJPA representatives and two representatives of the Unions. The JAC will meet on a quarterly basis to review the implementation of the PLA, the progress of the Project and to resolve problems and/or grievances.
- d. **Grievance and Arbitration Procedure:** The proposed PLA provides a general grievance and arbitration procedure that governs any additional disputes that could arise during the Project involving the interpretation or application of the PLA. This procedure provides for a four step process culminating in arbitration. Parties will be given three opportunities to meet and attempt to resolve the grievance before proceeding to formal arbitration.
- e. **Jurisdictional Dispute Process:** To prevent against jurisdictional disputes, under the proposed PLA, a pre-job conference will be convened before starting work on each contract. At the pre-job conference, the Contractor will announce the assignment of work and any objection to the assignment of work will be waived if it is not raised in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (Northern California Plan). Any objections to work assignments will be addressed by the procedure set forth in the Northern California Plan with the understanding that such disputes would not result in the disruption of the execution of the project in question during or subsequent to adjudication.

In addition to promoting labor harmony, these resolution procedures create cost efficiencies and enable the TJPA to more effectively manage the Project.

F. The Proposed PLA Provides Support For Small Programs and Businesses and Access to Training Opportunities

1. Support for Small and Disadvantaged Businesses

Staff believes it is essential that the proposed PLA ensure that small and disadvantaged businesses can compete on a level playing field. Hence, the PLA includes language reserving the TJPA's right to set aside work specifically for small business enterprises and expressly incorporates a reference to the Transit Center CM/GC's (Webcor/Obayashi) goal of 17 percent small business enterprise participation. Moreover, the proposed PLA also reserves the right to set additional small business enterprise participation goals through Phases I and II of the Project.

2. Community Outreach

Provisions in the proposed PLA encourage and ensure opportunities for young people, women, minorities, veterans – including disabled veterans – and economically disadvantaged individuals to pursue careers in the trades by, (1) attracting and enrolling local residents into pre-apprenticeship programs; and (2) facilitating entry into the building and construction trades for transitioning active-duty military members through the “Helmets to Hardhats” program.

- a. **Youth Outreach/Apprenticeship**: The proposed PLA encourages the hiring and training of local youth via outreach to high schools and community colleges in order to encourage individuals to pursue careers in the trades. These efforts will be directed toward educating young people on the diverse Project work performed by the various trades and crafts, to promote pre-apprenticeship and apprenticeship programs, and to encourage other opportunities for engagement with construction work in general and with the Transbay Transit Center Program in particular.
- b. **Helmets to Hardhats**: The proposed PLA commits the parties to the “Helmets to Hardhats” program, which facilitates entry into the building and construction trades for transitioning active-duty military members. Helmets to Hardhats also runs the “Wounded Warrior” program, which provides information to veterans about construction careers that employers have specifically identified as potentially suitable for disabled veterans.
- c. **Outreach to Women / Economically Disadvantaged Individuals**: The proposed PLA creates opportunities for women and economically disadvantaged individuals to pursue careers in the trades, with a commitment to recruit applicants for apprenticeship programs from appropriate community-based programs.

These programs are designed to provide jobs to the surrounding community while ensuring the work performed on the Project is commercially useful and meaningful.

NEXT STEPS

In sum, the proposed PLA has a number of tangible benefits that address concerns associated with a vast and complex construction project such as the Transbay Transit Center Project. At its meeting on October 13, 2011, the Board will hear testimony on the proposed project labor agreement.

Staff plans to present the PLA for final adoption at the Board's November meeting. The Board will have an additional opportunity to hear public testimony at that meeting, prior to holding a vote.

ENCLOSURES

Appendix:

- A. Proposed TJPA Project Labor Agreement

**PROJECT LABOR AGREEMENT STAFF REPORT
APPENDIX A**

[PROPOSED]

TRANSBAY JOINT POWERS AUTHORITY
PROJECT LABOR AGREEMENT ATTACHED



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

November 2, 2011

Rome Aloise
Principal Officer, Secretary-Treasurer
International Brotherhood of Teamsters
Local 853
2100 Merced St, Suite B
San Leandro, CA 94577

Re: Transbay Joint Powers Authority, Project Labor Agreement – Transbay Terminal Project

Dear Mr. Aloise:

This letter will confirm the agreement reached by Teamsters Local 853 and the Transbay Joint Powers Authority (together, the “Parties”) regarding the above-captioned Project Labor Agreement and, specifically, the application of Article 4.9(h) of the Agreement to off-haul work consisting of the removal of materials, including fill, mud or debris, from the construction site of the Transbay Terminal Project. This side letter constitutes material terms and conditions of the Parties’ agreement and is valid and enforceable as if it were set forth directly in the PLA, and 4.9(h) shall be deemed amended to comply with any decision issued by an arbitrator as set forth below.

The Parties have negotiated with respect to the legality and eligibility of including off-haul as covered work under the PLA but have been unable to resolve this issue. This side letter agreement is intended to put in place a process for resolving the issue of coverage of off-haul while allowing the parties to enter into the PLA with respect to all other work within the Teamsters’ craft. We have therefore agreed that the issue of off-haul coverage, specifically, whether as a matter of law sections 8(e) and 8(f) of the NLRA, or other applicable law, prohibit its inclusion in whole or in part, shall be put to binding arbitration and the Parties shall abide by the decision of the arbitrator. This side letter shall be considered conformed to the decision of the arbitrator and all subsequent bids shall set forth the scope of covered work with respect to off-haul as may be determined by the arbitrator.

It is expressly understood that all but a small portion of the off-haul in Phase I of the project has already been contracted, and that the TJPA cannot legally apply the PLA to any work for which bids have already been solicited. Accordingly, at the Teamsters’ sole option, the parties shall place the issue defined below before the arbitrator and obtain a decision prior to the solicitation of bids for the remaining Phase I off-hauling work, and such decision shall apply to all other phases of the Transbay Terminal Project.

The Parties shall utilize the permanent arbitrator under Article 9.7 of the PLA. The Parties shall share the cost of the arbitrator equally, provided that each shall bear its own attorneys' fees and other costs of the arbitration. The arbitrator shall be empowered to decide the following question/issue: Is the inclusion of off-haul work within the coverage of the Project Labor Agreement legally permissible, and, if so, what are the limits on the inclusion of such work, if any? In reaching a conclusion, the arbitrator shall be bound by relevant determinations of courts, the National Labor Relations Board, as well as any applicable regulations and executive orders.

To expedite a decision, the Parties shall exchange stipulated facts prior to arbitration. To the extent that there is disagreement as to facts, evidence shall be presented to the arbitrator as to those contested facts.


The arbitrator shall endeavor to issue a decision within thirty (30) business days after the completion of the hearing or, if there is no hearing, within thirty (30) business days after all written documents have been submitted and the issue has been argued and/or briefed.

The Arbitrator's decision shall have binding effect on the Parties. Should there be a later change or revision in law that brings the arbitrator's decision into doubt, either party may resubmit the issue.

In the event the arbitrator issues an award regarding such coverage, such agreement or award shall cover only new contracts bid after such decision is issued by the arbitrator.

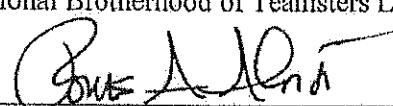
Pursuant to Article 24 (Savings Clause) of the PLA, in the event the determination of an arbitrator made pursuant to this side letter is determined to be illegal or void by a court of competent jurisdiction, the remainder of the PLA shall remain in full force and effect. The Teamsters agree to cooperate with and assist in the defense of any such challenge.

Very truly yours,



Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority

Agreed and accepted this 10th day of November 2011
International Brotherhood of Teamsters Local 853

By: 

Rome Aloise,
Principal Officer, Secretary-Treasurer