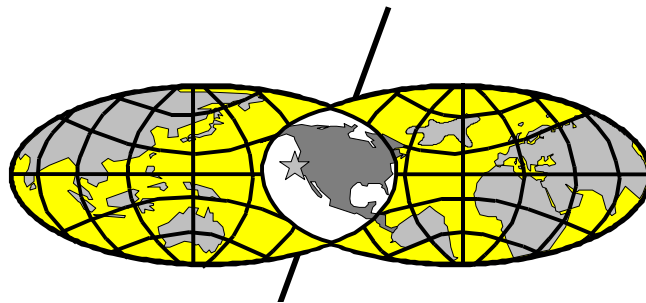


# PORT OF OAKLAND STANDARD CONTRACT PROVISIONS

**NOVEMBER 2009**



**PORT OF OAKLAND**

THE BOARD OF PORT COMMISSIONERS

ROOM 748

530 WATER STREET  
OAKLAND, CA 94607

## Preface

Pursuant to Port of Oakland Ordinance No. 1606, § 18, the Port of Oakland Standard Contract Provisions (Standard Contract Provisions) is incorporated by reference into Project Manuals issued by the Port for public works construction projects. Modifications to the Standard Contract Provisions implemented since the most recent published edition of the Standard Contract Provisions, and any project-specific modifications to the Standard Contract Provisions (e.g., modifications to the General Conditions, deletion of MAPLA-related documents for non-MAPLA projects, etc.) will be included in Document 00800, Modifications to Standard Contract Provisions of the Project Manual.

Knowledge of these Standard Contract Provisions and other contract requirements included in the project-specific Project Manual is essential for all contractors bidding and undertaking construction work for the Port of Oakland.

### Revision History:

First Edition approved by Board of Port Commissioners on October 19, 2004 [Resolution No. 04298].

Second Edition approved by Board of Port Commissioners on November 17, 2009 [Resolution No. 09165].

DOCUMENT 00010

**PORT OF OAKLAND  
STANDARD CONTRACT PROVISIONS**

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– END OF DOCUMENT –



**UPON REQUEST THIS DOCUMENT WILL BE PROVIDED TO THE SUCCESSFUL BIDDER FOR EXECUTION.  
DO NOT COPY THIS FORM FOR SUBMISSION TO THE PORT.**

DOCUMENT 00650

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS ("Agreement and Release"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its BOARD OF PORT COMMISSIONERS (the "Port"), acting under and by virtue of the authority vested in the City of Oakland by the laws of the State of California, and \_\_\_\_\_ (the "Contractor"), whose place of business is at \_\_\_\_\_.

RECITALS

- A. The Port and the Contractor entered into Contract \_\_\_\_\_ in the City of Oakland, County of Alameda, State of California.
- B. The Work under the foregoing Contract has been completed.

Now, therefore, it is mutually agreed between the Port and the Contractor as follows:

AGREEMENT

- 1. The Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due the Contractor	\$ _____

2. Subject to the provisions of this Agreement and Release, the Port shall forthwith pay to the Contractor the sum of \$ \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents under Contract, less any amounts withheld under that Contract or represented by any Notice to Withhold Funds on file with the Port as of the date of such payment.

3. The Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against the Port arising from Contract, except for the claims described in Section 4. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of the Contractor against the Port, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claims set forth in Section 4. Nothing in this

Agreement and Release shall limit or modify the Contractor's continuing obligations described in Sections 6 and 7, below.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Date Submitted</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>
------------------	-----------------------	-----------------------------	------------------------

**[Attach information]**

5. Consistent with California Public Contract Code Section 7100, the Contractor hereby agrees that, in consideration of the payment set forth in Section 2, above, the Contractor hereby releases and forever discharges the Port, all its agents, employees, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the work under Contract.

6. Guarantees and warranties for the Work, and any other continuing obligation of the Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. The Contractor shall immediately defend, indemnify and hold harmless the Port, all its respective agents, employees, inspectors, assignees and transferees from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of the Contractor's suppliers and/or subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of Contract except for the Disputed Claims set forth in Section 4 above.

8. The Contractor hereby waives the provisions of California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling or regulations, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. The Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connecting with this Agreement and Release.

11. All of the Port's rights shall survive completion of the Work or termination of Contract and execution of this Agreement and Release.

\* \* \* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \* \* \*

---

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title (If Corporation: Chairman, President  
or Vice President)

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title (If Corporation: Secretary, Assistant  
Secretary, Chief Financial Officer or  
Assistant Treasurer)

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port  
Commissioners,

By: \_\_\_\_\_  
\_\_\_\_\_, Chief Engineer

END OF DOCUMENT





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DO NOT COPY THIS FORM FOR SUBMISSION TO THE PORT.**

Escrow No. \_\_\_\_\_

DOCUMENT 00680

P.C.C. §22300

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (hereinafter called the "Port"), whose address is 530 Water Street, Oakland, California 94607; \_\_\_\_\_ ("Contractor"), whose place of business is located at \_\_\_\_\_; and \_\_\_\_\_, a state or federally chartered bank in the State of California, whose place of business is located at \_\_\_\_\_ ("Escrow Agent").

For the consideration hereinafter set forth, Port, Contractor and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Port pursuant to the Construction Contract \_\_\_\_\_ for \_\_\_\_\_, in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (the "Contract"). Alternatively, on written request of Contractor, Port shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Port within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between Port and Contractor. Securities shall be held in name of \_\_\_\_\_, and shall designate Contractor as the beneficial owner.
2. Port shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When Port makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when Port pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of Port. Such expenses and payment terms shall be determined by Port, Contractor and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by

Contractor at any time and from time to time without notice to Port.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Port to Escrow Agent that Port consents to withdrawal of amount sought to be withdrawn by Contractor.
7. Port shall have the right to draw upon the securities in event of default by Contractor. Upon seven (7) days written notice to Escrow Agent from Port of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Port.
8. Upon receipt of written notification from Port certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from Port and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and Port and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of Port and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Port:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

530 Water Street  
Oakland, CA 94607

On behalf of Port:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

530 Water Street  
Oakland, CA 94607

On behalf of Contractor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title (If corporate: Chairman, President or Vice President)

\_\_\_\_\_  
Address

On behalf of Escrow Agent:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

At the time the Escrow Account is opened, Port and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Port

Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Escrow Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

END OF DOCUMENT



DOCUMENT 00700

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## **GENERAL CONDITIONS**

### **1. GENERAL**

#### **1.1 CONTRACT DOCUMENTS**

The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Architect/Engineer and the Contractor, (2) between the Port or its representatives and a Subcontractor, Sub-sub-contractor or supplier of any Project labor, materials or equipment, or (3) between any persons or entities other than the Port and the Contractor. Notwithstanding the foregoing, the Port shall be deemed to be an intended third-party beneficiary of each agreement referenced in clause (2) above, and each such agreement shall so provide. The Contractor is fully responsible for all acts and omissions of its Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work, labor, materials or equipment under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor's own acts and omissions.

#### **1.2 EXERCISE OF CONTRACT RESPONSIBILITIES**

The Port does not, in exercising its responsibilities and authorities under the Contract Documents, assume any duties or responsibilities to any Subcontractor or supplier, nor does the Port assume any duty of care to the Contractor, its Subcontractors or suppliers. Architect/Engineer, in exercising its responsibilities and authorities under the Contract Documents, does not assume any duties or responsibilities to any Subcontractor or supplier, nor does Architect/Engineer assume any duty of care to the Contractor, its Subcontractors, or suppliers, except as expressly set forth in the Contract Documents.

#### **1.3 DEFINED TERMS**

Except as set forth herein, all abbreviations and definitions of terms used and not otherwise defined in these General Conditions are set forth in Specifications Section 01420 (References and Definitions).

### **2. INVESTIGATIONS PRIOR TO BIDDING**

#### **2.1 INVESTIGATIONS BY CONTRACTOR**

Bidders must, prior to bidding, perform the work, investigations, research and analysis required by Article V of Document 00520 Agreement. The Contractor under the Contract Documents is charged with all information and knowledge that a reasonable bidder would ascertain from having performed this required work, investigation, research and analysis. Bid prices must include entire cost of all work "incidental" to completion of the Work, as that term is defined in Section 5.1 of this Document 00700.



2.2 CONDITIONS SHOWN ON THE CONTRACT DOCUMENTS AND LIMITED WARRANTY

Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Plans or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. However, the Port only warrants, and the Contractor may only rely, on the accuracy of limited types of information.

- (a) As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents or as-built conditions readily observable, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated or complete. This information is verifiable by independent investigation and the Contractor is required to make such verification as a condition to bidding. In submitting its Bid, the Contractor shall rely on the results of its own independent investigation. In submitting its Bid, the Contractor shall not rely on Port-supplied information regarding above ground conditions or as-built conditions.
- (b) As to any subsurface condition shown or indicated in the Contract Documents, the Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. The Port is not responsible for the completeness of such information for bidding or construction; nor is the Port responsible in any way for any conclusions or opinions of the Contractor drawn from such information; nor is the Port responsible for subsurface conditions that are not specifically shown (for example, the Port is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).

2.3 CONDITIONS SHOWN IN REPORTS AND PLANS SUPPLIED FOR INFORMATIONAL PURPOSES

Reference is made to Document 00320 Existing Conditions and Geotechnical Data for identification of geotechnical reports, "as built" information, and other plans or other documents describing physical conditions in or relating to existing surface or subsurface conditions or structures at or contiguous to the Site. These materials are not Contract Documents and, except for any "technical data" regarding subsurface conditions specifically identified in Document 00320 Existing Conditions and Geotechnical Data, and "Underground Facilities" data (as limited in Document 00320), the Contractor may not in any manner rely on the information in these reports and plans. Subject to the foregoing, the Contractor must make its own independent investigation of all conditions affecting the Work and must not rely on information provided by the Port.

2.4 SUBCONTRACTORS

In accordance with Port Ordinance No. 1606 and Public Contract Code Section 4101 et seq., the Contractor shall not substitute any other person or firm as a

Subcontractor in place of any of those listed in the Bid, nor shall any Subcontractor assign or transfer subcontract, or permit the same to be performed by any other contractor without written approval of the Port. At the Port's request, the Contractor shall provide the Port with a complete copy of all executed subcontracts or other final contractual agreements with Subcontractors and/or suppliers.

Annual On-Call Contracts only: Prior to commencing any specific task order or assignment, Contractor shall submit a list of subcontractors, if any, as required by Public Contract Code Section 4100, et seq. For purposes of Port Ordinance No. 1606, Section 5.1, each specific task order or assignment shall be deemed to constitute a separate phase of work.

The Contractor must, by written agreement, require subcontractors to be bound to the terms of the Contract Documents and require them to assume vis-à-vis the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Port, to the extent of the work to be performed by the subcontractor. Subcontract agreements must preserve and protect the rights of the Port under the Contract Documents so that subcontracting will not prejudice such rights. The Contractor must provide for the assignment of all rights any subcontractor may have against any manufacturer, supplier or distributor for breach of warranties and guarantees relating to the work performed by the subcontractor under the Contract Documents.

Contractor shall maintain a current list of all subcontractors (of any tier) under contract to work on the Project and supply Port with a copy of this list whenever updated.

- 2.5 Document 00340 (Hazardous Materials Surveys) is included as a Bidding Document, subject to Section 2.1. Bidder may rely on data made available under and described in Document 00340 (Hazardous Materials Surveys) regarding the general location of hazardous materials in the same manner as Bidder may rely on "technical data" under Section 2.3. Bidders shall advise the Port in writing of any discovered discrepancies or lack of information regarding data supplied under Document 00340 (Hazardous Materials Surveys) promptly upon knowledge.

### **3. COMMENCEMENT OF THE WORK**

The Contract Times will commence to run on the thirtieth (30th) day after the issuance of the Notice of Award, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. The Port may give a Notice to Proceed at any time within thirty (30) days after the Notice of Award. See also Section 15 hereof. The Contractor shall start to perform the Work on the date when the Contract Times commence to run, but no work shall be done at the site prior to the date on which the Contract Times commence to run.

### **4. BONDS AND INSURANCE**

#### **4.1 BONDS**

- 4.1.1 At or before 5 o'clock p.m. of the twentieth (20) day following

Notice of Award of Contract, the Contractor must file with Port the following bonds:

- (a) Corporate surety bond, in the form of Document 00610 Construction Performance Bond, in the sum specified therein, to guarantee faithful performance of the Contract Documents ("Performance Bond"); and
- (b) Corporate surety bond, in the form of Document 00620 Construction Labor and Material Payment Bond, in the sum specified therein, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of the Contract Documents ("Labor and Material Bond").

4.1.2 Corporate sureties on these bonds and on bonds accompanying Bids must be legally authorized to engage in business of furnishing surety bonds in State of California. Sureties must be satisfactory to the Port.

#### 4.2 OWNER CONTROLLED INSURANCE PROGRAM ("OCIP")

The Port of Oakland ("Port") has arranged with Aon Risk Insurance Services West, Inc. (the "OCIP Administrator") for the Project to be insured under an Owner Controlled Insurance Program ("OCIP"), which program will provide Workers' Compensation and Employer's Liability, Commercial General Liability, Excess Liability, Contractor's Pollution Legal Liability, Builder's Risk insurance, and such additional insurance the Port may, in its sole discretion, elect to provide in connection with the performance of the Work, (collectively, the "OCIP Insurance Policies").

4.2.1 Coverage Under the OCIP Insurance Policies. Coverages and policy limits under the OCIP shall apply to all Work designated for inclusion by the Port in the OCIP performed at the Project Site, and shall cover the Port, certain eligible Contractors and Subcontractors who have successfully enrolled in the OCIP, as set forth below, (each, an "Enrolled Contractor" or "Enrolled Subcontractor," as the case may be), and such other persons or interests as the Port in its sole discretion may designate (each such party who is insured under the OCIP, an "Insured Party"). Coverage under the OCIP shall not apply to or be available for (a) vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who solely transport, pickup, deliver, or carry materials, personnel, waste, parts or equipment or any other items or persons to or from the Project Site, (b) Contractors and each of their respective Subcontractors who do not perform any actual labor on the Project Site, or (c) any parties or entities not specifically included in the first sentence of this section 4.2.1 (collectively, the persons and/or entities, as applicable, described in clauses (a), (b) and (c) above, the "Excluded Parties"). The Port reserves the right, in its sole discretion, to include or exclude any Contractor or Subcontractor from the OCIP, notwithstanding such party's apparent eligibility for same. Coverage under the OCIP shall apply only to those operations of each Insured Party performed at the

Project Site in connection with the Work. The OCIP shall only apply to an Insured Party's operations off of the Project Site if such "off-site" operations are identified and are dedicated solely to the Project. It is the responsibility of the Contractor to request that the OCIP Administrator include coverage for specified "off-site" operations. The OCIP shall not apply to such "off-site" operations until receipt by the Contractor of written acknowledgment of such coverage from the OCIP Administrator.

4.2.2 Insured Party Responsibilities. The responsibilities of each Insured Party under the OCIP are more fully set forth in the Project Insurance Manual for the Port of Oakland's Owner Controlled Insurance Program (the "Project Insurance Manual"), which is hereby incorporated by reference and shall be considered a Contract Document. It is the obligation of the eligible Contractor and each of its Eligible Subcontractors to enroll in the OCIP and to comply with all of the administrative, insurance and other requirements outlined in this section 4, in the Project Insurance Manual, or elsewhere in the Contract Documents. The failure of (a) the Port to include the Project Insurance Manual in the bid documents or (b) the Contractor to provide each of its Eligible Subcontractors with a copy of same, shall not relieve the Contractor or any of its Eligible Subcontractors from any of the obligations contained therein. The Contractor shall be responsible for providing each of its Subcontractors with a copy of the Project Insurance Manual and for requiring in writing that each Subcontractor comply with, among other things, the provisions of the OCIP Insurance Policies and the provisions contained in the Project Insurance Manual, the provisions in this section 4, and the provisions of the Contract Documents.

4.2.3 Payment of OCIP Premiums; Insurance Credits; OCIP Policy Deductibles and Charges, and Retentions

(a) The cost of premiums for the coverage provided by the OCIP shall be paid by the Port. The Port will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retro adjustments, return premiums, audits or otherwise. Each Contractor and each of its Subcontractors shall execute any instrument of assignment as may be necessary to permit the Port to receive or pay such adjustments, unless otherwise provided in the Contract Documents.

(b) With respect to each Contractor, compensation payable for performance of the Work shall exclude all of Contractor's and its Subcontractors' costs of insurance for coverages provided under the OCIP. The Contractor shall execute Aon Form-3 (as found in the Project Insurance Manual) to certify and shall require Subcontractors execute Aon Form-3 to certify that contract prices exclude all costs for any type of insurance coverage that is provided under the OCIP. By submitting a bid, the Contractor and each Subcontractor warrants that no costs for insurance provided by the OCIP Insurance Policies are included in any lump sum or cost plus contract costs.

(c) All “Deductibles,” “Retentions,” and “Charges” (as defined in the Project Insurance Manual) shall be paid by the responsible Contractor for losses attributable to the Contractor’s acts or omissions, or the acts or omissions of its Subcontractor or any other entity or person for whom it may be responsible, unless otherwise provided in the Contract Documents.

4.2.4 Estimated Payrolls/Manhours Disclosure. Within 20 calendar days of contract award, Contractor shall provide to the OCIP Administrator the completed originals of the Insurance Credit Worksheet (Aon Form-1), Insurance Summary (Aon Form-2), and the Enrollment Form (Aon Form-3). Forms are found in the Project Insurance Manual.

4.2.5 Owner’s Insurance Obligations; Contractor’s Obligations. The Port assumes no obligation to provide insurance other than that contemplated under the Contract Documents, including the Project Insurance Manual. The Contractor and each Enrolled Subcontractor shall review the OCIP coverages, limits of liability and insurance policies (when available) to satisfy themselves that the coverages offered thereby meet their needs. Nothing contained herein shall be deemed to place any responsibility on the Port for ensuring that the insurance provided by the OCIP is sufficient for the conduct of Contractor’s or its Subcontractors’ business or performance of the Work. The Port reserves the right at its option, but without obligation to do so, to furnish other insurance coverage of various types and limits, provided that such coverage is not less than that specified in the Contract Documents. The furnishing of insurance by the Port through the OCIP shall in no way relieve or limit or be construed to relieve or limit Contractor or any Subcontractor of any responsibility, liability, or obligation imposed by the Contract Documents or by law, including without limitation any indemnification obligations which Contractor or any of its Subcontractors has to the Port or other parties thereunder. Contractor acknowledges by executing Aon Form-3, and shall require all of its Subcontractors to acknowledge by executing Aon Form-3, that the Port is not an agent, partner or guarantor of the insurance companies providing coverage under the OCIP (each such insurer, an “OCIP Insurer”) and that the Port is not responsible for any claims or disputes between or among Contractor, its Subcontractors, and any OCIP Insurer(s). The Port shall not be liable to any party (including, but not limited to, Contractors and Subcontractors) for any failure or delay by any insurer to honor any policy obligation, including extra-contractual obligations, for any reason, including, but not limited to, coverage disputes, coverage defenses, claims handling practices, the defense of or the failure to defend any claim, or insolvency, and Contractor and its Subcontractors release the Port of any such claim.

Any type of insurance coverage or limits of liability not provided by the OCIP which the Contractor or any Subcontractor desires for its or their own protection, or which is required by applicable laws or regulations, shall be its or their sole responsibility and at its or their sole expense and shall not be billed to the Port. Any reference in this Agreement, the Project Insurance Manual or elsewhere in any other contract documents

as to amount, nature, type or extent of coverage provided under the OCIP and/or potential applicability to any potential claim or loss is for reference only. The Contractor and its Subcontractors represent and warrant that they have not relied upon said reference, and have relied solely upon their own independent review and analysis of the OCIP coverage, limits of liability and insurance policies when available in formulating any understanding and/or belief as to amount, nature, type or extent of any coverage provided by the OCIP Insurance Policies and/or the Policies' potential applicability to any potential claim or loss.

4.2.6 Work to Begin On-site Prior to Finalization of OCIP Coverage / Owner's Election to Discontinue OCIP Coverages.

If the Port, for any reason, is unable to furnish coverage prior to the Contractor's or its Subcontractors' work beginning on the designated Project site, or elects to discontinue all or portions of the OCIP, modifies the insurance limits provided in the OCIP, or requests that Contractor or any of its Subcontractors withdraw from the OCIP, then, upon thirty (30) days written notice from the Port, Contractor and/or one or more of its Subcontractors, as specified by the Port in such notice, shall obtain at the Port's expense and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by the Port) of the insurance provided or contemplated under the OCIP Insurance Policies, and the Port shall thereafter no longer be obligated to furnish all or a part of such insurance through the OCIP. The Contractor and Subcontractors shall provide the Port's OCIP Administrator and the Port's Risk Manager with certified copies of such insurance policies not later than 30 days following the issuance of such notice. The form, content, limits and cost of such insurance and the insurer issuing such insurance secured by Contractor or its Subcontractors pursuant to the provisions of this section 4.2.6 shall be subject to the Port's approval.

4.2.7 OCIP Policies Establish OCIP Coverage. The insurance coverages, agreements, conditions and exclusions contemplated in this section 4 and the other Contract Documents are set forth in full in their respective insurance policy forms. The descriptions of such policies in this section 4 and the other Contract Documents are not intended to be complete or to alter or amend any provision of the actual insurance policies and in matters, if any, in which the description herein conflicts with such insurance policies, the provisions of the actual insurance policies shall govern.

4.3 THE INSURANCE COVERAGES SUPPLIED

4.3.1 Scope of OCIP Insurance. Unless otherwise modified by the Port, the OCIP shall provide the following insurance to Enrolled Contractors and Enrolled Subcontractors for Work performed at the Project Site(s).

- (a) Workers' Compensation Insurance in compliance with the Workers' Compensation Laws of the State of the Project Site or other applicable jurisdiction, and Employer's Liability insurance in

the amount of \$2,000,000 each accident / \$2,000,000 bodily injury each employee by disease/ \$2,000,000 policy limit for bodily injury by disease. The Workers' Compensation insurance will include, as needed, "other states" coverage, U.S. Longshoremen and Harbor Workers Act coverage, Maritime/Jones Act coverage, including crew, with a limit of \$2,000,000 each accident and aggregate, and Federal Employer's Liability Act coverage with a limit of \$2,000,000 each accident and aggregate. This insurance is primary for all covered employee injuries at the Project Site.

- (b) Commercial General Liability Insurance in a form providing coverage not less than the standard Commercial General Liability coverage form (equivalent to Insurance Services Office (ISO) Occurrence Form 2004), covering liability for bodily injury, property damage, personal and advertising injury, blanket contractual liability, independent contractors, explosion, collapse and underground hazards, products and completed operations, including Broad Form Property Damage, extending coverage for ten (10) years after final acceptance of the Contractor's Work. The insurance policies will have limits of liability of \$2,000,000 per occurrence, \$2,000,000 Personal & Advertising Injury, \$100,000 Fire Damage Legal Liability, \$4,000,000 Products-Completed Operations Aggregate, and \$4,000,000 annual General Aggregate for all insureds combined under the OCIP.

The Contractor shall be responsible, at its own expense, for a per occurrence charge, including court costs, attorney fees and costs of defense for bodily injury or property damage, to the extent losses payable are attributable to the Contractor's acts or omissions, or the acts or omissions of any of its Subcontractors or any other entity or person for whom Contractor may be responsible. The amount of the charge will depend on the amount of the initial Contract Price, as follows:

- \$10,000 for all contracts \$1,000,000 and over;
- \$5,000 for all contracts below \$1,000,000.

The portion of the charge applying to Contractor or Subcontractor will be the responsibility of the Contractor. Contractor shall promptly pay its charge attributable to any loss. The Port, in addition to its other remedies, may backcharge Contractor for the obligation and deduct it from Contractor's next progress payment or final payment.

In addition, to the extent the Commercial General Liability Insurance provided under the OCIP extends coverage for Contractor's liability for the cost to repair, replace, alter or remove Contractor's Work due to a defect in such Work or that of any of its Subcontractors, Contractor shall be responsible for the full

amount of any deductible described in the Commercial General Liability Policy applicable to such insurance coverage.

The Commercial General Liability Insurance policy will be primary insurance for losses at the Project Site.

- (c) Excess Liability Insurance over the Employer's Liability and Commercial General Liability Insurance, and extending coverage for ten (10) years after final acceptance of Contractor's Work for completed operations. The total combined excess liability limit for all insureds under the OCIP shall be:

Combined Single Limit each occurrence	\$300,000,000
Project Term Aggregate	\$300,000,000
Completed Operations Term Aggregate	\$300,000,000

The Products and Completed Operations Aggregate is the total amount available for all insureds for the ten (10) year period after final acceptance of the Work.

**The insurance provided under the OCIP does not extend coverage for the liability of any insured party, vendor, manufacturer, fabricator, supplier, material dealer or other person or entity for liability arising out of any product manufactured, assembled or otherwise worked upon away from the Project Site, unless such manufacturing or assembly is expressly approved by the Port and as required by the applicable Contract Documents.**

- (d) Builder's Risk Insurance in the amount of the initial Contract Price (and thereafter adjusted pursuant to any Change Orders issued with respect to the Work), covering "all risk" or "special form" perils on a replacement cost basis, issued on a manuscripted form, with a sublimit of \$25,000,000 for losses caused by certain perils, including Land Movement And Water Damage. Off-site storage and transit coverages are provided, subject to \$10,000,000 sublimits and subject to certain other limitations. The Builder's Risk coverage shall exclude machinery, tools, equipment, and other personal property owned or used by the Contractor or its Subcontractors in the performance of the Work. Such Builder's Risk Insurance shall be secured and maintained by the Port in a form and amount as may be from time to time determined by the Port. The Contractor agrees that the terms of the Builder's Risk Policy shall be as set forth in that policy, including any exclusions that may be contained therein. Payments by the applicable OCIP Insurer for all losses covered under the Builder's Risk Policy shall be adjusted by and payable to the Port, for the interest of all insured parties and, if required by the Port's lender(s), shall be subject to the interests of such lender(s), including the right(s) of such lender(s) to apply such payments in accordance with the terms of the applicable loan documents.



Contractor shall be responsible at its own expense for a charge for each loss payable under the policy related to or arising out of the Contractor's acts or omissions, or the acts or omissions of any of its Subcontractors or any other entity or person for whom Contractor may be responsible. The amount of the charge will depend on the amount of the initial Contract Price, as follows:

- \$10,000 for all contracts \$1,000,000 and over;
- \$5,000 for all contracts below \$1,000,000.

The portion of the charge applying to Contractor or Subcontractor will be the responsibility of the Contractor. This charge shall remain uninsured by Contractor. Contractor shall promptly pay its charge attributable to any loss. The Port, in addition to its other remedies, may backcharge Contractor for the charge and deduct it from Contractor's next progress payment or final payment.

The Contractor and each of its Subcontractors shall be solely responsible for any loss or damage to its or their personal property, including, without limitation, property created or provided under the Contract Documents, its or their tools, equipment, and machinery, mobile construction equipment, vessels, vehicles, scaffolding, and temporary structures, whether owned, used, leased or rented by Contractor or any of its Subcontractors. The Contractor or any of its Subcontractors may, at its or their option, purchase, maintain and pay for insurance or self-insure such equipment and property, and any deductible in relation thereto shall be its or their sole responsibility. Any insurance, including self-insurance, shall be the Contractor's or any of its Subcontractor's sole source of recovery in the event of a loss. Partial occupancy or use of the Project shall not commence until all insurers providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Port and the Contractor shall take reasonable steps to obtain the consent of insurers and shall not, without mutual consent, take any action with respect to partial occupancy or use which would cause cancellation, lapse, or reduction of any insurance.

- (e) Contractors Pollution Liability Insurance on an occurrence basis, with limits of \$20,000,000 per Loss and \$20,000,000 Policy Term Aggregate for Bodily Injury, Property Damage, Clean Up Costs and Claim Expenses, arising at or emanating from the covered Project arising from all contracted operations performed on behalf of the Port.

Such insurance shall provide coverage for both sudden and gradual occurrences arising from the work performed under this contract. The policy term is from 7/14/2009 through 7/14/2014 with completed operations coverage for a period of ten (10) years following policy expiration. Covered operations under this Policy include all contracted operations performed on behalf of the Port under this

contract, including asbestos and lead-based paint abatement, and environmental remedial activities.

Contractor shall be responsible at its own expense for a per-occurrence deductible for each loss payable under the policy that is attributable to the Contractor's acts, errors, or omissions, or the acts, errors, or omissions of any of its Subcontractors, or any other entity or person for whom Contractor may be responsible. The amount of the deductible will be based on the amount of the original contract Price, as follows:

\$10,000 per Loss for contracts \$100,000 or under  
\$25,000 per Loss for contracts from \$100,000 to \$499,999  
\$50,000 per Loss for contracts from \$500,000 to \$4,999,999  
\$100,000 per Loss for contracts of \$5,000,000 or greater

The deductible applying to the Contractor or Subcontractor will be the responsibility of the Contractor. This deductible shall remain uninsured by Contractor. Contractor shall promptly pay its deductible pertaining to any loss. The Port, in addition to its other remedies, may backcharge Contractor for the deductible and deduct it from Contractor's next progress payment or final payment.

4.3.2 OCIP Insurance Certificates and Policies: Contractor and its Subcontractors will be insureds on the policies of insurance described above. Prior to the time that Work is performed at the Project Site, certificates of insurance for the Builders' Risk, General Liability, Contractor's Pollution Legal Liability, and Excess Liability policies will be issued to the Contractor and Subcontractors, reflecting that the Contractor and Subcontractors are insureds. The insurer will also issue a Workers' Compensation insurance policy in the name of each Contractor and Subcontractor.

4.3.3 **ADDITIONAL INSURANCE REQUIRED FROM CERTAIN OCIP INSURED PARTIES**

In addition to insurance coverages provided under the OCIP, the Contractor shall obtain and maintain, and shall require each of its Subcontractors to obtain and maintain, the insurance coverage specified in subsections (a) through (d) below. Such insurance shall be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. Except with respect to the insurance provided under section 4.3.3(b), each policy required under this section 4.3.3 shall name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, together with their respective officers, boards, board members, employees, representatives, agents and consultants, while acting in the scope of their authority, and any additional entities as the Port may request, as additional insureds, but only with respect to liability arising out

of the activities of the named insured. With respect to the insurance required under section 4.3.3(c), the additional insured endorsement shall be equivalent to ISO form CG 20 10, 11/85 edition or CG20 33 37 04 and CG 20 37 07 04 edition together, and shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

- (a) Commercial Automobile Liability Insurance in a form providing coverage not less than the standard Commercial Automobile Liability ISO form CA 00001 07 97, covering all owned, non-owned and hired automobiles with a combined single limit of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 per accident for any operations performed on the South Field, the Aviation Operations Area (AOA) of the Oakland International Airport property. As used herein, the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle code. Such insurance shall be endorsed to affirm that it is primary. In the event that Contractor's or Subcontractor's insurance excludes any drivers from coverage, such drivers will not be permitted to drive in connection with this Project.

If the Work involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its Subcontractors shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

1. DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
2. DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

- (b) Statutory Workers' Compensation Insurance and Employer's Liability insurance for operations away from the Project site and which are not otherwise insured under the OCIP, with statutory limits as required in the State(s) where Contractor or Subcontractor is performing such operations, including U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverage, if appropriate,

and Employer's Liability limits of \$1,000,000 for bodily injury each accident / \$1,000,000 bodily injury by disease each employee / \$1,000,000 policy limit for bodily injury by disease.

- (c) Commercial General Liability Insurance for operations away from the Project Site and which are not otherwise insured under the OCIP, in a form providing coverage not less than the standard Commercial General Liability insurance policy ISO form CG 00010196 ("Occurrence Form"). The limits shall be:

Each Occurrence	\$1,000,000
Annual General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Limit	\$1,000,000

- (d) Ocean Marine Liability Insurance for all owned, leased or hired watercraft used in any fashion for such operations away from the Project Site and which are not otherwise insured under the OCIP covering liability for bodily injury (including death) and property damage (including loss of use) with a minimum combined limit of \$10,000,000. Such insurance shall be maintained in the form of a standard Protection and Indemnity policy which shall include coverage for wreck removal, unlimited protection and indemnity, pollution liability and Jones Act exposures.

The Commercial Automobile Liability, Commercial General Liability, and any Protection and Indemnity Liability insurance policies specified in Subsections (a), (c) and (d), above, shall be endorsed to contain the following terms:

- (1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, together with their respective officers, boards, board members, employees, representatives, agents and consultants, while acting in the scope of their authority, and any additional entities as the Port may request, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured.
- (2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.
- (3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

4.4 INSURANCE REQUIREMENTS FOR EXCLUDED PARTIES

Any Excluded Party performing Work shall obtain and maintain, and shall require each of its Excluded Subcontractors to obtain and maintain, the insurance coverage specified in subsections (a) through (g) below. Such insurance shall be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. Except with respect to the insurance provided under section 4.4(b) and (e), each policy required under this section 4.4 shall name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, together with their respective officers, boards, board members, employees, representatives, agents and consultants, while acting in the scope of their authority, and any additional entities as the Port may request, as additional insureds, but only with respect to liability arising out of the activities of the named insured. With respect to the insurance required under section 4.4(c), the additional insured endorsement shall be equivalent to ISO form CG 20 10, 11/85 edition, and shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

- (a) Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage not less than the Standard Comprehensive Automobile Liability policy provided on ISO form number CA 00001 07 97 with limits not less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 combined single limit for any operations performed on the South Field, the Aviation Operating Area of the Oakland International Airport property.

If the Work involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its Subcontractors shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

1. DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
2. DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

- (b) Workers' Compensation Insurance with statutory limits as required in the State(s) where any operations are being performed, including U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverage, if appropriate, and Employer's

Liability limits of not less than \$1,000,000 bodily injury each accident / \$1,000,000 bodily injury each employee by disease / \$1,000,000 policy limit for bodily injury.

- (c) Commercial General Liability Insurance on a form at least as broad as the standard ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00010196), covering liability for bodily injury and property damage. Such insurance shall provide coverage for all operations and include independent contractors, products and completed operations, extending such coverage for five (5) years after final completion and acceptance of the final payment for the Work, blanket contractual liability coverage including, to the maximum extent possible, coverage for the liability assumed by the indemnity provisions of this agreement, broad form property damage coverage, coverage for explosion, collapse, and underground hazards, personal and advertising injury liability coverage. The limits of such insurance shall not be less than \$1,000,000 per occurrence, \$1,000,000 annual General Aggregate, \$1,000,000 products and completed operations aggregate.
- (d) If required by the Port, Railroad Protective Liability, Aviation and/or Protection and Indemnity Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.
- (e) If required by the Port, Errors and Omissions/Professional Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.
- (f) If required by the Port, Environmental Professional Liability Insurance and/or Contractor's Pollution Legal Liability Insurance in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.
- (g) If the Work involves the disposal of hazardous or regulated substances, its Subcontractor shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Environmental Liability Insurance, in a form reasonably satisfactory to the Port and with limits in the amount of not less than \$5,000,000 per Loss and \$5,000,000 Annual Aggregate.

The Commercial Automobile Liability, Commercial General Liability, Contractor's Pollution Legal Liability and Aviation and/or Protection and Indemnity Liability coverage specified in Subsections (a), (c), (d), (f) and (g), above, shall be endorsed to contain the following terms:

- (1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, together with their respective officers, boards, board members, employees, representatives, agents and consultants, while acting in the scope of their authority, and any additional entities as the Port may request, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured.

- (2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.
- (3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

#### 4.5 GENERAL PROVISIONS

4.5.1 Cooperation; Compliance; Audits. Contractor and each of its Subcontractors shall (a) cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP, and (b) comply with the terms and conditions of the insurance policies provided pursuant to the OCIP and other provisions of the Contract Documents, and (c) Provide to each of its Subcontractors of all tiers a copy of the Project Insurance Manual, and ensure Subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, and the Contract Documents. The failure of Contractor to provide each of its eligible Subcontractors of any tier with a copy of the same shall not relieve Contractor, or any of its Subcontractors, from any of the obligations contained therein.

Contractor shall provide, within five (5) business days of the OCIP Administrator's request, all requested documentation, including but not limited to, certified copies of insurance policies, all underwriting, certified payroll, rating and prior loss history information. Contractor agrees that the Port, the OCIP Administrator, and/or any OCIP Insurer may audit Contractor's or any of its Subcontractor's records and insurance policies to confirm the accuracy thereof, or of any insurance cost information hereafter provided by Contractor or any of its Subcontractors in connection with the Work, or changes to the scope of Work pursuant to the Contract Documents. The obligations assumed in these sections 4.5.1 through 4.5.4 shall be specifically enforceable.

4.5.2 Waiver of Subrogation. Contractor hereby waives all rights of recovery against the Port, the OCIP Administrator, its or their officers, agents, or employees, and any other Contractor or Subcontractor performing Work or rendering services on behalf of the Port in connection with the planning, development and construction of the Project, to the extent any losses, claims or damages are covered by any policy of insurance available to Contractor and further waives all rights of recovery which are not covered by insurance because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or failure to maintain insurance as required herein. Contractor shall also require that all insurance policies related to the Work secured by Contractor or its Subcontractors include clauses providing that each insurance underwriter waives all of its rights of recovery by subrogation, or otherwise, against the Port, the OCIP Administrator, together with the same parties referenced immediately above in this Section 4.5.2.

Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors. This provision shall apply to each Contractor and Subcontractor performing Work or rendering services on behalf of the Port in connection with the planning, development and construction of the Project, irrespective of whether or not it is enrolled in the OCIP. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

4.5.3 Records Disclosure, Maintenance and Access. Prior to the commencement of the Work, Contractor and all of its Subcontractors of all tiers to comply with OCIP Administrators instructions for electronically enrolling in the OCIP using "AonWrap" and for electronically reporting payroll using "AonWrap", shall furnish and shall cause each of its Subcontractors to furnish to the Port, in a form satisfactory to the Port, an estimate of total direct labor cost (listed by Standard Workers' Compensation Insurance classification) to be incurred in connection with the Work at the Project Site, and the total price due each Subcontractor under its contract with Contractor. Accurately and fully complete the Insurance Cost Worksheet (Aon Form-1) and the Insurance Summary Form (Aon Form-2) located in the Project Insurance Manual, and the Enrollment Application (Aon Form-3) and submit the same to Owner or the OCIP Administrator prior to commencement of the Work. Contractor shall, and shall cause each of its Subcontractors to, keep and maintain an accurate and classified record of its or their payroll data and information in accordance with the requirements of the OCIP Insurer(s) or any other Contract Document. Contractor shall complete and provide the Monthly Payroll Report Form (Aon Form-4) with reportable Workers' Compensation payrolls for all on-site labor performed by Contractor and its Subcontractors to the Port. Contractor and its Subcontractors shall permit its books and records to be examined and audited periodically by the OCIP Insurer(s), the Port, or their respective representatives. The Port, in addition to its other remedies, may withhold Contractor's progress payments or final payment for any period in which Contractor or any of its Subcontractors is in non-compliance with this Section 4.5.3.

4.5.4 Proof of Coverage. With respect to non-OCIP insurance coverage required to be provided pursuant to the Contract Documents, Contractor and/or each of its Subcontractors shall deliver to the Port's OCIP Administrator and the Port's Risk Manager, prior to the commencement of the Work, a Certificate of Insurance evidencing such insurance coverage for Contractor on a standard ACORD form 25-S, or other form as required by the Port. The commencement of the Work by the Contractor or any of its Subcontractors without compliance with this or any other requirement of this section shall not constitute a waiver of any right of the Port under this section nor a release or waiver of any duty or obligation owed by any Contractor or Subcontractor. Upon the Port's request, the Contractor and/or Subcontractor shall submit to the Port copies of the actual



insurance policies or renewals or replacements thereof. All policies of insurance the Contractor or any of its Subcontractors are required to obtain and maintain in accordance with the Contract Documents shall be placed with A.M. Best-rated A-X (or higher) insurance companies satisfactory to the Port and shall provide thirty (30) days written notice of cancellation, non-renewal or reduction of coverage, except ten (10) days notice of cancellation for non-payment of premium. Contractor shall pay all insurance premiums for such insurance, including any charges for required waivers of subrogation or the endorsement of additional insureds. All such insurance furnished by Contractor or any of its Subcontractors shall be in full force and effect during Contractor's or each of its Subcontractor's performance, as applicable, under the Contract Documents, and ten (10) years after completion of Contractor's and its Subcontractor's Work, for completed operations under a Commercial General Liability occurrence form and such other coverages as designated by the Port. Contractor's failure to deliver satisfactory evidence of coverage shall not be construed as a waiver of Contractor's obligation to provide the required insurance coverage. Contractor shall be responsible for obtaining satisfactory evidence of insurance coverage from each of its Enrolled and non-Enrolled or Excluded Subcontractors and submitting same to the Port prior to commencement of such Subcontractor's Work. The Port reserves the right to increase or decrease the required limits of liability or require additional coverages of any Contractor or Subcontractor based on the type and scope of work performed.

- 4.5.5 Failure to Maintain Insurance. Contractor shall indemnify and hold harmless the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, from all claims and liabilities arising out of the failure of Contractor, any of its Subcontractors or any other entity or person for whom the Contractor may be responsible, to maintain the insurance coverages as described and required herein. The Port, in addition to its other remedies, may withhold Contractor's progress payments or final payment for any period in which (a) such insurance coverages are not in full force and effect or (b) the Contractor has not supplied the Port with required evidence of such insurance coverages.
- 4.5.6 Duty of Care. Nothing contained in this section 4 or the Project Insurance Manual shall relieve the Contractor or any of its Subcontractors of their respective obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract.
- 4.5.7 Safety Violations: The existence of the OCIP shall not in any manner diminish the Port's rights under the Contract Documents to suspend part or all of the work if, in its opinion, any conditions or practices in any portion of the work are such that a danger exists which could reasonably be expected to cause serious physical harm or otherwise pose a health hazard to contractors, employees, tenants or others. Contractor shall be

solely responsible for safety on the project. Contractor shall establish a safety program that, at a minimum, complies with all Federal, state, and local safety standards, and any safety standards established by Owner for the Project.

## **5. PLANS AND SPECIFICATIONS**

### **5.1 INTENT**

It is the intent of the Plans and Specifications to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of the Contract Documents unless otherwise defined in the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract Documents or from prevailing custom or trade usage as being required to produce this intended result shall be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. The intent of the Plans specifically includes the intent to depict construction that complies with all applicable laws, codes and standards. The Divisions and Sections of the Specifications and the identification on the Plans shall not control the Contractor in dividing the Work among Subcontractors or suppliers or delineating the work to be performed by any specific trade.

The Contractor shall provide as part of the "Work" all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, shop drawings, storage and testing, security, transportation, disposal, the securing of all field dimensions necessary or required, cutting or patching of existing materials, all notices, permits, documents, reports, and agreements and any other items required or necessary to timely and fully complete the Work described and the results intended by the Contract Documents and, in particular, the Plans and Specifications.

Reasonably implied parts of the Work shall be performed as "incidental work" even though absent from the Plans and Specifications. "Incidental" work shall be performed by the Contractor without extra cost to the Port. Incidental work includes any work not shown on Plans nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Plans or described in the Specifications, or is necessary or required to make each installation satisfactory, legally operable, functional, consistent with the intent of the Plans and Specifications or the requirements of the Contract Documents. Incidental work shall be treated as if fully described in Specifications and shown on Plans, and expense thereof shall be included in price bid and Contract Sum. Incidental work includes, but is not limited to, tasks required to be performed under Division 1 of Specifications.

### **5.2 PLAN DETAILS**

A typical or representative detail on the Plans shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where

necessary, and where reasonably inferable from the Plans, the Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by Port. Repetitive features shown in outline on the Drawing shall be in exact accordance with corresponding features completely shown.

### 5.3 INTERPRETATION OF PLANS AND SPECIFICATIONS

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in the Plans and Specifications prepared by Architect/Engineer, the matter shall be referred to the Port in writing, with a copy for Architect/Engineer. Port will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Plans and Specifications as Port may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Plans and Specifications. Such written clarifications and interpretations will be binding upon the Contractor. The Contractor shall not carry on work except with the knowledge of the Port. If the Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or Contract Times and the parties are unable to agree to the amount or extent thereof, if any, then the Contractor shall perform the Work subject to the clarification and may make a written claim therefor as provided in Section 12 of this Document 00700.

### 5.4 CHECKING OF PLANS

Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall be responsible for any errors which might have been avoided by such comparison. Figures shown on Plans shall be followed; the Contractor shall not scale measurements. The Contractor shall promptly report in writing to the Port, any conflict, error, ambiguity or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from Port before proceeding with any Work affected thereby.

### 5.5 STANDARDS TO APPLY WHERE DETAILED SPECIFICATIONS ARE NOT FURNISHED

Wherever in the Specifications, or in any directions given by the Port pursuant to or supplementing the Specifications, it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the following general specifications shall apply. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed specifications are set forth herein shall conform to the usual standards for first-class work of the kind required. The Contractor shall specify in writing to the Port the materials to be used or work to be performed under this section no later than ten (10) business days prior to furnishing such materials or performance of such work.

5.6 DEVIATION FROM SPECIFICATIONS AND PLANS

- 5.6.1 No modification or deviation from the Plans and Specifications will be permitted. The Contractor must perform work in accord with Plans and Specifications. Deviations from Plans and from the dimensions therein given, or from the Specifications, whether or not error is believed to exist, shall be made only when approved in writing by the Port.
- 5.6.2 The Port may order that locations, lines and grades for Work vary from those shown on Plans. Changes may be made in location, lines or grades for Work under any item of the Contract Documents. No extra payment in addition to unit price fixed in the Contract Documents for Work under respective items will be allowed on account of variations from Plans in unit price items. In lump sum contracts, or where there are no unit price items covering work affected by variations of locations, lines or grades, all changes in the Contract Documents will be made in accordance with Section 14, Modifications of Contract Documents.

5.7 PRECEDENCE OF DOCUMENTS

In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:

- 5.7.1 Modifications in inverse chronological order, and in the same order as specific portions they are modifying.
- 5.7.2 Signed Agreement, and terms and conditions referenced therein.
- 5.7.3 Supplementary Conditions.
- 5.7.4 General Conditions.
- 5.7.5 Division 1 Specifications.
- 5.7.6 Plans and Division 2 through 16 Specifications.
- 5.7.7 Written numbers over figures, unless obviously incorrect.
- 5.7.8 Figured dimensions over scaled dimensions.
- 5.7.9 Large-scale Plans over small-scale Plans.
- 5.7.10 Any conflict between the Plans and Division 2 through 16 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of the Specifications.
- 5.7.11 Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete the Work

required by the Contract Documents, then the actual quantities shall take precedence.

5.7.12 In the event the technical specifications include divisions above Division 16 (e.g., Division 17 and above), or specifications included in The Project Manual but inadvertently omitted from the Table of Contents, then such divisions and/or specifications shall be included within the Contract Documents unless identified otherwise.

5.7.13 Any conflict between Document 00823, Port of Oakland Maritime and Aviation Project Labor Agreement, and Document 00700, General Conditions, or the Specifications, will be resolved in favor of the Project Labor Agreement.

Notwithstanding anything to the contrary above, should any provision or requirement of any Contract Document conflict with another provision or requirement in the Contract Documents on subject matters of hazardous waste abatement, clean up, disposal, or required safety standards or methods, then the most stringent provision or requirement shall control.

5.8 OWNERSHIP AND USE OF PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS

The Plans, Specifications and other Contract Documents were prepared for use for the Work of the Contract Documents only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the Port. Any unauthorized use of the Contract Documents is prohibited and at the sole liability of the user.

**6. CONSTRUCTION BY PORT OR BY SEPARATE CONTRACTORS**

6.1 THE PORT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

The Port may perform construction or operations related to the Project with its own forces, or award separate contracts in connection with other portions of the Project or other construction or operations, on the site or areas contiguous to the Site, under conditions of the Contract Documents similar to these (including those portions related to insurance and waiver of subrogation), or have other work performed by utility owners. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Port/Contractor agreement.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford all other contractors, utility owners, and the Port (if the Port is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials, shall ensure that the execution of its Work

properly connects and coordinates with their work, and shall cooperate with them to facilitate the progress of the Work.

- 6.2.2 The Contractor shall coordinate its Work with the work of other separate contractors, the Port, and utility owners, including the holding weekly of coordination meetings with them (or less often as necessary). The Port or its designee shall have the right to participate in these coordination meetings, and shall be advised of the results of these coordination meetings at the monthly Progress Meeting.
- 6.2.3 Unless otherwise provided in the Contract Documents, the Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of other separate contractors, the Port or utility owners by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Port and the others whose work will be affected.
- 6.2.4 The duties and responsibilities of the Contractor under Subsections 6.2.1 to 6.2.3 above are for the benefit of the Port and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the Port and such other contractors and utility owners.
- 6.2.5 To the extent that any part of the Contractor's Work is to interface with work performed or installed by other contractors or utility owners, the Contractor shall use reasonable means to inspect and measure the in-place work and promptly report to the Port in writing any defect in such in-place work that will impede or increase the cost of the Contractor's interface unless corrected. The Port will require the Contractor responsible for the defective work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If the Contractor fails to measure, inspect and/or report to the Port in writing defects that are reasonably discoverable, all costs of accomplishing the interface acceptably shall be borne by the Contractor. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

### 6.3 PORT AUTHORITY OVER COORDINATION

- 6.3.1 The Port shall have authority over coordination of the activities of multiple contractors in those cases where the Port contracts with others for the performance of other work on the Project, the Port performs work with its own forces, or utilities perform work on the Site. The authority of the Port with respect to coordination of the activities of multiple contractors and utility owners, however, shall not in any manner relieve the Contractor of its obligation to other contractors and utility owners to coordinate its work with utility owners and other contractors as specified above. The Contractor shall promptly notify the Port in writing when another

contractor on this Project fails to coordinate its work with the Work of the Contract Documents.

- 6.3.2 The Contractor shall suspend any part of the Work herein specified or shall carry on the same in such manner if directed by the Port when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by the Contractor will be allowed therefor if the suspension or work change is due in whole or in part to the Contractor's failure to perform its obligation herein specified to coordinate its work with utility owners and other contractors. If the suspension or work change is due in whole or in part to the failure of another contractor to coordinate its work with the Contractor and other contractors and utility owners, then resulting damages or claims by the Contractor will be allowed. The Port reserves the right to backcharge the Contractor for any damages or claims of other contractors incurred as a result of the Contractor's failure to perform its obligations to coordinate with other contractors and utility owners.
- 6.3.3 The Port may at any time and in its sole discretion, designate a person, firm or corporation other than the Port, to have authority over the coordination of the activities among the various contractors.

#### 6.4 PORT-FURNISHED MATERIALS AND EQUIPMENT

- 6.4.1 Materials and equipment to be furnished by the Port will be available at locations designated in the Contract Documents or if not designated in the Contract Documents will be delivered to the Site. Such Port-furnished materials and equipment shall be hauled to and properly stored at the place of use by the Contractor at Contractor's sole expense, including all necessary loading and unloading that may be involved. All costs of storing, handling, and installing Port-furnished materials and equipment shall be considered as included in the Contract Price paid for the item involving such Port-furnished materials and equipment.
- 6.4.2 Contractor shall conduct a reasonable inspection of all Port-furnished materials and equipment. For Port-furnished materials and equipment designated prior to submission of bids, bidder shall be charged with all information and knowledge that a reasonable bidder would ascertain from having performed a reasonable inspection. For Port-furnished materials and equipment not designated prior to submission of bids, Contractor shall conduct a reasonable inspection not more than 21 days following delivery of such Port-furnished materials and equipment. Contractor shall provide the Port with written notice of all defects, omissions, damage, non-conformance, or quantity variations in the Port-furnished materials and equipment.
- 6.4.3 The Contractor shall be held responsible for all materials and equipment furnished to the Contractor, and shall pay all demurrage and storage charges. If any Port-furnished materials and equipment are lost or damaged from any cause whatsoever after receipt by the Contractor, the Contractor shall be liable to the Port for the cost of replacing or repairing

such Port-furnished materials and equipment and the cost thereof may be deducted from any monies due or to become due the Contractor.

## **7. PORT AND PAYMENT**

### **7.1 PORT'S REPRESENTATIVES**

The Port's designated authorized representatives will have limited authority to act on behalf of the Port and only to the extent set forth in the Contract Documents. The Contractor shall issue all communications to the Port in a writing through the Resident Engineer. Any required or requested interface between the Contractor and the Port, the Architect/Engineer, or any other representative of the Port, will be coordinated by the Resident Engineer.

### **7.2 MEANS AND METHODS OF CONSTRUCTION**

Subject to those rights specifically reserved in the Contract Documents, the Port shall not supervise, direct, or have control over, or be responsible for, the Contractor's means, methods, techniques, sequences or procedures of construction or for the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the furnishing or performance of Work. The Port shall not be responsible for the Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

### **7.3 RECEIPT AND PROCESSING OF APPLICATIONS FOR PAYMENT**

The Contractor shall prepare the necessary schedules required by Section 01200 Measurement and Payment, submit applications for progress payments or final payments, and warrant title to all Work covered by each application for payment, as required by Section 01200 Measurement and Payment. The Port shall review the Contractor's applications for payment and make payment thereon, and the Contractor shall make payments to Subcontractors, suppliers and others, as required by Section 01200 Measurement and Payment.

## **8. CONTROL OF THE WORK**

### **8.1 SUPERVISION OF WORK BY THE CONTRACTOR**

The Contractor shall supervise, inspect and direct the work competently and efficiently, devoting such attention thereto and applying such personal skills and expertise as required and necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall be responsible to see that the completed Work complies with the Contract Documents.

The Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without the express written consent of the Port which will not be unreasonably withheld. The Superintendent will be the Contractor's representative at the site and shall have



complete authority to act on behalf of the Contractor. All communications to the Superintendent shall be as binding as if given to the Contractor.

## 8.2 OBSERVATION OF WORK BY THE PORT AND THE ARCHITECT/ENGINEER

- 8.2.1 Work shall be performed under the general observation and administration of the Port. The Contractor shall immediately comply with orders and instructions given by the Port in accordance with the terms of the Contract Documents, but nothing herein contained shall be taken to relieve the Contractor of any obligations or liabilities under the Contract Documents. No failure by the Port or the Architect/Engineer to review or, upon review, failure to object to any aspect of the Work reviewed, shall be deemed a waiver or approval of any non-conforming aspect of the Work.
- 8.2.2 The Architect/Engineer may advise and consult with the Port as requested by the Port, but will have authority to act on behalf of the Port only to extent provided in Contract Documents.
- 8.2.3 The Port and the Architect/Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 8.2.4 The Port and the Architect/Engineer will not be responsible for or have control or charge over acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing the Work.
- 8.2.5 The Port (and the Architect/Engineer, to the extent requested by the Port) will review the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the general design concept of Work and with information given in the Contract Documents.
- 8.2.6 The Architect/Engineer may conduct inspections to recommend to the Port the dates that Contractor has achieved Substantial Completion and Final Acceptance. The Port will receive the written warranties and related documents required by the Contract Documents and assembled by the Contractor.
- 8.2.7 The Port will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Plans and Specifications or otherwise) as the Port may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on the Contractor. If the Contractor believes that a written clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, then the Contractor shall perform the Work as so clarified or interpreted and may make a written claim therefor as provided in Section 12.

- 8.2.10 The Port will have authority to undertake special inspection or testing of Work, whether or not the work is fabricated, installed or completed.
- 8.2.11 The Port reserves the right to employ a consultant to assist in the preparation of the hazardous materials abatement contract specifications and the right to assign or delegate to this consultant, or any other consultant ("Consultant") limited authority with respect to hazardous material abatement matters of the Port under the Contract Documents. The Contractor shall be notified in writing of any such delegation. In the event of any such delegation, all contractual correspondence, including submittals, shall be directed and processed through the Resident Engineer. Any required or requested interface between the Contractor and the Port, the Consultant, or any other representative of the Port, will be coordinated by the Resident Engineer.
- 8.2.12 The Contractor shall cooperate with Consultant as directed by the Port. Consultant's duties may include observing the Contractor's health and safety program and practices, observing the abatement construction activities, observing the contractor's abatement work practices for compliance with the Contract Documents, observing the extent of material removed from each job site, reviewing payment requests, reviewing reports required by governmental or quasi-governmental agencies or the Contract Documents, and providing clearance tests after abatement is completed. No action, omission to act, approval, or failure to advise the Contractor as to any matter by Consultant shall in any way relieve the Contractor from its responsibility for the performance of the Work in strict accordance with the Contract Documents and applicable Law. Unless directed otherwise in writing by the Port, the Contractor shall not communicate directly with the Consultant and shall direct all communications to the Port.

### 8.3 ACCESS TO WORK SITE

During performance of the Work, the Port and its agents, consultants, and employees may at any time enter upon Work, shops where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and the Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the Port's interests may require. Subject to the requirements of Paragraph 6.2 above, other contractors performing work for the Port may also, for all purposes required by their respective contracts, enter upon Work. Subject to the rights reserved in the Contract Documents, the Contractor shall have sole care, custody and control of the Site and its work areas for the purposes of the Work.

### 8.4 EXISTING UTILITIES

- 8.4.1 Pursuant to Government Code Section 4215, the Port shall be responsible, as between the Port and the Contractor, for the timely removal, relocation or protection of existing main or trunk line utility facilities located on the Project Site, if, and only if, such utilities are not

identified in the plans and specifications made a part of the invitation for bids. The Port shall compensate the Contractor for the cost of locating and repairing damage not due to the Contractor's failure to exercise reasonable care, and removing and relocating such utility facilities not indicated on the Plans and Specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work, such compensation to be determined in accordance with the provisions of these General Conditions.

- 8.4.2 Nothing herein shall be deemed to require the Port to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the site of the construction. If the Contractor, while performing the work of the Contract Documents, discovers utility facilities not identified by the Port in the Work of the Contract Documents or materials made available for bidding purposes, it shall immediately notify the Port and the utility in writing.
- 8.4.3 Prior to performing work at the site, the Contractor must lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. Prior to commencing other work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, the Contractor must further locate such utilities or installations that are to remain and which are subject to damage by carefully excavating with small equipment and, principally by hand, at no extra cost.
- 8.4.4 Where main or trunkline utilities identified in the Contract Documents and other utilities or underground structures that are known or reasonably discernible and that will remain in service are encountered, the Contractor must incorporate such existing installations into the work, including minor adjustments to design location or minor relocations of the existing installations, at no additional cost. If in service installations are damaged by the Contractor's operations, the Contractor must immediately take action to restore such installations to service. Should the Port determine that the Contractor has not responded in a timely manner or not diligently pursued completion of the work, the Port may restore service and deduct the costs of such action by the Port from the amounts due under the Contract.

## **9. WARRANTY, GUARANTY AND INSPECTION OF WORK**

### **9.1 WARRANTY AND GUARANTY**

- 9.1.1 General Representations and Warranties: the Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every phase of the Work and to complete the Work in accordance with the terms of the Contract Documents. The Contractor warrants that all construction work and construction services shall be performed in accordance with generally accepted professional standards

of good and sound construction practices and all requirements of the Contract Documents. The Contractor warrants that the Work, including but not limited to each item of materials and equipment provided by Contractor incorporated therein, shall be new, shall be of suitable grade of its respective kind for its intended use unless such grade is specified in the Contract Documents, shall be free from defects in design, engineering, materials, construction and workmanship, and shall conform in all respects with all applicable requirements of federal, state and local laws, licenses, and permits, the Contract Documents and all descriptions set forth therein, applicable construction codes and standards, and all other requirements of the Contract Documents.

9.1.2 Extended Guarantees: If any guaranty exceeding one year is provided by the supplier or manufacturer of any equipment or materials used in this Project, then the guarantee for such items shall be extended for such term. Contractor shall assign any extended equipment or material warranty to the Port and shall supply the Port with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.

9.1.3 Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Section 9.1.3 are effective continuously during the Contractor's work on the Project and following cessation of labor for any reason, including but not limited to, Project completion. The Contractor covenants, warrants and represents to the Port that:

- (a) To the Contractor's knowledge after due inquiry, no lead or asbestos-containing materials were installed or were discovered in the Project at any time during the Contractor's construction thereof. If any such materials were discovered, the Contractor made immediate written disclosure to the Port.
- (b) To the Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCB's are or were located on the Project at any time during the Contractor's construction thereof.
- (c) To the Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during the Contractor's construction thereof. If any such materials were discovered, the Contractor made immediate written disclosure to the Port
- (d) The Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances, and no notice from any governmental body has been served upon the Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for, any work, repairs, construction, alteration, or installation on or in connection with the

Project in order to comply with any such laws, ordinances, codes or regulations, with which the Contractor has not complied. If there are any such notices with which the Contractor has complied, the Contractor shall provide the Port with copies thereof.

9.1.4 Additional Warranties and Representations:

- (a) The Contractor represents and warrants that it, its employees and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training and ability to comply fully with all applicable Law and Contract Documents requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to adequately address the actual or potential dangers of contract performance).
- (b) The Contractor represents and warrants that it, its employees and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state and other governmental and quasi-governmental requirements applicable to the Work.
- (c) The Contractor represents and warrants that it has studied carefully all requirements of the specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in this contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. The Contractor accepts the risk that any specified procedure will result in a completed project in full compliance with the contract requirements.

9.2 INSPECTION OF WORK

- 9.2.1 All materials, equipment and workmanship used in the Work shall be subject to inspection or testing at all times during construction and/or manufacture in accordance with the terms of the Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by the Port, its agents, or independent contractors retained by the Port to perform inspection services, or governmental agencies with jurisdictional interests. The Contractor shall provide them proper and safe conditions for such access and advise them of the Contractor's site safety procedures and program so that they may comply therewith as applicable. Upon request or where

specified, the Port (or its designee) shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.

- 9.2.2 The Contractor shall give the Port timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 9.2.3 If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish the Port with the required certificates of inspection, or approval. The Port shall pay the cost of initial testing and the Contractor shall pay all costs in connection with any follow up or additional testing. The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mixed designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work.
- 9.2.4 If any Work (or the work of others) that is required to be inspected, tested or approved is covered by the Contractor prior to such inspection, testing or approval, without written approval of the Port, it must, if requested by the Port, be uncovered. Uncovering Work shall be at the Contractor's expense unless the Contractor has given the Port timely notice of the Contractor's intention to cover the same and the Port has given its written approval of the covering of the Work.
- 9.2.5 In any case where Work is covered contrary to the written request of the Port, it must, if requested by the Port, be uncovered for the Port's observation or inspection at the Contractor's expense.
- 9.2.6 Whenever required by the Port, the Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by the Contractor. If Work is found to be satisfactory, examination will be paid for by the Port in manner herein prescribed for paying for alterations, modifications and extra work, except as otherwise herein specified.
- 9.2.7 Inspection of the Work by or on behalf of the Port, or its failure to do so, shall not be deemed a waiver or approval of any non-conforming aspect of the Work.

### 9.3 CORRECTION OF DEFECTIVE WORK

- 9.3.1 If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Port may order the Contractor to replace the defective work or to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Port to stop the Work shall not give rise to any duty on the part of the Port to exercise this right for the benefit of the Contractor or any other party.
- 9.3.2 If required by the Port, the Contractor shall promptly, as directed by the Port, without cost to the Port and in accordance with the Port's written instructions, (i) correct such defective Work, whether or not fabricated, installed or completed, or, if it has been rejected by the Port, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. All claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others) as well as all costs of the Port incurred in exercising such rights and remedies (including, but not limited to, staff costs, overhead and any extra ordinary costs incurred in the examination, evaluation and determination that such defective Work should be corrected or removed and replaced) will be the responsibility of the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. Contractor shall provide costs of re-inspection and re-testing. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the Port may deduct from monies due the Contractor all claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others) as well as all costs of the Port incurred in exercising such rights and remedies (including, but not limited to, staff costs, overhead and the costs incurred in the examination, evaluation and determination that such defective Work should be corrected or removed and replaced). If the Contractor disagrees with the Port's calculation, it may make a claim as provided in Section 12. The Port's rights under this Section shall be in addition to any other rights it may have under the Contract Documents, including, without means of limitation, in Sections 9.3.3 and 9.4.
- 9.3.3 Correction Period: If within one (1) year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws or regulations, by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, the Contractor shall promptly, without cost to the Port and in accordance with Port or the Port's written instructions, (i) correct such defective Work or, if it has been rejected by the Port or the Port, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious

risk of loss or damage, the Port may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to staff costs, overhead and to all costs of repair or replacement of work of others) shall be paid by the Contractor.

- 9.3.4 In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that part of the Work or that item may start to run from an earlier date if so provided by Change Order.
- 9.3.5 Where defective or rejected Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.6 Where Contractor fails to correct defective work or defects are discovered outside of the correction period described above, the Port shall have all rights and remedies granted by law.

#### 9.4 ACCEPTANCE AND CORRECTION OF DEFECTIVE WORK BY THE PORT

- 9.4.1 The Port may accept defective Work: If, instead of requiring correction or removal and replacement of defective Work, Port prefers to accept it, the Port may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the Port's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, unless the parties are unable to agree upon an appropriate decrease in the Contract Sum, in which case the Port may deduct from monies due the Contractor the amount of any and all claims, costs, losses (including diminution in value), damages, expenses and liabilities attributable to the defective work. If the Contractor disagrees with the deduction, the Contractor may make a claim as provided in Section 12. If the acceptance occurs after Final Payment, an appropriate amount shall be paid by the Contractor as determined by the Port.
- 9.4.2 The Port may correct untimely or defective Work: If the Contractor fails within five (5) days after written notice from the Port to correct defective Work or to remove and replace rejected Work as required by the Port in accordance with Section 9.3.2, or provide a plan for correction of defective Work acceptable to the Port, or if the Contractor otherwise fails to perform the Work in accordance with the Contract Documents (including material delays from approved schedules), the Port may (at its sole option), after five (5) days written notice to the Contractor, correct and remedy any deficiency. In connection with such corrective and remedial action, the Port may exclude the Contractor from all or part of



the Site, take possession of all or part of the Work and suspend the Contractor's work related thereto, and incorporate in the Work any materials and equipment stored at the Site or for which the Port has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Port, its representatives, agents, employees, and other contractors and Architect/Engineer's consultants access to the Site to enable the Port to exercise the rights and remedies under this Section. All claims, costs, losses (including diminution in value), damages, expenses and liabilities incurred or sustained by the Port in exercising such rights and remedies will be the responsibility of the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the Port may deduct from monies due the Contractor all claims, costs, losses (including diminution in value), expenses, damages and liabilities attributable to the defective Work, including all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work. If correction occurs after Final Payment, an appropriate amount shall be paid by the Contractor as determined by the Port. In either case, if the Contractor disagrees with the Port's calculation, it may make a claim as provided in Section 12.

#### 9.5 RIGHTS UPON INSPECTION OR CORRECTION

- 9.5.1 The Contractor shall not be allowed an extension of the Contract Times (or any Milestones) because of any delay in the performance of Work attributable to the exercise by the Port of its rights and remedies under this Section. Where the Port exercises its rights under this Section, it retains all other rights it has by law or under the Contract Documents, including but not limited to, the right to terminate the Contract Documents and/or make a claim or backcharge where a Change Order cannot be agreed upon.
- 9.5.2 Inspection shall not relieve the Contractor of its obligation to have furnished material and workmanship in accordance with the Contract Documents. Payment for work completed through periodic progress payments or otherwise shall not operate to waive the Port's right to require full compliance with the Contract Documents and shall in no way be deemed as acceptance of the Work paid therefor. The Contractor's obligation to complete the Work in accordance with the Contract Documents shall be absolute, unless the Port agrees otherwise in writing.

#### 9.6 SAMPLES AND TESTS OF MATERIALS AND WORK

- 9.6.1 Samples or test specimens of all materials to be used or offered for use in connection with the Work shall be prepared at the Contractor's expense and furnished to the Port (or its designee) in such quantities and sizes as may be required for proper examination and tests.

- 9.6.2 All samples shall be submitted in ample time to enable the Port and Architect/Engineer to make any necessary tests, analyses or examinations before the time at which it is desired to incorporate the material into the work.
- 9.6.3 The Port may refuse consideration of further samples of the same brand or make of any material or product previously determined as unsatisfactory for testing, analysis or examination.
- 9.6.4 Test samples or specimens of material for testing may be taken by the Port, his or her representative, or any inspector, or a representative of the testing agency.
- 9.6.5. The Port reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor contract requirements of safe and statutory compliant work methods and (where applicable) safe re-entry level air standards under State and Federal law upon completion of the job, and compliance of the work with periodic and final inspection of public and quasi-public entities having jurisdiction.

The Contractor acknowledges that the Port also has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement and post-abatement air monitoring, provided that the Port shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by the Contractor. In the event the Port elects to perform these activities and tests, the Contractor shall afford the Port ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. The Contractor will include the potential impact of these activities for tests by the Port in the Contract Sum and the Contract Times.

Notwithstanding the Port's rights granted by this Section 9.6.5, the Contractor may be required to retain its own industrial hygiene consultant and shall have primary responsibility for collecting samples and perform all applicable, relevant or appropriate activities and tests including, but not limited to, pre-abatement, during abatement and post-abatement air monitoring, required or suggested by the Contract Documents, the Law, or both, and the Port reserves the right to request documentation of all such activities and tests performed by the Contractor relating to the Work.

## 9.7 PROOF OF COMPLIANCE WITH CONTRACT PROVISIONS

In order that the Port may determine whether the Contractor has complied or is complying with requirements of the Contract Documents not readily enforceable through inspection and tests of Work and materials, the Contractor shall at any time when requested submit to the Port properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 ACCEPTANCE

Neither inspection by Port or its authorized agents or representatives, nor any order or certificate for the payment of money, nor any payment, nor acceptance of the whole or any part of the Work by Port, nor any extension of time, nor any verbal statements on behalf of the Port or its authorized agents or representatives shall operate as a waiver or modification of any provisions of the Contract Documents, or of any power reserved to Port herein or therein or any right to damages provided in the Contract Documents, nor shall any waiver of any breach of the Contract Documents be held to be a waiver of any other subsequent breach.

**10. CONTRACTOR'S ORGANIZATION AND EQUIPMENT**

10.1 CONTRACTOR'S LEGAL ADDRESS

Address and telecopy number given in the Contractor's Bid are hereby designated as the Contractor's legal address and telecopy number, but such address and/or number may be changed at any time by notice in writing, delivered to Port at the office of the Port, which in conspicuous language advises Port of a change in legal address or telecopy number. Delivery to the Contractor's legal address or depositing in any post office or post office box regularly maintained by United States Postal Service, in a postpaid wrapper, directed to the Contractor at legal address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon the Contractor. Telecopy to the Contractor's designated telecopy number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of telecopy transmission, shall be deemed legal and sufficient service thereof upon the Contractor.

10.2 CONTRACTOR'S OFFICE AT THE WORK SITE

The Contractor shall maintain an office at the Site, which office shall be headquarters of a Contractor representative authorized to transmit and receive instructions, Plans or other communications to and from Port. Instructions, Plans, or other communications given to the Contractor's representative or delivered at the Site office in representative's absence shall be deemed to have been given to the Contractor.

10.3 CONTRACTOR'S SUPERINTENDENTS OR FOREPERSON

The Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Port may give, and the Contractor shall be liable for faithful observance of instructions delivered to the Contractor or to authorized representative or representatives on Site.

10.4 PROFICIENCY IN ENGLISH

Supervisors, security guards, safety personnel and employees who have unescorted access to the Site must possess proficiency in the English language

in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.5 CONTRACTOR'S AND SUBCONTRACTORS' EMPLOYEES

The Contractor shall employ, and shall permit the Subcontractors to employ, only competent and skilled personnel to do Work. If Port provides notice to the Contractor explaining that any person on the Work is incompetent, unfaithful or disorderly, or fails to observe customary standards of conduct or refuses to carry out provisions of the Contract Documents, or uses threatening or abusive language to any person on the Work representing Port, or violates sanitary rules, or is otherwise unsatisfactory, and if Port requests that such person be discharged from the Work, then such person shall be immediately discharged from the Work and shall not be employed again on it except with consent of Port.

10.6 CONTRACTOR TO SUPPLY SUFFICIENT WORKERS AND MATERIALS

10.6.1 Unless otherwise required by Port pursuant to the terms of the Contract Documents, the Contractor shall at all times keep on the Site a sufficient amount of materials and employ a sufficient number of qualified workers to prosecute the Work at a rate and in a sequence and manner necessary to complete the Work within the Contract Times. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.

10.6.2 Should the Contractor at any time during progress of the Work, directly or (through Subcontractors) indirectly, refuse, neglect, or be unable to supply sufficient materials or qualified workers to prosecute the Work as required, then upon receipt of notice to that effect from Port, Port or its designee may notify the Contractor, at no cost to Port, to accelerate the Work and/or furnish additional qualified workers or materials as Port may consider necessary, and if the Contractor does not comply with the notice within 3 business days of date of service thereof, Port shall have right but not a duty to provide materials and qualified workers to finish the Work or any affected portion of the Work, as Port may elect. Sums necessary to meet expenses thereby incurred shall be deducted from monies due or which may thereafter become due under the Contract Documents, and paid to persons supplying materials and doing the Work. Amount of such payments shall be deducted from funds or appropriations set aside for purposes of the Contract Documents and charged to the Contractor as if paid to the Contractor. The Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of Port from claims of others.

10.6.3 Exercise by the Port of the rights conferred upon them in Section 10.6.2, immediately above, is entirely discretionary on the part of the Port. The Port shall have no duty or obligation to exercise the rights referred to in Section 10.6.2 above, and the failure to exercise such rights shall not be deemed an approval of existing work progress or a waiver or limitation of

the Port's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon Port under Section 10.6.2 above are cumulative to the Port's other rights under the Contract Documents.

10.7 CONTRACTOR TO LIST TRADES WORKING

The Contractor shall list on a daily basis what trades are working on the Site and their scheduled activities, and provide a copy of that list to the Port.

10.8 CONTRACTOR'S USE OF THE SITE

The Contractor may make no arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the Port and any owner, former owner or tenant of such land, structure or buildings. The Contractor may not occupy Port-owned property outside the limit of the work as shown on the Plans unless it obtains prior approval from the Port.

10.9 PROJECT LABOR AGREEMENT

Contractor shall comply with all requirements imposed upon the "Prime Contractor" and "Contractors" in the Port of Oakland Maritime and Aviation Project Labor Agreement, Document 00823 (as such terms are defined in such Project Labor Agreement). In addition, Contractor shall cause all "Contractors" (as such term is defined in the Project Labor Agreement) that contract under Contractor on this Contract and are covered by the Project Labor Agreement, to comply with the requirements imposed on such "Contractors" under said agreement.

**11. PROSECUTION AND PROGRESS OF THE WORK**

11.1 SCHEDULES AND EXAMINATIONS OF CONTRACT DOCUMENTS

11.1.1 Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon, all applicable field and engineering measurements and all actual conditions. The Contractor shall promptly report in writing to the Port any conflict, error, ambiguity or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Port before proceeding with any Work affected thereby.

11.1.2 The Contractor shall submit an original plus seven copies of the following schedules to the Port at least five days prior to the Pre-Construction Conference for initial review and discussion:

- (a) Progress Schedules and Reports as required by Specification Sections 01320 and 01330.

- (b) Preliminary Schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal, as required by Specification Section 01330. If no such schedule is agreed upon, then all Shop drawings, Samples and product data submittals shall be completed and submitted within thirty (30) business days after receipt of the Notice of Award.
- (c) Preliminary Schedule of Values for all the Work which will include quantities and prices of items aggregating the Contract Sum and will subdivide each schedule of value into component activities in sufficient detail to serve as the basis for progress payments during construction. Such Schedule of Values will include an appropriate amount of overhead and profit applicable to each item of work, will include a line item for project record documents and a line item for project scheduling, and will conform to Specification Section 01200.

11.1.3. Unless otherwise provided in the Contract Documents, at least fifteen (15) days before submission of the First Application for Payment, a conference attended by the Contractor, Port, and others as appropriate, will be held to review for acceptability the final drafts of the schedules referred to in Subsection 11.1.2, above. The Contractor shall have an additional fifteen (15) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be due or owing to the Contractor until the schedules referred to in subsection 11.1.2, above are submitted to and acceptable to the Port and/or Architect/Engineer as meeting the requirements of the Contract Documents (including Specification Sections 01200, 01320 and 01330). The Port's acceptance of the Contractor's schedules will not create any duty of care or impose on the Port any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve the Contractor from the Contractor's full responsibility therefor. Schedules shall be updated and completed as required by Specification Sections 01200, 01320 and 01330.

11.1.4 Before commencing any portion of the Work, the Contractor shall, to permit proper inspection of the Work and to assure measurements necessary for record and payment, inform the Port in writing as to time and place at which the Contractor wishes to commence the Work and the nature of the Work to be done. Information shall be given to the Port a reasonable time in advance of time at which the Contractor proposes to begin Work, so that Port may make necessary preliminary work without inconvenience or delay to the Contractor. If the Port so requires, the Contractor shall submit weekly, a rolling three (3) week schedule, listing the activities anticipated to be performed along with the dates for which work is expected to be performed.

11.1.5 The Contractor shall submit submittals and shop drawings to Port for review in accordance with Section 01330 Submittals. Submission of a Shop Drawing shall constitute the Contractor's representation that all

requirements of Section 01330 Submittals have been complied with. All submittals will be identified as Port may require and in the number of copies specified in Section 01330 Submittals.

- 11.1.6 The Contractor shall not perform any Work requiring submission of a Shop Drawing or Sample or other submittal prior to submission and a favorable review thereof. Where a Shop Drawing or Sample or other submittal is required by the Contract Documents or the final schedule of Shop Drawing and Sample submissions accepted by the Port, any related Work performed prior to Port's approval of the pertinent submittal will be at the sole expense, responsibility and risk of the Contractor.
- 11.1.7 The Contractor shall utilize the Progress Schedules in planning, scheduling, coordinating, performing and controlling the Work (including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). The Contractor shall update the Progress Schedules on a monthly basis for purpose of recording and monitoring the progress of the Work and evaluating and preparing the Contractor's monthly progress payments.

## 11.2 LINES AND GRADES, MEASUREMENTS

- 11.2.1 Work shall be done to lines and grades established by the Contractor at the Contractor's cost in accordance with Contract Documents, unless the Port, in its sole discretion, directs otherwise. Existing monuments and monuments, stakes, and marks must be carefully preserved by the Contractor. If such monuments, stakes, or marks are destroyed or damaged, they shall be replaced immediately. The Contractor will be charged for the cost of replacing or restoring monuments, stakes, and marks destroyed or damaged by reason of its operations. If the removal of a control point is required by the construction operations of the Contractor, advance notice of at least two full working days must be given to the Port, who will reference and remove said control point at no cost to the Contractor.

The Contractor must take field measurements and verify field conditions consistent with prudent construction industry standards and must carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before the performance of any work. Errors, inconsistencies, or omissions in the Contract Documents discovered by the Contractor must be reported to the Port at once.

- 11.2.2 At the Port's request, the Contractor shall, without charge, provide workers from the Contractor's force, and tools and materials, to assist the Port temporarily in making measurements and surveys and in establishing temporary or permanent reference marks. At times it may be necessary to discontinue portions of the Work in order for the Port to make measurements or surveys without interruptions or other interference that might impair accuracy of results. At any time, on the

Port's request, the Contractor shall discontinue Work to such extent as may be necessary for the Port's purposes.

- 11.2.3 No direct payment will be made for the Contractor's cost of any Work or delay occasioned by establishing or checking lines and grades or making other measurements, or by inspection, and no extension of time will be allowed for such delays.

### 11.3 COST DATA

- 11.3.1 The Contractor shall maintain full and correct information as to number of workers employed in connection with each subdivision of the Work, classification and rate of pay of each worker in form of certified payrolls, cost to Contractor of each class of materials, tools and appliances used by Contractor in the Work, and amount of each class of materials used in each subdivision of the Work. The Contractor shall provide the Port with written monthly summaries of this information. If the Contractor maintains summaries or reports comparing actual Project costs with Bid estimates or budgets, it shall provide the Port with a copy of such report whenever it is generated.
- 11.3.2 The Contractor shall maintain daily job reports recording all significant activity on the Project, including the number of workers on the Site, Work activities, problems encountered and delays. The Contractor shall take weekly progress photographs of all areas of the Work. The Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors. The Contractor shall report to its sureties promptly upon receiving requests from its sureties to provide reporting. The Contractor shall provide daily job reports as required by the Port and/or specified in Section 01320.
- 11.3.3 The Port shall have the right to audit the Contractor's books and records and to inspect the Site, including the Contractor's trailer, or other job site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. The Port shall have the right to inspect and obtain copies of the following documents at all times: all Contract Documents, all planning and design documents, all Bid proposal and negotiation documents, all design modification proposals, all value engineering or other cost reduction proposals, all revisions made to the original design, and all job progress reports and photographs, and as-built drawings maintained by the Contractor.
- 11.3.4 The Contractor shall maintain in a safe place at the Site one record copy of all Plans, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents, together with all approved Samples and a counterpart of all approved Shop drawings, shall be maintained and be available to the Port for reference. Upon completion of the Work, these Record Documents, Samples and Shop drawings and as-built drawings shall be delivered to the Port.



- 11.3.5 The Port shall have the right to inspect all information and documents maintained under this Section 11.3 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall be specifically enforceable in a court of law, either independently, or in conjunction with enforcement of any other rights in the Contract Documents. The Port's right of inspection shall not relieve the Contractor of its duties and obligations under the Contract Documents.
- 11.3.6 The Contractor shall obtain and maintain and shall furnish to the Port on completion of the Work or at any other time requested by the Port, all necessary permits, licenses, approvals, authorizations, notifications, training certificates, respirator certificates, reports, correspondence, test results, air monitoring certificates, forms, medical records, medical certificates, notes and photographs of work conditions, approved shipping and disposal facility receipts, manifests, and all other documentation required by the Contract Documents or applicable Law, or both.
- 11.3.7 The Contractor shall provide the Port with copies of each such document as it is generated and shall, as a condition to final payment, provide the Port with a complete set of such documents (bound, organized and indexed) at the conclusion of the Work. The Contractor shall keep and maintain in retrievable files true and correct copies of all such documents for a period of not less than thirty (30) years after final completion of the Work. The Port shall have the right to inspect or photocopy these records and, if the Contractor should cease business operations, then it shall furnish these records to the Port.

## **12. CLAIMS BY THE CONTRACTOR**

### **12.1 GENERAL**

- 12.1.1 Contract Interpretation Disputes: Should it appear to the Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, the Contractor shall give written notice to the Port. The Contractor shall bear all costs incurred in the giving of such notice. All issues regarding the interpretation of the Plans or Specifications shall be referred to the Port for interpretation and determination. The Port shall have the right but not the obligation to affirm or disaffirm any Architect/Engineer interpretation of the Plans or Specifications, which affirmance or disaffirmance shall be final. All issues regarding the General Conditions, Division 1 Specifications or non-engineering or non-technical aspects of the Work shall be determined by the Port whose determination shall be final. If the Contractor should disagree with the Port's determination regarding any aspect of the Contract Documents, the Contractor's sole and exclusive remedy is to file a claim in accordance with this Section. Notwithstanding and pending the resolution of any

claim, the Contractor shall diligently prosecute the Disputed Work (as defined in Section 12.2.1) to Final Completion.

- 12.1.2 Work Disputes: Should any dispute arise under the Contract Documents respecting the true value of any Work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra Work which the Contractor may be required to perform or time extensions, respecting the size of any payment to the Contractor during the performance of the Contract Documents, or of compliance with Contract Documents procedures, the dispute shall be decided by the Port and its decision shall be final and conclusive. If the Contractor disagrees with the Port's decision, the Contractor's sole and exclusive remedy is to file a claim in accordance with this Section 12. Notwithstanding and pending the resolution of any claim, the Contractor shall diligently prosecute the Disputed Work to Final Completion.
- 12.1.3 Claim" means a written demand or written assertion by the Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of the Contract Documents terms, or other relief arising under or relating to the Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under Section 12 of Document 00700 General Conditions.
- 12.1.4 A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.
- 12.1.5 The provisions of this Section 12 survive termination or completion of the Contract Documents. The Contractor shall bear all costs incurred in the preparation and submission of a claim.
- 12.1.6 Contractor shall impose the claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to the Contractor all claims against Contractor and/or Port within the times and containing the documentation required by this Section 12. The claim notice and documentation procedure described in this Section 12 applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific portion of the Contract.

## 12.2 PROCEDURES

- 12.2.1 Should any clarification, determination, action or inaction by the Port or Architect/Engineer, Work, or any other event, in the opinion of the Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in the Contractor seeking additional compensation in time or money for any reason (collectively "Disputed Work"), then the Contractor and the Port shall make good faith attempts

to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven (7) calendar days after Contractor's first knowledge of the Disputed Work, whichever is earlier, the Contractor must file a written notice of the Disputed Work with the Port stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written notice of Disputed Work is not issued within this time period, or if the Contractor proceeds with the Disputed Work without first having given the notice required by this Section, the Contractor shall waive its rights to further claim on the specific issue.

- 12.2.2 The Port will review the Contractor's timely notice of Disputed Work and provide a written decision. If, after receiving the decision, the Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of the Contract Documents, it shall so notify the Port, in writing, within seven (7) calendar days after receiving the decision, that a formal claim will be issued. Within thirty (30) calendar days of receiving the decision, the Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. The Contractor's failure to furnish notification within seven (7) calendar days and all justifying documentation within thirty (30) calendar days will result in the Contractor waiving its right to the subject claim. If Disputed Work persists longer than thirty (30) days, then the Contractor shall, every thirty (30) days until the Disputed Work ceases, submit to the Port a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. The Contractor's failure to submit a Claim Update or to quantify costs every thirty (30) days shall result in waiver of the claim for that thirty (30) day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with this Section and shall result in the Contractor waiving its claim(s).
- 12.2.3 Upon receipt of the Contractor's formal claim including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as previously stipulated, the Port or its designee will review the issue and render a final determination.
- 12.2.4 Claims shall be calculated in the same manner as Change Orders per Section 01250. EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), PORT SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CLAIMS SHALL NOT INCLUDE SPECIAL OR CONSEQUENTIAL DAMAGES. CONTRACTOR SHALL BE LIMITED IN ITS RECOVERY ON CLAIMS TO THE CHANGE ORDER CALCULATIONS SET FORTH IN SECTION 01250.

### 12.3 CLAIM FORMAT

The Contractor shall submit the claim justification in the following format: (a) Cover letter and certification of the accuracy of the contents of the claim, (b)

summary of claim including underlying facts, entitlement, quantum calculations and Contract Document provisions supporting relief, (c) list of documents relating to claim including specifications, Plans, clarifications/requests for information, schedules and others, (d) chronology of events and correspondence, (e) analysis of claim merit, (f) analysis of claim cost, and (g) attach supporting documents referenced in (c).

#### 12.4 EXCLUSIVE REMEDY

The Contractor's performance of its duties and obligations specified in this Section 12 and submission of a claim as provided in this Section 12 is the Contractor's sole and exclusive remedy for the payment of money, extension of time, the adjustment or interpretation of Contract Documents terms or other contractual or tort relief arising from the Work. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by the Port, its representatives, consultants or agents, or the transfer of the Work or the Project to the Port for any reason whatsoever. The Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the notice and claim submission procedures described in this Section 12 is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No claim or issues not raised in a timely protest and timely claim submitted under this Section 12 may be asserted in any Government Code Claim, subsequent litigation, or legal action. The Port shall not have deemed to waive any provision under this Section 12, if at the Port's sole discretion, a claim is accepted in a manner not in accord with Section 12.

#### 12.5 MEDIATION

All claims not subject to the claim resolution procedures set forth in Section 01410 (Regulatory Requirements) shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

### 13. LEGAL AND MISCELLANEOUS

#### 13.1 LAWS AND REGULATIONS

13.1.1 The Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority, including the Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses")

and Port Ordinance No. 3666 entitled “An Ordinance Establishing a Living Wage Requirement”), affecting the Contract Documents, the Work and persons connected with Work, and shall protect and indemnify the Port and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by the Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of the Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

- 13.1.2 Whenever the Plans and Specifications require large sizes or higher standards than are required by any applicable law, ordinance, regulation or order, the Plans and Specifications shall govern. Whenever the Plans and Specifications require something which will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
- 13.1.3 COMPLIANCE WITH LAWS. The Contractor represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state and local laws, statutes standards, rules, regulations and ordinances applicable to the Work (collectively, the “Law”) relating to:
- (a) the protection of the public health, welfare and environment,
  - (b) storage, handling or use of asbestos, PCB, lead, petroleum based products or other hazardous materials,
  - (c) the generation, processing, treatment, storage, transport, disposal, destruction or other management of asbestos, PCB, lead, petroleum or hazardous waste materials or other waste materials of any kind, or
  - (d) the protection of environmentally sensitive areas such as wetlands.
- 13.1.4 DISPOSAL. The Contractor has the sole responsibility for determining current waste storage, handling, transportation and disposal regulations for Hazardous Materials, Hazardous Wastes or any other materials or waste at the Site. Contractor shall be responsible for selecting each waste disposal facility from those on the Port’s approved list provided under this Contract. The Contractor must comply fully at its sole cost and expense with these regulations and any applicable Law. Nothing herein shall be interpreted to impose upon Contractor responsibility for the negligence or willful misconduct of the waste disposal facility, if such waste disposal facility is on the Port’s current approved list of disposal sites/designated facilities, as further described below. The Port may, but is not obligated to, require submittals with information regarding the chosen waste disposal facility or the negligence or willful misconduct of the waste disposal facility for it to review consistent with the Contract Documents.

The Contractor shall develop and implement a system acceptable to the Port to track Hazardous Waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that the Port may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.

The Contractor shall dispose of Hazardous Waste, designated waste, universal waste, and other contaminated materials removed from Port project sites at disposal sites/designated facilities listed in Document 00805, Supplemental General Conditions—Hazardous Materials.

The Contractor shall use the disposal sites listed in Document 00805, Supplemental General Conditions—Hazardous Materials, whether the Work is covered under OCIP or not.

However, for projects covered by the OCIP, any disposal site used must also meet the following four criteria:

1. Such facility shall be properly licensed to accept and dispose of waste and in compliance with applicable Environmental Laws;
2. As of 7/14/09, such facility is not listed, not proposed and has never been listed on the Federal National Priorities List (Superfund), State equivalent list, or Local equivalent list;
3. As of 7/14/09, such facility is not subject to Federal information requests under Section 104(c) of CERCLA or Section 3007 (a) of RCRA or, State or Local equivalent requests; and
4. As of or date that the waste is accepted from the Named Insured, whichever is later, the non-owned location, its owners and operators are not in bankruptcy or financial insolvency.

If the disposal sites listed on Document 00805 do not meet the above-listed OCIP criteria, the Contractor must use an alternate disposal site which does meet all of the above-listed criteria.

Please note that the list provided in Document 00805 will be revised from time to time and may not be current. Prior to considering use of any of the listed disposal sites/designated facilities, a current list should be obtained either from the Port Risk Management Department or Environmental and Safety Department.

The Contractor shall obtain documentation of the actual disposal or destruction of waste at a designated facility through a disposal certificate or certificate of destruction and forward the original to the Port.

- 13.1.5 With respect to hazardous wastes of hazardous substances which originate at the Site and are not brought onto the Site by the Contractor, the Contractor shall not have liability as an owner, operator, generator or discharger of such hazardous wastes or hazardous substances under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. section 9601 *et seq.*) the Carpenter-Presely-Tanner

Hazardous Substance Account act (Cal. Health & Safety Code Section 25300 *et seq.*) the Porter Cologne Water Quality Control Act (Water Health & Code Section 25100 *et seq.*) or the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 *et seq.*). Contractor shall, however, have liability for performing this Contract, and such liability shall include the responsibility to fully and completely comply with the foregoing statutes and all other applicable federal, state and local laws, statutes, standards, rules, regulations, orders or permits that apply to the work.

After Final Completion of the Work by the Contractor in accordance with the Contract Documents, subject to its continuing obligation under the Contract Documents (including, without limitation, its obligation under the representations, warranties and guaranties with respect to the Work performed), Contractor shall not be responsible for the performance of any further remedial action, removal actions or cleanup of hazardous waste or hazardous substances at the Site that the Port may be ordered, directed or required to perform by any governmental authority after the date of Final Completion, unless such remedial action, removal action or cleanup is necessary because of the Contractor's failure to perform this Contract, any negligence in the performance of the Work, or any willful misconduct in connection with the performance of the Work.

Nothing in this Paragraph 13.1.5 shall limit or restrict the liability or responsibility of the Contractor (or any of its subcontractors, consultants, employees or agents) in the event of any failure to perform or comply with the terms of the Contract Documents, any negligence in the performance of the Work, or any willful misconduct in connection with the performance of the Work, nor shall this Paragraph in any way limit or restrict the Contractor's responsibilities under the Contract Documents and applicable law in connection with the handling, transport, storage or disposal of hazardous waste or hazardous substances and/or the arranging therefor.

## 13.2 PERMITS AND TAXES

13.2.1 The Contractor shall procure all permits and licenses, pay all charges and fees, including fees for street opening permits, and give all notices necessary and incident to due and lawful prosecution of the Work, unless otherwise provided herein. The Port will pay applicable building permit and plan checking fees charged by the City of Oakland, but no mark ups will be allowed on these costs. The Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads and other works in advance of operations, even where permits for the Work may have already been obtained by the Port.

Before performing any of the Work, and at such other times as may be required by applicable Law, the Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. The

Contractor shall submit evidence satisfactory to the Port that it and any disposal facility (i) have obtained all required permits, approvals and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable Law, and (ii) are in compliance with all such permits, approvals and the like. For example, before commencing any work in connection with the Work involving asbestos-containing materials or PCB subject to regulation, the Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to the Port. The Contractor shall not conduct any Work involving asbestos-containing materials or PCB unless the Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, bonds required by governmental or quasi-governmental authorities, fees, deposits, tap fees, offsite easements and asbestos and PCB disposal facilities necessary for the prosecution of the Work shall be procured and paid for by the Contractor. The Contractor shall give all notices and comply with the Law bearing on the conduct of the Work as drawn and specified. If the Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying the Port in writing of such fact. If the Contractor performs any Work contrary to the Law without such notice to the Port, it shall bear all costs arising therefrom.

In the case of any permits or notices held in the Port's name or of necessity to be made in the Port's name, the Port shall cooperate with the Contractor in securing the permit or giving the notice, but the Contractor shall prepare for the Port's review and execution upon approval, all necessary applications, notices and other materials.

- 13.2.2 The Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into the Work, and all other taxes properly assessed against equipment or other property used in connection with the Work, without any increase in the Contract Sum. Without means of limitation, Contractor shall be responsible for any documentary, excise, stamp and transfer tax and any sale, use or other tax imposed by reason of the design, delivery, sale, transfer, or installation of the materials, supplies, equipment or other property purchased and used on or incorporated into the Work, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Contractor represents that Contractor has, or will obtain prior to the transfer of title of any materials, supplies, equipment or other property purchased and used on or incorporated into the Work, the necessary seller's permit as required by the State of California. Contractor represents that it will collect, report, and pay all sales and or use taxes arising out of the Work to the State Board of Equalization. Upon full payment Contractor will issue Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving Port of all liability for



any tax relating to the materials, supplies, equipment or other property purchased and used on or incorporated into the Work.

### 13.3 RESPONSIBILITY OF THE CONTRACTOR AND INDEMNIFICATION

13.3.1 The Port, City, and each of their officers, employees, consultants and agents, including, but not limited to, the Board, the Port and each Port representative, shall not be liable or accountable in any manner for:

- (a) loss or damage that may happen to the Work or any part thereof;
- (b) loss or damage to materials, equipment, tools or other things used or employed in performing the Work;
- (c) injury, sickness, disease, or death of any person, including, but not limited to, workers and the public; or
- (d) damage to property;

resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and the Contractor releases all of the foregoing persons and entities from any and all such claims.

13.3.2 To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), the Contractor shall assume defense of, and indemnify, and hold harmless the Port, City, and each of their officers, employees, consultants and agents, including, but not limited to, the Board, the Port and each Port representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorneys' fees and consultants' fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of the Contractor, Subcontractors, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of the Port or by any person or entity required to be indemnified hereunder.

13.3.3 With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the Port, City, and each of their officers, employees, consultants and agents, including, but not limited to, the Board, the Port and each Port representative.

13.3.4 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Contractor, its Subcontractors of any tier, or the officers or agents of any of them.

13.3.5 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of

liability, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party[s] indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, or completion of the Contract Documents. If the Contractor fails to perform any of these defense or indemnity obligations, the Port may in its discretion backcharge the Contractor for its costs and damages resulting therefrom and withhold such sums from progress payments or other contract monies which may become due.

- 13.3.6 The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to the Port to the extent of its active negligence.
- 13.3.7 Notwithstanding all of the foregoing, Contractor waives any and all claims against the Port, its officers, agents, employees, consultants, and representatives, and any other participant in the OCIP program, for loss, cost, damage or expense arising out of the Project or the Work to the extent any such loss, cost, damage or expense is covered by insurance.
- 13.3.8 To the greatest extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement and disposal of hazardous waste. This includes liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. §§ 9601 et seq).

#### 13.4 NOTICE OF CONCEALED OR UNKNOWN CONDITIONS

- 13.4.1 Before commencing work of digging trenches or excavation, the Contractor shall review all information available regarding subsurface conditions, including but not limited to information indicated in the Contract Documents or supplied in Document 00320, Existing Conditions and Geotechnical Data.
  - (a) In the case of any Underground Facilities which are located on Port property and are used to furnish services on Port property or are under the operation and control of the Port, or in any other case in which the Underground Services Alert does not provide an inquiry notification number and notify its members who have subsurface installations in the area of the proposed excavation, then the Contractor shall be fully responsible for locating the Underground Facilities and protecting such Underground Facilities during excavation. In locating the Underground Facilities Contractor shall investigate all records identified by the Port relative to the location of such Underground Facilities and shall make use of all necessary industry locating techniques and/or engage qualified locating service to perform such services for the Contractor. The Contractor shall undertake no excavation Work

until such time that the Underground Facilities are located and field marked or determined not to be in the area of excavation. Thereafter, subject to the further requirements in the Specifications, Contractor shall determine the exact location of the Underground Facilities by excavating with hand tools within the area of the location of the Underground Facilities. Contractor shall provide the Port with adequate prior written notice of its proposed excavation work in an area containing Port Underground Facilities, and shall submit for Port's approval its plan for locating and protecting the Underground Facility from damage due to the excavation work. The Port's favorable review of such plan shall in no way limit or restrict the responsibility of the Contractor under the Contract Documents and at law and Contractor shall not rely upon the Port's review as a representation of the location of the Underground Facility, the suitability of the plan or its compliance with law.

- (b) Subject to the terms and conditions of these documents, the Contractor shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."

The Contractor shall contact the regional notification center, "Underground Service Alert" ("USA"), and schedule the work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. The Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, the Contractor shall provide the Port with copies of all USA records secured by the Contractor. The Contractor shall advise the Port of any conflict between information provided in Document 00320, Existing Conditions and Geotechnical Data, and that provided by USA records.

- 13.4.2 If either of the following conditions is encountered at Site, the Contractor shall give written notice to the Port promptly before conditions are disturbed (except in an emergency as required by Section 16.4), and in no event later than seven (7) days after first observance of:
- (a) Subsurface or latent physical conditions which differ materially from those indicated in the Contract Documents.
  - (b) Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- 13.4.3 In response to the Contractor's written notice under Section 13.4.2 above, the Port will investigate the identified conditions, and if they differ materially and cause increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Port will issue a Change Order under the procedures described in the Contract Documents.
- 13.4.4 If the Port determines that physical conditions at the Site are not latent or are not materially different from those indicated in the Contract Documents or that no change in terms of the Contract Documents is justified, the Port shall so notify the Contractor in writing, stating reasons. If the Port and the Contractor do not agree on an adjustment in Contract Sum or Contract Times, the Contractor shall proceed with the Work as directed by the Port and may file a claim as provided in Section 12 hereof.
- 13.4.5 The Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Times regarding claimed latent or materially different Site conditions if:
- (a) The Contractor knew of the existence of such conditions at the time the Contractor submitted its Bid; or
  - (b) The Contractor should have known of the existence of such conditions as a result of having complied with the requirements of the Contract Documents, including without limitation Section 2.1 and 13.4.1 herein; or
  - (c) The information or conditions claimed by the Contractor to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that Sections 2.2 and 2.3 herein precludes reliance upon; or
  - (d) If the Contractor was required to give written notice under Section 13.4.2 herein and failed to do so within the time required.
- 13.4.6 If the Port and the Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or

Contract Times required under this Section, the Contractor may make a claim as provided in Section 12.

13.4.7 The cost of all of the following will be included in the Contract Sum and the Contractor shall have full responsibility for:

- (a) Reviewing and checking all available information and data, including but not limited to, Document 00320, Existing Conditions and Geotechnical Data, and information on file at USA and at the Port's utilities department;
- (b) Locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation, including but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing;
- (c) Coordination of the Work with the owners of such Underground Facilities during construction; and
- (d) The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

13.4.8 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by the Port or in information on file at USA, or is otherwise reasonably available to the Contractor, then the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven (7) days), and prior to performing any Work in connection therewith (except in an emergency as required by Section 16.4), identify the owner of such Underground Facility and give written notice to that owner and to the Port. During such time, the Contractor shall be responsible for the safety and protection of such Underground Facility.

13.4.9 The Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by the Port only where the Underground Facility:

- (a) Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00320, Existing Conditions and Geotechnical Data, or in information on file at USA; and
- (b) The Contractor did not know of it; and
- (c) The Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an

Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to the Contractor pursuant to Document 00320 Existing Conditions and Geotechnical Data, in information on file at USA, or otherwise reasonably available to the Contractor.)

13.4.10 The Contractor shall bear the risk that Underground Facilities not owned or built by the Port may differ in nature or locations shown in information made available by the Port pursuant to Document 00320, Existing Conditions and Geotechnical Data, in information on file at USA, or otherwise reasonably available to the Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations and the Contractor is to apply its skill and industry to verify the information available.

13.4.11 If the Contractor stops Work in connection with any changed condition and in any area affected thereby, the Contractor shall immediately redeploy its Subcontractors, workmen, equipment and materials, as necessary, to other portions of the Work to minimize delay and disruption.

13.4.12 The Site is located in an urban area, with industrial businesses in the vicinity, in an area that was previously filled. The Contractor should anticipate encountering hazardous materials and irregular conditions or materials in the soil at the Site.

## 13.5 NOTICE OF HAZARDOUS WASTE OR MATERIALS CONDITIONS

13.5.1 Notice by the Contractor shall be given in writing to the Port promptly, before any of the following conditions are disturbed (except in an emergency as required by Section 16.4), and in no event later than 24 hours after first observance, of any:

- (a) material that the Contractor believes may be material that is hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
- (b) other material which may present a substantial danger to persons or property exposed thereto in connection with Work at the Site.

Except as otherwise provided in the Contract Documents or as provided by applicable law, the Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous waste or hazardous material where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous

waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where the Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.

- 13.5.2 The Contractor's written notice under Section 13.5.1 above shall indicate whether the hazardous waste or material was brought to the Site by the Contractor, its Subcontractors, suppliers, or anyone else for whom the Contractor is responsible.
- 13.5.3 In response to the Contractor's written notice under Section 13.5.1 above, the Port shall promptly investigate the identified conditions, and if it finds that conditions do involve hazardous waste or hazardous materials which causes a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Port will issue a Change Order under the procedures required by the Contract Documents.
- 13.5.4 If the Port determines that conditions do not involve hazardous waste or hazardous materials or that no change in Contract Documents terms is justified, the Port shall so notify the Contractor in writing, stating reasons. If the Port and the Contractor cannot agree on an adjustment in Contract Sum or Contract Times, the Contractor shall proceed with the Work as directed by the Port and may file a claim as provided under Section 12.
- 13.5.5 The Contractor shall not be entitled to any adjustment in the Contract Sum or Times regarding claimed hazardous waste or hazardous materials if:
- (a) The Contractor knew of the existence of such hazardous material or hazardous waste at the time the Contractor submitted its bid, including information supplied in Document 00340 Hazardous Material Surveys or information obtained by any Port consultant as a result of the Port's consultant's additional or supplementary examinations, investigations, explorations, tests, studies and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
  - (b) The Contractor should have known of the existence of such hazardous material or hazardous waste as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
  - (c) If the Contractor failed to give the written notice within the time required under Section 13.5.1 above.
- 13.5.6 If after receipt of notice from the Port, the Contractor does not agree to resume work based on a reasonable belief it is unsafe, or does not agree to resume work under special conditions, then the Port may order such

portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work or performed by others, or the Port may invoke its rights to terminate the Contractor's right to proceed under the Contract Documents in whole or in part. The Port will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Sum or Contract Times as a result of deleting such portion of Work, or performing the Work by others. If the Contractor does not agree with the Port's determination, it may make a claim therefore as provided in Section 12.

13.5.7 If the Contractor stops Work in connection with any hazardous condition and in any area affected thereby, the Contractor shall immediately redeploy its Subcontractors, workmen, equipment and materials, as necessary, to other portions of the Work to minimize delay and disruption.

13.5.8 Notwithstanding any of the foregoing, Contractor shall not perform remediation of or clean up work of hazardous or regulated materials, substances or waste without first receiving written pre-approval from the Port of (a) such work and (b) any and all contractors and subcontractors responsible for carrying out such work.

#### 13.6 SUSPENSION OF WORK

The Port may, without cause, order the Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as the Port may determine. An adjustment shall be made for increases in cost of performance of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01250. No adjustment shall be made to extent: (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (b) that an equitable adjustment is made or denied under another provision of the Contract Documents; or (c) that the suspension of work was the direct or indirect result of the Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, the Contractor may file a claim under Section 12 herein.

#### 13.7 TERMINATION OF CONTRACT FOR CAUSE

13.7.1 The Contractor shall be in default of the Contract Documents and the Port may terminate the Contractor's right to proceed under the Contract Documents, for cause:

- (a) Should the Contractor make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, filing any



answer admitting or not contesting the material allegations of a petition filed against the Contractor in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of the Contractor or of all or any substantial part of its properties or if the Contractor, its directors or shareholders, take action to dissolve or liquidate the Contractor; or

- (b) Should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from the Port to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide the Port within the 10 day period with a written plan acceptable to the Port to cure said breach, and then diligently commence and continue such cure according to the written plan); or
- (c) Should the Contractor violate or allow (by a Subcontractor or other person or entity for which the Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within ten (10) days of the date of the notice from the Port to the Contractor demanding such cure; or, if such violation is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide the Port within the 10 day period with a written plan to cure said violation acceptable to the Port, and then diligently commence and continue performance of such cure according to the written plan.)

13.7.2 If the Port at any time reasonably believes that the Contractor is or may be in default under the Contract Documents, as defined above, the Port may in its sole discretion notify the Contractor of this fact and request written assurances from the Contractor of performance of the Contract Documents and a written plan from the Contractor to remedy any default under the terms of the Contract Documents which the Port may advise the Contractor of in writing. Failure of the Contractor to provide written assurances of performance as required herein within ten (10) days of demand will constitute a material breach of the Contract Documents sufficient to invoke Section 13.7.1.(b) above.

13.7.3 In event of termination for cause, the Port shall immediately serve written notice thereof upon Surety and the Contractor. Surety shall have the rights and obligations set forth in Document 00610, Construction Performance Bond ("Performance Bond"). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default

thereunder), the Port may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.

13.7.4 In the event of termination by the Port as provided in Section 13.7.1 above for cause,

- (a) The Port shall compensate the Contractor for the value of the Work delivered to the Port upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and backcharges, and provided that the Contractor provides the Port with updated as-builts and Project record documents showing the Work performed up to the date of termination. However, the Port shall not compensate the Contractor for its costs in terminating the Work or any cancellation charges owed to third parties;
- (b) The Contractor shall deliver to the Port possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which the Port may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate the Port for all loss, cost, damage, expense, and/or liability suffered by the Port as a result of such termination and failure to comply with the Contract Documents.

13.7.5 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with the provisions of the Contract Documents on claims and calculated in accordance with the provisions of the Contract Documents on Change Orders and claims. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

13.7.6 Notwithstanding anything in Section 13.7 to the contrary, the Port shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should the Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents or the Law on any matter involving the exposure of persons or property to hazardous waste. However, if the breach exposing

persons or property to hazardous waste is due solely to an ordinary, unintentional and non-reckless failure to exercise reasonable care, then the procedures in Section 13.7 for termination for default shall apply without modification.

### 13.8 TERMINATION OF CONTRACT FOR CONVENIENCE

13.8.1 The Port may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever the Port shall determine that termination is in the Port's best interest. Termination shall be effected by the Port delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

13.8.2 After receiving a notice of termination under Section 13.8.1 above, and except as otherwise directed by the Port, the Contractor shall:

- (a) Stop Work under the Contract Documents on date and to extent specified in notice of termination;
- (b) Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
- (c) Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
- (d) Assign to the Port in manner, at times, and to extent directed by the Port, all right, title, and interest of the Contractor under orders and subcontracts so terminated. The Port shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
- (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of the Port to extent the Port may require. The Port's approval or ratification shall be final for purposes of this Section;
- (f) Transfer title to the Port, and deliver in the manner, at the times, and to the extent, if any, directed by the Port, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed plans, plans, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to the Port;
- (g) Use its best efforts to sell, in manner, at times, to extent, and at price or prices that the Port directs or authorizes, any property of

types referred to in Section 13.8.2.(f) above, but the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by the Port. Proceeds of transfer or disposition shall be applied to reduce payments to be made by the Port to the Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by the Contract Documents or paid in such other manner as the Port may direct;

- (h) Complete performance of the part of the Work which was not terminated by the notice of termination; and
- (i) Take such action as may be necessary, or as the Port may direct, to protect and preserve all property related to the Contract Documents which is in the Contractor's possession and in which the Port has or may acquire interest.

13.8.3 After receipt of a notice of termination, the Contractor shall submit to the Port its termination claim, in form and with all certifications required by the Contract Documents. The Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. The Contractor and the Port may agree upon the whole or part of the amount or amounts to be paid to the Contractor because of a total or partial termination of Work under this Section 13.8. If the Contractor and the Port fail to agree on the whole amount to be paid to the Contractor because of the termination of the Work under this Section 13.8, the Port shall determine, based on information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor for Work specified in the Contract Documents which is performed before the effective date of the termination, the total (without duplication of any items) of -

- (a) The reasonable cost to the Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. In determining reasonable cost, deductions will be made for cost of materials to be retained by the Contractor, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of 10 percent of direct costs of such work.
- (b) When, in the Port's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

- (c) A reasonable allowance for profit on cost of Work performed as determined under Subsection 13.8.3.a, provided that the Contractor establishes to the Port's satisfaction that the Contractor would have made a profit had the Project been completed, and provided further that the profit allowed shall not exceed 5 percent of cost.
- (d) Reasonable costs to the Contractor of handling material returned to vendors, delivered to the Port or otherwise disposed of as directed by the Port.
- (e) A reasonable allowance for the Contractor's administrative costs in preparing termination claim.
- (f) The Port shall have no obligation to pay the Contractor under this Section 13.8 unless and until the Contractor provides the Port with updated and acceptable as-builts and Project record documents for Work completed prior to termination.

In no event shall the Port be liable for costs incurred by the Contractor or subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting the Contractor's Bid, attorney's fees and all other costs relating to prosecution of claim or lawsuit.

13.8.4 In arriving at the amount due the Contractor under this clause there shall be deducted:

- (a) all unliquidated advances or other payments on account previously made to the Contractor which are applicable to the terminated portion of the Contract Documents,
- (b) any claim which the Port may have against the Contractor in connection with the Contract Documents, and
- (c) the agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold under provisions of Section 13.8, and not otherwise recovered by or credited to the Port.

## 13.9 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

The Contractor hereby assigns to the Port each Subcontract for a portion of the Work, provided that:

13.9.1 The assignment is effective only after the Port's termination of the Contractor's right to proceed under the Contract Documents (or portion

thereof relating to that Subcontract) pursuant to Sections 13.7 or 13.8 above;

13.9.2 The Assignment is effective only for the Subcontracts which the Port expressly accepts by notifying the Subcontractor in writing;

13.9.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by the Performance Bond provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;

13.9.4 After the effectiveness of an assignment, the Contractor shall, at its sole cost and expense (except as otherwise provides in Sections 13.7 or 13.8 above), sign all instruments and take all actions reasonably requested by the Port to evidence and confirm the effectiveness of the assignment in the Port; and

13.9.5 Nothing in this Section 13.9 shall modify or limit any of the Contractor's obligations to the Port arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold harmless obligations arising from or related to the assigned Subcontract.

#### 13.10 REMEDIES

Subject to the Contract Documents provisions regarding the Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter-claims, disputes and other matters in question between the Port and the Contractor arising out of or relating to the Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of Alameda. All Port remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances the Port shall have any and all other equitable and legal rights and remedies which it would have according to law.

#### 13.11 PATENTS

Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall have been included in the Bid price for doing the Work. The Contractor shall defend, indemnify and hold harmless the Port, City, and each of their officers, employees, consultants and agents, including, but not limited to, the Board, the Port and each Port representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which the Contractor

agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.12 SUBSTITUTION FOR PATENTED AND SPECIFIED ARTICLES

Except as noted specifically in the Contract Documents, whenever in the Contract Documents a material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired and shall be deemed to be followed by the words "or equivalent." The Contractor may offer any substitute material or process which the Contractor considers equal in every respect to that so designated, and if the material or process offered by the Contractor is, in the Port's opinion, equal in every respect to that so designated, its use will be approved. The Contractor shall submit to the Port a separate request for substitution pursuant to Section 01620 Product Options and Substitutions of the Specifications.

13.13 INTEREST OF PUBLIC OFFICERS

No representative, officer, or employee of the Port, no member of the governing body of the locality in which the Project is situated, no member of the locality in which the Port is located, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

To the greatest extent permitted by law, neither Contractor nor any subconsultant or subcontractor performing work under this contract shall employ, hire, engage or otherwise contract with any employee of Port or a Port consultant during the period of performance of the Contract Documents and for a period of two years following the completion of the Program. Contractor acknowledges with monetary damages. This provisions shall be specifically enforceable.

13.14 LIMIT OF LIABILITY

PORT, CITY, AND EACH OF THEIR OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS, AND EACH PORT REPRESENTATIVE SHALL HAVE NO LIABILITY TO THE CONTRACTOR FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

13.15 SEVERABILITY

Any provisions or portions thereof of the Contract Documents which are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents. If the provisions of

such applicable law may be waived, they are hereby waived to the end that the Contract Documents may be deemed to the greatest extent possible to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of the Contract Documents are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of the provisions and the Contract Documents shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

#### 13.16 RELEASE OF HAZARDOUS MATERIALS

The Contractor shall bear full responsibility for any release of hazardous or nonhazardous chemicals or substances unless the release directly results from work directed by the Port. The Contractor must immediately report any such release to the Port. The Contractor will be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the Port by any agency as a result of such release and shall hold harmless, indemnify and defend the Port from any claims arising from such release. For purposes of this section only, the term "claims" shall include (1) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (2) any claim, cause of action, or administrative or judicial proceeding brought against the Port, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the Port.

If, in the performance of the work outlined in the Contract Documents, the Contractor brings upon the Port property any hazardous materials or hazardous wastes, those materials/wastes must be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor must dispose of the wastes under its own EPA Generator Number. In no event will the Port be identified as the generator. The Contractor must notify the Port of any such hazardous wastes and the Port reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend the Port from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by the Contractor.

If Toxic Materials are detected within any excavations by the Contractor, or during soil testing being done by the Port, the Port will obtain all necessary permits and approvals for the removal, transport and lawful disposal of these materials. The Contractor must notify the Port of any material which the Contractor believes may contain Toxic Materials. The Port will notify the appropriate regulatory agencies, if necessary.

The Contractor shall consider itself bound by the conditions of all required permits, including permits and manifests obtained for the removal, transport and disposal of Toxic Materials.



### 13.17 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Contract or deduct from the Contract Sum or otherwise recover from the Contractor the full amount of the contingent fee.

"Bona fide agency" as used in this section means an established commercial or selling agency, maintained by the Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain any Port contract or contracts through improper influence.

## 14. MODIFICATIONS OF CONTRACT DOCUMENTS

### 14.1 ALTERATIONS, MODIFICATIONS AND FORCE ACCOUNT WORK

14.1.1 No modification or deviation from the Contract Documents will be permitted except by written Change Order or written Field Change, collectively referred to as a "Contract Modification."

14.1.2 The Port may, without notice to the sureties, make alterations, deviations, additions to, or deletions from the Contract Documents; increase or decrease the quantity of any item or portion of the Work of Contract Times; delete any item or portion of the work; and require extra work. The Contractor shall perform such work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra work, the Port reserves the right to furnish all or portions of associated labor, material, and equipment, which the Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such Port-furnished labor, materials, and equipment.

14.1.3 Changes affecting time or price of the Work shall be set forth in a written Change Order that shall specify: (1) the work performed in connection with the change to be made; (2) the amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the work ordered; and (3) the extent of the adjustment in the Contract time, if any. A Change Order will not become effective until signed by the Chief Engineer.

14.1.4 Changes not affecting the time or price of the Work, in the Port's discretion, may be set forth in a written Field Change executed by the Port. Execution of a Field Change constitutes the Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Times.

- 14.1.5 No changes or deviations from the Contract Documents affecting time or price of the Work will be made without the authority of an approved Change Order, except in cases of emergency discussed herein.
- 14.1.6 All Change Orders shall be diligently carried out by the Contractor in accordance with the Contract Documents. If changes ordered in time, design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that the Contractor and the Port may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then the Port shall reach a determination, which shall be final, subject to the Contractor's rights under Section 12 herein. In all cases the Contractor shall perform the changed work as directed by the Port subject to the Contractor's rights under Section 12 herein.
- 14.1.7 The Contractor shall, upon the Port's request, permit inspection of the original unaltered Project Bid estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with the cost proposal.
- 14.1.8 Changes in the Work made pursuant to this Section and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees/warranties given by the Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.9 Procedures for Modifications of the Contract Documents and for calculating the cost of extra work are given in Section 01250 of the Specifications. Contractor may not seek delay compensation using "Eichleay" formula; if the Contractor requests compensation for delay to the construction, then the Contractor must show and document actual costs plus markup per the cost categories and procedures in Section 01250 in order to request, claim or prove compensation for delay.

## 14.2 CONTRACT MODIFICATIONS

The Contract Documents and any Contract Modifications shall represent the entire and integrated agreement between the Port and the Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents and any Contract Modifications shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. The Port and the Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance

upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

14.3 EFFECT OF WAIVERS

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

**15. TIME ALLOWANCES**

15.1 TIME ALLOWANCES FOR PERFORMANCE OF THE WORK

15.1.1 When the Contract Documents have been signed by the Contractor and the Port, the Port will serve a Notice to Proceed upon the Contractor to that effect, either by depositing notice in a post office or post office box regularly maintained by United States Postal Service in a postpaid wrapper directed to the Contractor at the Contractor's legal address, or (at the Port's option) by delivery by other means at the Contractor's legal address.

15.1.2 The start date for Contract Times shall be on the date indicated in the Notice to Proceed. If no date is indicated, then the start date for Contract Times shall be the fifth (5th) calendar day from the date that the Contractor receives, by hand delivery or by facsimile transmission, the Port's written Notice to Proceed, unless the Notice to Proceed is served by mail only, in which case the start date for Contract Times shall be the tenth (10th) calendar day following the mailing date. The total number of calendar days for completion of the Work under the Contract Documents shall be as provided in Document 00520.

15.1.3 If Port permits work performed at night, the work area must be lit to the satisfaction of the Port with lighting equipment that does not interfere with aviation or other traffic safety. The Contractor must notify the Port at the beginning of the project of the normal hours during the day that the work will be performed.

15.1.4 Whenever the Contractor varies the normal hours during one day that work is performed, or performs work on a legal holiday, Saturday, or Sunday, notice of the Contractor's intention to do so and written permission must be secured from the Port at least 24 hours in advance thereof. The Port may, in the event that the Contractor fails to give such notice, order the work be stopped, or reject the work performed during said times and require that such work be removed, or require the Contractor to show evidence satisfactory to the Port that such work was properly performed, or assess actual damages against the Contractor should the unauthorized work interfere with Port operations.

15.1.5 Extended Work Period: Upon authorization by the Port, the work period may be extended to 48 hours per calendar week encompassing 6 days of 8 hours per day.

15.1.6 Emergency Work Period: Emergencies may arise during the progress of the Work which may require special treatment or may make advisable extra shifts of workers to continue the Work in excess of 8 hours per day. The Contractor shall be prepared in case of emergencies to make all necessary repairs and promptly execute such work when required by the Port. Determinations made by the Port for handling emergencies shall be final and conclusive.

## 15.2 CHANGE OF CONTRACT TIMES

15.2.1 The Contract Times (or Milestones) may only be changed by Change Order or Contract Modification, and all time limits stated in the Contract Documents are of the essence of the Contract Documents. The Contract Times (or Milestones) will be adjusted in an amount equal to the time lost due to the following:

- (a) Changes in the Work ordered by the Port;
- (b) Acts or neglect by the Port, acts or neglect of utility owners or acts or neglect of other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents, including but not limited to its cooperation and coordination responsibilities required by the Contract Documents;
- (c) Fires, floods, epidemics, abnormal weather conditions, earthquakes, terrorist attacks, civil or labor disturbances, strikes or acts of God, provided damage resulting therefrom is not the result of Contractor's failure to protect the Work as required by the Contract Documents.

Notwithstanding the foregoing, the Contract Times (or Milestones) shall not be extended unless the Contractor has actually been prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay which is (i) beyond the control of the Contractor and due to reasons for which the Contractor is not responsible (ii) a claim for delay is made as provided for herein, and (iii) Contractor submits a Time Impact Analysis as required under Section 01320 that demonstrates actual delay to critical path work activities which actually delay the progress of the Work in the amount of time requested. Delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of the Contractor.

15.2.2 Where the Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of both the Port and the Contractor (including, but not limited to, adverse weather of all types), an extension of Contract Times (without compensation), in an

amount equal to the time loss due to such delay shall be the Contractor's sole and exclusive remedy for such delay.

15.2.3 The Port shall not be liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from (i) delays caused by or within the control of the Contractor, or (ii) delays described in Section 15.2.1 above or (iii) other contractors performing other work as contemplated by Section 6. All such claims must be asserted by Contractor and entitlement therefore shall be based upon Contractor's performance under the Contract.

15.2.4 Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions which fall within the parameters listed herein. Adverse weather delays may be allowed only if the number of work days of adverse weather exceeds these parameters on a monthly basis and Contractor can prove that adverse weather actually caused delays. Contractor must give written notice of intent to claim an adverse weather day within one day of the adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month Contractor starts and finishes work:

Rain days: January, [11]; February, [10]; March, [10]; April, [6]; May[3]; June, [1]; July, [0]; August, [0]; September, [1]; October, [4]; November, [7]; December, [10].

The Engineer will make final decision on the Contractor's claims for adverse weather days. Notwithstanding the above allowances, Contractor shall at all time employ all available rain mitigation measures to enable Work to continue.

### 15.3 NOTICE OF DELAY

Within seven (7) calendar days of the beginning of any delay the Contractor shall notify the Port, in writing, of all anticipated delays resulting from the delay event in question.

15.3.1 The Contractor's notice shall set forth the impact of the delay on the critical path, the Contractor's statement of additional time requested, and a full recital of the causes of the delays relied upon, and shall be accompanied by the Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor is entitled as a result of the occurrence of said event.

15.3.2 After receipt of a timely request for an extension of Contract Times, including all items required by Section 15.3.1 above, the Port will make decision thereon, and will advise the Contractor in writing. No extension of Contract Times shall be considered without required documents and justifications necessary for the Port to make the determination.

15.3.3 No extension of Contract Times shall be granted for delays for which the Contractor fails to give timely and complete notice as provided in this Section 15.3, and the Contractor hereby waives any and all damages for delay for which the Contractor does not give such a timely and complete notice. If the delay event arises from adverse weather, then Contractor shall not be entitled to an adjustment in the Contract Times if Contractor did not give timely notice of intent to claim a weather related delay within one day of the weather delay occurring.

15.3.4 If the Contractor and the Port cannot reach an agreement regarding a requested extension of Contract Times (or Milestones), then the Port's determination shall be final, subject to the Contractor's rights under Section 12 herein.

#### 15.4 NO DAMAGES FOR CONTRACTOR CAUSED DELAY

The Contractor shall not be entitled to any time extension or compensation, including but not limited to extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by the Contractor's failure to perform its obligations under the Contract Documents. The Contractor may receive time extension (without compensation) during periods of delay concurrently caused by the Contractor and the Port. The Contractor may receive time extension and be compensated for delays caused directly and solely by the Port except that the Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:

15.4.1 The Port's right to sequence the Work in a manner which would avoid disruption to the Port's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of the Contractor's failure to perform its cooperation and coordination responsibilities required by the Contract Documents, the Port's enforcement of any government act or regulation, or the provisions of the Contract Documents;

15.4.2 For changed site conditions that are beyond the parties' contemplation, except that the Port may approve direct costs associated with unknown conditions (but not costs or damages which are result of such delays); and

15.4.3 Extensive requests for clarifications to the Contract Documents or modifications thereto, provided such clarifications or modifications are processed by the Port or its consultants in a reasonable time commensurate with the Contract Documents requirements.

#### 15.5 LIQUIDATED DAMAGES

15.5.1 The Contract Documents may provide time within which Work or portions thereof shall be completed and may provide for payment of agreed liquidated damages to the Port for every calendar day thereafter during which Work shall be uncompleted.

- 15.5.2 Execution of the Contract Documents by the Contractor shall constitute acknowledgement by the Contractor that the Contractor understands, has ascertained and agrees that the Port will actually sustain damages in the amount fixed in the Contract Documents for each and every calendar day during which completion of Work required is delayed beyond expiration of time fixed for completion or extensions of time allowed pursuant to provisions hereof. The Contractor and the Port agree that such damages shall be presumed to be the damages actually sustained by the Port as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- 15.5.3 There shall be deducted from any money due or to become due to the Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then accrued liquidated damages.
- 15.5.4 Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by the Port for increased project administration expenses, including extra inspection, construction management and architectural and engineering expenses and interest expenses related to the Project and the Contract Documents because the Contractor failed to perform and complete Work within time fixed for completion or extensions of time allowed pursuant to provisions hereof. Liquidated damages shall not be deemed to include within their scope additional damages arising from defective work, lost revenues, lost rental income, cost of completion of the Contract Documents, cost of substitute facilities, or damages suffered by others or other forms of liability claimed against the Port as a result of delay (e.g., delay or delay related claims of other contractors, subcontractors or tenants), and defense costs thereof; the Contractor shall be fully responsible for the actual amount of any such damages caused by Contractor, in addition to the liquidated damages otherwise due the Port.
- 15.5.5 Should the Contractor fall behind in the performance of the Work in accord with the approved Progress Schedule, the Port reserves the right to deduct liquidated damages based on its estimated period of late completion. The Port need not wait until Final Completion to withhold liquidated damages from the Contractor's progress payments. Should money due or to become due to the Contractor be insufficient to cover aggregate liquidated damages due, then the Contractor forthwith shall pay the remainder of the assessed liquidated damages to the Port.
- 15.5.6 Time is of the essence.

**16. WORKING CONDITIONS AND PREVAILING WAGES**

**16.1 USE OF SITE/SANITARY RULES**

- 16.1.1 All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. The Contractor shall furnish toilets for use of the Contractor's and Subcontractors' employees on the Site where needed, and their use shall be enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to the Port's approval.
- 16.1.2 The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by the Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by the Port, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the owner or occupant thereof resulting from the performance of Work.
- 16.1.3 During the progress of the Work, the Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall leave the premises clean and ready for occupancy by the Port at Substantial Completion of Work. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.
- 16.1.4 The Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall the Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. The Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform its work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

16.2 PROTECTION OF WORK, PERSONS AND PROPERTY

- 16.2.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. The Contractor shall comply with all safety requirements specified in any safety program established by the Port in consultation with the Contractor, or required by state, federal or local laws and ordinances. The Contractor shall be responsible for all damage to Work, property or structures, and all injuries to persons, arising from the performance of the Contract. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:



- (a) All persons on Site, adjacent work sites, and any other person who may be affected by the Work;
- (b) All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- (c) All work, property or structures at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities, not designated for removal, relocation or replacement in the course of construction.

In particular, but without limiting the foregoing, the Contractor shall, on a daily basis, remove or paint over all graffiti, posters, bills or other disfigurements on any and all portions of the Work, construction equipment, materials, fencing, signs and any other property related to the construction of the Work. The Contractor shall protect all existing improvements or facilities, utility facilities and adjacent property, including but not limited to, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines, sewer and waterlines, highway facilities, and any other improvements or facilities, under or above ground, that are within or adjacent to the work limit line. If such objects are injured or damaged by reason of the Contractor's operations, they must be replaced or restored at the Contractor's expense to a condition as good as when the Contractor entered upon the work, or as good as required by the Contract Documents if any such objects are a part of the work being performed under the Contract.

- 16.2.2 Where necessary, the Contractor shall furnish guards, fences, warning signs, walks and lights and take all necessary precautions to prevent damage or injury. Safety orders, rules and recommendations of Division of Industrial Safety of California, applicable to the Work shall be obeyed and enforced by the Contractor.
- 16.2.3 The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- 16.2.4 All damage, injury or loss to any property referred to in subsections (b) or (c) of Section 16.2.1 above, caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work.

Neither the Port nor any of its agents assume any responsibility for collecting any indemnity (including insurance proceeds where applicable) from any person or persons causing damage to work of the Contractor. The existence of insurance coverage for any damage so incurred shall in no way limit the Contractor's liability or the Port's rights of indemnity.

- 16.2.5 The Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 16.2.6 The Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with all applicable laws and regulations.
- 16.2.7 The Port may, at its option, retain such moneys due under the Contract Documents as the Port deems necessary until any and all suits or claims against the Contractor for injury to persons or property shall have been settled and the Port receives satisfactory evidence to that effect.
- 16.2.8 The Contractor shall perform safe, expeditious and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal and disposal industry, the Law (as herein defined), and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the Law, delivering of all requisite notices, and obtaining all necessary governmental and quasi governmental approvals

### 16.3 RESPONSIBILITY FOR SAFETY AND HEALTH

- 16.3.1 The Contractor shall ensure that the Contractor, Subcontractors, and their subcontractors, employees, agents and invitees while at Site comply with applicable health and safety laws, including without limitation the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and the Port's safety regulations as amended from time to time. The Contractor shall further comply with all Port directions regarding protective clothing, head covering, eye protection, etc.
- 16.3.2 The Contractor shall be fully responsible for the safety of all persons employed by the Contractor or Subcontractors and their respective agents and invitees on the Site. The Contractor shall notify the Port, in writing, of existence of hazardous conditions, property or equipment at Site which are not under the Contractor's control. However, until corrected by responsible party, the Contractor shall be fully responsible to take all necessary precautions against injury to persons or damage to the property of the Contractor, subcontractors or persons from recognized hazards.

16.3.3 The Contractor shall confine all persons under the Contractor's employ or employ of Subcontractors or any other person acting on behalf of the Contractor or Subcontractors to that portion of the Site where Work under the Contract Documents is to be performed, to routes to be designated by the Port for ingress and egress thereto and to any other areas the Port may expressly permit the Contractor to use. Within such areas, except those routes for ingress and egress over which the Contractor has no right of control, the Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

#### 16.4 EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Port, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by the Port. The Contractor shall give the Port prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Port determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Contract Modification, Change Order or Field Change will be issued to document the consequences of such action.

#### 16.5 USE OF ROADWAYS AND WALKWAYS

The Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Wherever interference becomes necessary for proper and convenient performance of Work, and no satisfactory detour route exists, the Contractor shall, with advance Port concurrence and before beginning interference, provide satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over interference and shall maintain it in satisfactory condition as long as interference continues, all at the Contractor's cost unless otherwise provided in the Contract Documents. Contractor shall comply with any specific requirements in the Specifications regarding traffic management.

#### 16.6 NONDISCRIMINATION

No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in section 12940 of the Government Code, and every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

#### 16.7 PREVAILING WAGES

16.7.1 Pursuant to Labor Code Sections 1770 et seq., the Contractor shall pay to persons performing labor in and about the Work provided for in the

Contract Documents not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations and the Port to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

- 16.7.2 The Contractor shall forfeit, as a penalty to the Port, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under the Contract Documents by him or her or by any subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this Section 16.7.2 and the terms of the Labor Code shall be withheld and retained from payments due to the Contractor under the Contract Documents, pursuant to this Document 00700 General Conditions and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by the Port. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code section 1775.
- 16.7.3 The Contractor shall insert in every subcontract or other arrangement which the Contractor may make for performance of work or labor on Work provided for in the Contract Documents comparable provisions to those contained in this Section 16.7, including without limitation the \$50.00 per day per person forfeiture to the Port.
- 16.7.4 The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor will be responsible for the compliance with these provisions by its subcontractors:
- (a) Each contractor and subcontractor must keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
  - (b) The payroll records enumerated under subparagraph a. must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
    - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such

employee or his or her authorized representative on request.

- (2) A certified copy of all payroll records enumerated in subparagraph a. shall be furnished to the Port and made available for inspection or furnished upon request to the Port, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in subparagraph a. shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Port, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to subparagraph ii., the requesting party must, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public will not be given access to such records at the principal office of the Contractor.
- (c) The certified payroll records must be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
  - (d) Each contractor must file a certified copy of the records enumerated in subdivision a. with the entity that requested such records within 10 days after receipt of a written request.
  - (e) Any copy of records made available for inspection as copies and furnished upon request to the public or the Port, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be marked or obliterated.
  - (f) The Contractor must inform the Port of the location of records enumerated under subparagraph a, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
  - (g) In the event of noncompliance with the requirements of this section 16.7, the Contractor will have ten days in which to comply subsequent to receipt of written notice specifying how to comply with this section. If noncompliance continues after such 10-day period, the Contractor will, as a penalty to the State or the Port, forfeit \$50 for each calendar day, or portion thereof, for each

worker, until compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

- (h) The penalties specified in subparagraph 7 of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Contractor.
- (i) The Contractor and each subcontractor must preserve their payroll records for a period of 3 years from the date of completion of the Contract.

16.7.5 The Contractor shall comply with all reporting requirements of the Port's Social Responsibility Division. Contractor acknowledges that the Port has adopted a Web Accessed Monitoring System ("WAMS") to satisfy the reporting requirements for prevailing wages. Contractor shall utilize WAMS to submit the information including but not limited to the data required by Document 00810, Document 00815 and, for projects to which the provisions of the Maritime and Aviation Project Labor Agreement (MAPLA) apply, Document 00825. For federal-aid contracts, these documents will consist of Document 00802 and Document 00861. The Port has designated Elation Systems as its vendor for the electronic submission system and the successful bidder will be required to utilize the Elation Systems service for this contract. There will be no fees associated with the use of WAMS on the successful bidder's part. It will be the responsibility of the successful bidder to ensure access into WAMS by contacting Elation Systems, Inc., 155 Filbert St, Suite 249, Oakland, CA 94607, 510-764-1870, support@elationsystems.com prior to commencement of work."

## 16.8 ENVIRONMENTAL CONTROLS

16.8.1 The Contractor shall comply with all rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract Documents, including without limitation any toxic pollution control rules, regulations, ordinances and statutes specified by law and the following matters.

16.8.2 Air Pollution Control. The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract Documents, including any air pollution control rules, regulations, ordinances and statutes specified in Section 11017 of the Government Code. The Contractor will be responsible for assuring that in connection with performance of the Contract no Toxic Material is discharged into the air, in violation of any federal, state, city or Port law, regulation or permit, and in case of such discharge into or upon the air, that all remedial actions promptly are undertaken.

Material to be disposed of may not be burned, either inside or outside the Site. The Contractor will be responsible for taking all necessary and appropriate measures to prevent the discharge of any Toxic Material into the air.

- 16.8.3 Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways and other bodies of water, and will consist of constructing those facilities which may be shown on the plans, specified herein or in the Specifications, or directed by the Engineer. The Contractor will be responsible for taking all necessary and appropriate measures to prevent the discharge of any Toxic Material into the water.
- 16.8.4 Soil Pollution Control. The Contractor shall be responsible for assuring that in connection with performance of the Contract Documents no Toxic Material is discharged into or upon the soil, in violation of any federal, state, city or Port law, regulation or permit, and in the case of such discharge into or upon the soil, that all remedial actions promptly are undertaken. The Contractor shall be responsible for taking all necessary and appropriate measures to prevent the discharge of any Toxic Material into the soil.
- 16.8.5 Exposure Control. The Contractor shall be responsible for ensuring that the Contractor's employees, any subcontractors operating under the Contractor's control, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other materials used during or generated by activities on the site or otherwise associated with the project. The Contractor shall be responsible for taking all necessary and appropriate measures to prevent employee, subcontractor, or public exposure to any Toxic Material.

## 16.9 TRENCH SAFETY PLAN

- 16.9.1 Pursuant to the requirements of California Labor Code Section 6705, Contractor shall, at least fifteen (15) days in advance of excavation of any trench five feet or more in depth, submit to the Port a detailed plan showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the State Construction Safety Orders, the plan shall be prepared and signed by a registered civil or structural engineer. Nothing in this Section will be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety. Nothing in this section will be construed to impose liability on the Port, the Architect/Engineer or any of their employees.
- 16.9.2 The Contractor shall retain the responsibility for determining where sloping, shoring and/or bracing is necessary for all excavations, whether greater or less than 5 feet in depth. In addition, the Contractor will be solely responsible for the adequacy of the design, installation and

maintenance of all shoring and bracing during the course of the work. Acceptance by the Port of any plans showing the design of shoring or bracing or of any schedule for the work will not relieve the Contractor of its responsibilities under this Section or under the aforementioned Construction Safety Orders. The Contractor will be solely responsible for any damages or injuries that may result from excavating or trenching.

END OF DOCUMENT



**DOCUMENT 00810**

**PORT OF OAKLAND  
NON-DISCRIMINATION  
AND  
SMALL LOCAL BUSINESS UTILIZATION POLICY**

**OCTOBER 6, 1997**

Original July 31, 1997  
Revised 4/7/04  
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## NON-DISCRIMINATION POLICY

### I.

#### Statement of Purposes

It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in Port public works contracts and its contracts for the provision of goods and services. It is further Port policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. All contractors shall fully comply with the most recent version of the Port of Oakland Equal Opportunity Policy (as may be amended), and shall not discriminate against or grant preferential treatment to any contractor on the basis of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status or sexual orientation, in the performance of Port contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with Port Ordinance No. 1606.

The Port of Oakland has discovered that local businesses have been significantly underutilized in Port contracting. Accordingly, the Port on March 4, 1997, adopted a policy to promote maximum participation of local businesses in Port contracts. One element of this policy is to create a small local business program which will provide support to small local businesses, including minority and women owned small local businesses, to enable them to more effectively compete for participation in Port contracts. To achieve this goal the Port will use preferences to local and small local businesses in the award of Port contracts in order to encourage businesses to locate and remain in the Oakland area, to promote economy and efficiency, to provide and enhance employment opportunities for persons living in the Oakland area, and to contribute generally to the economic environment in the Oakland area. The Port will create a small business pool and a very small business pool where there are a sufficient number of small local businesses to compete for a specific Port contract. The Port will devise contracts, prepare project packages, and encourage bids which allow for small local businesses successfully to subcontract to perform portions of the work. The Port will provide other small local business support programs, which may include technical assistance programs, bonding programs, prompt payment programs, and advisory or training programs. The Executive Director will be responsible for implementation of this policy and will issue regulations and standards for the small local business utilization programs adopted by the Port. The Executive Director will be authorized to adjust and modify the regulations and may suspend preferences on programs when in consultation with the Chief Engineer it is determined to be in the best interests of the Port to do so.

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## II. Definitions

Unless otherwise specified, the following definitions shall apply to all portions of the non-discrimination policy, including Programs set forth in Part III and the Regulations set forth in Part IV.

**“Bidder”** shall mean the Prime Contractor submitting a bid directly to the Port.

**“Board”** shall mean the Port of Oakland Board of Port Commissioners.

**“Commercially Useful Function,”** for the purpose of determining a Local Business Area Business Enterprise or Local Impact Area Business Enterprise, shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Port or the Prime as required by solicitation, request for quotes, bids or proposals. Businesses acting as a passive conduit rather than contributing a value added or actual portion of the work will not be considered as performing a “commercially useful function.”

**“Construction Related Consultant”** shall mean and intend the person, firm or corporation contracting to perform architectural, engineering, environmental, construction/program management or other construction related professional services under the contract.

**“Contract Compliance Officer”** shall mean the Director, or his or her delegates, of the Social Responsibility Division for the Port of Oakland.

**“Contractor”** shall mean and intend the person, firm or corporation contracting to perform the work to be done under the contract. The term “contractor” or subcontractor shall include truckers and trucking brokers.

**“Department”** shall mean an operating department of the Port of Oakland.

**“Design-Builder”** shall mean any firm entering a contract with the Port in which the scope of work includes both the furnishing of design services for which professional registration is required under the California Business & Professions Code and construction contracting services for which a contractor’s license is required under the California Business & Professions Code .

**“Executive Director”** shall mean the Executive Director for the Port of Oakland.

**“Engineering Division”** shall mean the Engineering Division of the Port of Oakland.

**“Joint Venture”** shall mean an association of two or more businesses acting as a construction contractor or consulting service in order to perform or provide for services on a contract, in which each joint venture partner combines property, capital, efforts, skills, and knowledge, and shares proportionally in the risks, responsibilities, rewards and duties under the contract.

**“LBA or LIA Business Enterprise (LBABE or LIABE)”** shall mean an economically independent and continuing business performing a commercially useful function, which is located within the Local Business Area or Local Impact Area, respectively, as shown by the items listed in the regulations.

**“Local”** shall mean either the Local Business Area (LBA) or the Local Impact Area (LIA) as appropriate.

**“Local Business Area (LBA)”** shall mean all of Alameda County and Contra Costa County.

**“Local Impact Area (LIA)”** shall mean the area most impacted by Port projects. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro.

**“Minority, Minorities or Minority Person”** shall mean members of one of the following ethnic groups: Asians (defined as Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian Indian/South Asian and Southeast Asian or other Asian culture or origin, regardless of race), African-American (not of Hispanic origin), Hispanic (defined as Mexican, Puerto Rican, Cuban, Central or South American or other Hispanic culture or origin, regardless of race) and American Indian or Alaskan Native.

**“Ombudsman”** shall mean the officer appointed by the Executive Director for the Office of the Ombudsman, or assigned officer of that office for the Port of Oakland, delegated with the duties of assisting small local businesses in various Port and contracting requirements as specified in section L.12 *et. seq.* of the Regulations.

**“Person or Persons”** shall mean an individual or individuals, partnerships, corporations, associations, organizations, legal representatives, or any group of persons.

**“Policy”** unless otherwise stated, shall mean the Port of Oakland Non-Discrimination and Small Local Business Utilization Policy, and Regulations if applicable.

**“Port”** shall mean the Port of Oakland.

**“Prime Contractor (Prime)”** shall mean a contractor who contracts directly with the Port.

**“Regulations”** unless otherwise stated, shall mean the regulations adopted herein as part IV regarding the Port’s Non-Discrimination and Small Local Business Utilization Policy.

**“Small Business Enterprise (SBE)”** shall mean a business in the LIA with a specified amount of average gross annual revenue or less over the past three (3) years. For any business to qualify as a “small business,” it must have an average annual gross revenue within the State small businesses standards. (California Code of Regulations, Title 2, Chapter 4, Subchapter 8).

**“Social Responsibility Division (SRD)”** shall mean the Social Responsibility Division for the Port of Oakland.

**“Subcontractor”** shall mean a contractor who contracts with a prime contractor or higher tier of subcontractor.

**“Technically Excellent,”** for the purposes of selecting a consulting team or business, shall mean the cost, quantity, quality and type of consulting services offered sufficiently meet the Port’s needs, including professional, technical and financial needs, with regard to a particular project.

“**Very Small Business Enterprise (VSBE)**” shall mean a business in the LIA with a specified amount of average gross annual revenue or less over the past three (3) years. For any business to qualify as a “very small business,” it must have a three-year average annual gross revenue not to exceed \$2,000,000.

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**III.**  
**Programs**

**A. Non-Discrimination in Construction Subcontracting.**

The Port strictly prohibits all unlawful discrimination and preferential treatment in subcontracting.

**B. Preference Points in Award of Construction Contracts.**

Unless prohibited by state or federal law or regulation, the Port shall extend a preference based on local and small local business utilization in all bids and contracts in determining the lowest responsible bidder. Points shall be awarded as incentives to contractors located in the local business area (LBA) and local impact area (LIA) and to those contractors that have small business enterprise (SBE) and very small business enterprise (VSBE) certification status in accordance with the guidelines set forth in the administrative regulations.

Points shall be translated to a percentage, and Total Base Bid Prices within 10% or \$1,000,000 (one million dollars), whichever is less, of the Total Base Bid Price of the apparent low bidder shall be reduced by such percentage for purposes of evaluation to determine the lowest responsible bidder. Points shall be allocated pursuant to administrative regulations pertaining to this Program and may be adjusted, modified or suspended by the Executive Director.

**C. Non-Discrimination in Consulting Contracts.**

The Port strictly prohibits all unlawful discrimination and preferential treatment in subconsulting.

The Port will insure that LIABEs, LBABEs , VSBEs and SBEs have significant opportunities to submit proposals. The process shall be as open, fair and consistent as possible and will be implemented pursuant to the administrative regulations pertaining to this Program.

**D. Selection of Consultants and Preference Points.**

The Port, through its Selection Committee, will evaluate competing consultant proposals based on a one hundred (100) point scale. Up to eighty-five (85) of the points will be allocated based on an evaluation of technical excellence of the consultant; up to fifteen (15) points will be allocated pursuant to administrative regulations pertaining to this Program and may be adjusted, modified or suspended by the Executive Director.

**E. Selection of Design-Builders.**

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will review each project identified as design-build in order to determine in its sole

discretion whether the project will be subject to the guidelines set forth in this Policy or subject to the guidelines set forth in the Non-Discrimination and Small Local Business Utilization Policy for Alternative Project Delivery Approaches ("APDA") (Res. No. 02199).

Generally, if the Engineering Division determines that the project and specifications are sufficiently defined so as to allow bidders to identify their subcontractors, suppliers, or subconsultants at the time of bid submission, then it will be inclined to apply this Policy. Generally, if the Engineering Division determines that the project and specifications are not sufficiently defined so as to allow the bidders to identify their subcontractors, suppliers, or subconsultants, at the time of bid submission, then it will be inclined to apply the APDA. In making its determination as to which policy to apply, the Engineering Division will be guided by the objective of maximizing the opportunities for small and local businesses to participate in the project.

**Sealed Low Bid awards.** For those contracts in which the Design-Builder is selected according to the lowest responsive and responsible bid, preference points will be awarded in the manner described in Part III, Section D, and will be implemented in accordance with the guidelines set forth in the administrative regulations.

**Competitive Negotiation or Best Value awards.** For those contracts in which the Design-Builder is selected through a process of competitive negotiation or Best Value, the Port will award preference points in accordance with the guidelines set forth in the administrative regulations.

#### **F. Small Business Program.**

The Port recognizes the difficulties small businesses may encounter when competing against larger more established businesses for construction and consultant contracts. The Port has implemented a Small Business Program to assist in the utilization of small local businesses.

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will annually review its Capital Improvement Program in order to determine whether any projects exist that can successfully be completed by small local business contractors or consultants. Selection of projects for the program will be based primarily on the cost and the availability of a minimum number of small local businesses capable of performing the contract. Projects so identified will be presented to the Board of Port Commissioners for approval for placement in the Small Business Program. Bids or proposals for any project selected will be limited to certified small local businesses.

The Small Business Program includes only small businesses located within the LIA. To qualify for inclusion in the Small Business Program, an applicant must be a Small Business Enterprise (SBE) as defined in Part II and be certified as such. If so certified, the business will be placed in a pool with other small local businesses.

In order to insure the effectiveness and integrity of the Small Business Program, and in accordance with the Port's non-discrimination policy, the Small Business Program will be neutral as to race, ethnicity, national origin, age, sex, religion, and sexual orientation, actual or perceived. Any business seeking inclusion in the pool of small businesses will be able to apply. Additionally, the Port will monitor the Small Business Program by a system of penalties for violations of the policy or regulations, including exclusion from any future bidding on or participation in Port projects.

### **G. Very Small Business Program.**

The Port recognizes the unique difficulties facing very small businesses when competing in the marketplace and even in the Small Business Program. The Port will implement a Very Small Business Program to assist in the utilization of very small local businesses.

The Port, through its Engineering Division in consultation with the Social Responsibility Division, will annually review its Capital Improvement Program in order to determine whether any projects exist that can successfully be completed by very small local business contractors or consultants. Selection of projects for the program will be based primarily on the cost and the availability of a minimum number of very small local businesses capable of performing the contract. Projects so identified will be presented to the Board of Port Commissioners for approval for placement in the Very Small Business Program. Bids or proposals for any project selected will be limited to certified very small local businesses.

The Very Small Business Program will include only small businesses located within the LIA. To qualify for inclusion in the Very Small Business Program, an applicant must be a Very Small Business Enterprise (VSBE) as defined in Part II and be certified as such. If so certified, the business will be placed in a pool with other very small local businesses.

In order to insure the effectiveness and integrity of the Very Small Business Program, and in accordance with the Port's non-discrimination policy, the Very Small Business Program will be neutral as to race, ethnicity, national origin, age, sex, religion, and sexual orientation, actual or perceived. Any business seeking inclusion in the pool of very small businesses will be able to apply. Additionally, the Port will monitor the Very Small Business Program by a system of penalties for violations of the policy or regulations, including exclusion from any future bidding on or participation in Port projects.

### **H. Building Permits and Leases.**

The Port shall require, as a prerequisite to granting a building permit or lease, that the grantee or lessee comply with the Port's Non-Discrimination and Small Local Business Utilization Policy. A business may demonstrate its compliance according to the standards set forth in the Port's Policy and administrative regulations.

### **I. Purchasing Program.**

The Port, through its Purchasing Department, will seek to utilize vendors from Oakland, including small local businesses, in furtherance of efficiency and Port policy to the extent permissible by law, when such vendors are available and the price of goods or services sought is reasonable. When no vendors from Oakland are available, the Purchasing Department will seek to contract with businesses from outside Oakland in this order of preference: the LIA, the LBA, the Bay Area, California and nationwide.

### **J. Consultant Contracts Below the Bid Limit.**

In choosing consultants for small projects, for which costs are below the bid limit, Port staff and divisions shall comply with all applicable terms of this policy in their awards of small consulting contracts using the selection process outlined in section D above; and in accordance with the administrative regulations pertaining to this Program.



**K. Non-Discrimination in Contracts Below the Bid Limit.**

Contracts which are below the bid limit and not subject to competitive bidding are required to be issued according to the same non-discrimination and non-preferential treatment policy as set forth in Part I hereinabove. Port Division Directors and their Staff are expected to select and utilize contractors and consultants according to this policy.

Staff will maintain records on contracts awarded under this section and report the results to the Social Responsibility Division (SRD) on December 31 and on June 30 of each year. SRD shall report its Port-wide summaries annually to the Board.

**L. Federal, State or Other Grants and Funding Sources.**

To the extent it is a condition of a federal, state or other funding source that the Port comply with that source's policies and programs concerning Disadvantaged Business Enterprise (DBE), Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE) and small local business utilization, the Port will make its policies consistent with said source's regulations to the extent permissible by law.

**M. Technical Assistance Program.**

The Port will co-sponsor and encourage development of programs for training in business skills for owners and operators of small local businesses.

**N. Bonding Program for Small Local Businesses.**

The Port will implement a Surety Bond and Financing Program to assist contractors in obtaining bonding and financing to meet the Port's small local business utilization goals.

**O. Ombudsman**

The Port will designate a person to act as Ombudsman to assist small local businesses seeking Port contracts with problems in the contracting process, such as interpretation of plans and specifications, requests for proposal, bonding and insurance requirements, preparation and submission of bid, and other Port processes and procedures relative to the process of contracting.

**P. Prompt Payment Program**

The Port will implement a Prompt Payment Program to insure timely payment to contractors and consultants upon receipt of properly documented invoices or other contract billings. As part of this program, the Port will require that subcontractors, subconsultants, and suppliers in turn receive timely payments from the contractor or consultant after the Port has made payment.

**Q. Executive Director**

The Executive Director, with the advice and assistance of the Port Attorney, shall implement this policy and is authorized to adopt rules of practice and procedure and issue regulations reasonably necessary to carry out the provisions of this Policy and effectuate its purposes.

### **R. Penalties**

The Port shall monitor all contractors' and consultants' compliance with this Policy through a system of penalties. The Executive Director shall have the authority to impose sanctions on individuals and businesses upon a finding of a willful, knowing or bad faith, non-compliance or submission of information known or suspected to be false or misleading.

Penalties shall include banning from future bidding on Port projects, cancellation of executed contracts and ineligibility for all programs under this Policy.

### **S. Severability**

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

## **IV.** **Regulations**

The following Regulations are issued to implement the Port's Non-Discrimination and Small Local Business Utilization Policy. All terms not otherwise specifically defined have the same meaning as set forth in the Part II Definitions.

### **A. Preference Points in Award of Construction, Consultant Contracts and Design Builders.**

1.1. Persons and entities claiming local business status under this article who are not yet certified as an LIABE, LBABE, SBE or VSBE shall apply to the Social Responsibility Division for this certification at least seven (7) business days prior to the bid or proposal due date. The Social Responsibility Division will provide forms for application, determine whether the completed application and documentation presented establishes eligibility for certification, and issue a letter of certification as a Local Business Area Business Enterprise (LBABE), Local Impact Area Business Enterprise (LIABE), Small Business Enterprise (SBE) or a Very Small Business Enterprise (VSBE) or joint venture with any of the above. The Port shall require the following:

1.1.1. The business must be located at a fixed commercial or residential address, which constitutes a business location where administrative, clerical, professional, or other productive work is continuously performed relative to its commercial contracts. A temporary or moveable office, a project work station, a post office box, or a telephone answering and/or forwarding service are not acceptable; and

1.1.2. The business must have located within the LBA or LIA at least one (1) year prior to the certification application date; and

1.1.3. The business must provide evidence of performing prior contracts while based within the LBA or LIA; and

1.1.4. The business must be economically independent and perform commercially useful functions. A business acting as a passive conduit rather than contributing a value added or actual portion of the work performed does not qualify for certification; and

1.1.5. The business must be currently licensed, where applicable, in the type of work in which it is seeking a contract with the Port of Oakland at least one year prior to the certification application date; and

1.1.6. The business must be *bona fide* with real and continuing business ownership interests which are not created merely for the purpose of meeting the objectives of the Port's Non-Discrimination and Small Local Business Utilization Policy.

1.2. Any business claiming local business or local impact area business status shall provide the following documentation to establish business location and time in business at the location:

1.2.1. Valid current business license or tax certificate issued by the city or county where it is located and doing business.. All applicants are required to submit this documentation; and

1.2.2. Previous business license or tax certificate certified for authenticity by the city clerk or county clerk of the jurisdiction which issued it, and dated at least twelve (12) months prior to its certification application, for purposes or establishing length of time of doing business at the location; and

1.2.3. Copy of current lease; if month-to-month then a letter from the leasing agent and a copy of the last check paid; if home office then copy of Federal Form 8829 or property tax statements; and

1.2.4. Past or current contracts with governmental agencies or private entities for work performed at or from the location; and

1.2.5. Professional or trade licenses or applicable certificates or permits required by law for doing business and issued by a federal or state governmental agency within the past ten (10) years.

1.3. Any business claiming small or very small local business status shall provide the following documentation to establish business location and time in business at the location:

1.3.1. Certification by the Social Responsibility Division as a LIABE pursuant to regulations Sections 1.1 and 1.2.

1.3.2. The business also must provide evidence of annual gross receipts not to exceed the following size standards:

1.3.2.1. For Small Business Enterprise (SBE) certification: State small business standards set forth in California Code of Regulations, Title 2, Chapter 4, Subchapter 8.

1.3.2.2. For Very Small Business Enterprise (VSBE) certification: an average annual gross receipts not to exceed \$2,000,000 (two million dollars) over the past three (3) consecutive years.

1.3.3. Documentation to provide evidence of gross receipts includes tax returns or other acceptable documentation.

1.4. Preference Points for Public Works Construction Contracts: In order to receive preference points, all certifications must be complete at time of bid as the process is described in § 1.1, 1.2 and 1.3 above. Bidders seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.4.1. Bidders may be awarded up to a maximum of four (4) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified prime contractor(s) and subcontractors.

- a. If all the contract work is to be performed by LIABE prime contractor(s) and subcontractors, the bidder will be awarded four (4) points; or
- b. If all the contract work is to be performed by LBABE prime contractor(s) and subcontractors, the bidder will be awarded two (2) points; or
- c. If the contract work is to be divided among prime contractor(s) and subcontractors with offices located within the LIA, LBA and outside the LBA, the bidder will be awarded the proportionate shares of the 4 LIA and 2 LBA points depending on the percentage of total work being done by the prime contractors and subcontractors in each area.

1.4.2. Bidders may also be awarded up to a maximum of two (2) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime contractor(s).

- a. If all the prime contract work is to be performed by LIABE prime contractor(s), the bidder will be awarded two (2) points; or
- b. If all the prime contract work is to be performed by LBABE prime contractor(s), the bidder will be awarded 1 point; or
- c. If the prime contract work is to be divided among prime contractor(s) with offices located within the LIA, LBA, and outside the LBA, as in the case of a joint venture or other form of strategic alliance, the bidders will be awarded proportionate shares of the 2 LIA and 1 LBA points depending on the percentage of prime work being done by prime contractors in each area.

1.4.3. Bidders may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work, to be done by SBE and VSBE certified prime contractor(s) and subcontractors.

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE prime contractor(s) and subcontractors; or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE prime contractor(s) and subcontractors.

1.5. Construction bidders may accumulate points under these rules up to a maximum of ten (10) points. For each point validated under these rules, the Total Base Bid Price that is within 10% or \$1,000,000 (one million dollars), whichever is less, of the apparent low bidder's Total Base Bid Price, will be reduced by an equivalent percentage for purposes of evaluation for determination of the lowest responsible bidder. If the bid is accepted on this basis, the actual bid before reduction under these rules will be the bid awarded the contract. Consultants proposing contracts may accumulate up to fifteen (15) points to be considered pursuant to Regulation 2.3.

1.6. The proportion of the contract amount attributable to materials or supplies bought by the bidder for use and or installation by a listed subcontractor shall accumulate points based on that subcontractor's preference point's eligibility.

1.6.1. The bidder shall list any contract amount(s) of materials or supplies bought by the bidder for use and or installation by a listed subcontractor. The amount(s) of each subcontractor's materials or supplies shall be listed separately on an attached sheet (form 00430) to be submitted with the bid.

1.7. Preference Points for Bids based on Percentage of Direct Labor Costs: For bids submitted on basis of bidder's direct labor costs, preference points described above will only be credited for participation by bidders that satisfy the requirements for local (LIABE and/or LBABE) and small (SBE and/or VSBE) business participation. Preference points will not be credited (nor bids modified) for participation by LIABE, LBABE, SBE or VSBE subcontractors or truckers.

1.7.1. Preference Points for Bids For Annual On-Call/Emergency Spill Response and Hazardous Materials Handling Services: For bids submitted to perform annual on-call emergency spill response services, including hazardous materials handling services, preference points described above will only be credited based on a comparison of bidders proposed local (LIABE and/or LBABE) and small (SBE and/or VSBE) participation levels that meet or exceed the minimum local and small participation threshold established by the Executive Director. The minimum local and small participation threshold established by the Executive Director shall be based upon actual utilization figures from prior contracts involving the same or similar scopes of work and services over the prior three year contractual periods. The minimum local and small participation threshold shall be set forth in Document 00200, Instructions to Bidders. Up to 6 points shall be credited for the level of LBABE and/or LIABE utilization that a bidder is willing to certify to use. Up to 4 points will be credited for the level of SBE and/or VSBE utilization that a bidder is willing to certify to use. Points shall be calculated based on the highest level of local and small business utilization that is proposed from among all bids, as follows: The level of the bidder's local and small participation divided by the highest level of local and small business participation proposed by any bidder, the quotient of which will be multiplied by the maximum ten points. LBABE firms' participation will be credited at 50% of the proposed contract value towards the local participation threshold. LIABE firms' participation will be credited at 100% of the proposed contract value towards the local participation threshold. SBE firms' participation will be credited at 100% of the proposed contract value towards the small participation threshold. VSBE firms' participation will be credited at 200% of the proposed contract value towards the small participation threshold. The successful bidder will be required to achieve their stated level of local and small participation proposed and certified on in Document 00857, entitled "Bidder's Certification of Local Participation"

1.8. Preference Points for Consultant Contracts: In order to receive preference points, all certifications must be complete by proposal due date as the process is described in § 1.1, 1.2 and 1.3 above. Proposers seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.8.1. Proposers may be awarded up to a maximum of five (5) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified prime consultant(s) and subconsultants.

- a. If all the contract work is to be performed at the prime consultant's and subconsultants' respective offices within the LIA, the proposer will be awarded 5 points; or
- b. If all the contract work is to be performed at the prime consultant's and subconsultants' respective offices within the LBA, the proposer will be awarded 2.5 points; or
- c. If the contract work is to be divided among prime consultants and subconsultants with offices located within the LIA, LBA and outside the LBA, the proposers will be awarded proportionate shares of the 5 LIA and 2.5 LBA points depending on the percentage of total work being done by the prime consultants and subconsultants in each area

1.8.2. Proposers may also be awarded up to a maximum of three (3) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime consultant(s).

- a. If all the prime contract work is to be performed at the prime consultant's office within the LIA, the proposer will be awarded 3 points; or
- b. If all the prime contract work is to be performed at the prime consultant's office within the LBA, the proposer will be awarded 1.5 points; or
- c. If the prime contract work is to be divided among the LIA, LBA, and outside the LBA, as in the case of a joint venture or other form of strategic alliance, the proposers will be awarded proportionate shares of the 3 LIA and 1.5 LBA points depending on the percentage of prime work being done by firms located in each area.

1.8.3. Proposers may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work to be done by SBE and VSBE certified consultant(s) and subconsultants.

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE prime consultant(s) and subconsultants; or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE prime consultant(s) and subconsultants.

1.8.4. Proposers may also be awarded up to a maximum of three (3) preference points for demonstrating their commitment to the Port's community values and programs. Examples of this commitment may include proposers which do the following:

- a. Mentor small or very small local firms;

- b. Commit to hiring local interns, and students;
- c. Participate in trade fairs or job fairs targeted to LIA businesses and job seekers;
- d. Participate in other activities which are dedicated to the economic development of LIA businesses, citizens and students.

1.9. Preference Points for Design-Builders. In order to receive preference points, all certifications must be complete by the proposal due date as the process is described in § 1.1, 1.2 and 1.3 above. Bidders seeking SBE and VSBE preference points must be certified according to the process described in § 1.1, 1.2 and 1.3 above.

1.9.1. Proposers may be awarded up to a maximum of five (5) preference points depending on the proportionate share of work, calculated based on the contract amount, to be done by LBABE and LIABE certified firms (professional services and construction).

- a. If all the contract work is to be performed by firms located within the LIA, the proposer will be awarded 5 points (professional services and construction); or
- b. If all the contract work is to be performed by firms located within the LBA, the proposer will be awarded 2.5 points (professional services and construction); or
- c. If the contract work is to be divided among firms with offices within the LIA, LBA, and outside the LBA, the proposer will be awarded proportionate shares of the 5 LIA and 2.5 LBA points depending on the percentage of total work being done by firms in each area (professional services and construction).

1.9.2. Proposers may also be awarded up to a maximum of three (3) preference points depending on the proportionate share of prime contract work to be done by LBABE and LIABE certified prime contractor(s) (professional services and construction).

- a. If all the prime contract work is to be performed by LIABE prime(s), the proposer will be awarded 3 points (professional services and construction); or
- b. If all the prime contract work is to be performed by LBABE prime(s), the proposer will be awarded 1.5 points (professional services and construction); or
- c. If the prime contract work is to be divided among LIABE, LBABE, and/or firms located outside the LBA, as in the case of a joint venture or other form of strategic alliance, the proposers will be awarded proportionate shares of the 3 LIA and 1.5 LBA points depending on the percentage of prime contract work being done in each area (professional services and construction).



1.9.3. Proposers may also be awarded up to a maximum of four (4) preference points depending on the proportionate share of work to be done by SBE and VSBE certified firms (professional services and construction).

- a. A proportionate share of four (4) points will be awarded based on the percentage of total work to be performed by VSBE firms (professional services and construction); or
- b. A proportionate share of two (2) points will be awarded based on the percentage of total work to be performed by SBE firms (professional services and construction).

1.9.4. Proposers may also be awarded up to a maximum of three (3) preference points based on the proportionate share of work to be done by firms (professional services and construction) for demonstrating their commitment to the Port's community values and programs. Examples of this commitment may include proposers which do the following:

- a. Mentor small or very small local firms;
- b. Commit to hiring local interns, student, or participating in local pre-apprentice and apprentice job training programs;
- c. Participate in trade fairs or job fairs targeted to LIA businesses and job seekers;
- d. Participate in other activities, which are dedicated to the economic development of LIA businesses, citizens and students.

1.10. Preference Points for Design-Builder(s) Bid based on Competitive Negotiation or Best Value: For bids awarded through a process of competitive negotiation or Best Value, the Port, through its Selection Committee, will evaluate the design-builder(s) proposal based on technical excellence and price of the proposing firm and through the allocation of preference points in the manner described in § 1.9 above.

**1.11.** For professional service consultants who will receive LIA, LBA, SBE or VSBE preference points, the work must be performed at the qualifying office.

1.12. The Contract Compliance Officer shall make determinations under this article with the advice of the Port Attorney, who is the final arbiter of interpretation of these rules. The decision of the Contract Compliance Officer as advised by the Port Attorney shall be final.

## **B. Selection of Consultants and Preference Points.**

2.1. The Department seeking a consultant for a contract above the bid limit will consult with the Social Responsibility Division to first identify SBE firms, to which requests for proposals may be sent. If an insufficient number of SBE firms are identified, LIA and then LBA firms will be identified for consideration. If insufficient LBA firms are identified, consideration will extend in geographic progression to the Bay Area, northern California, California, and nationwide.

2.2. Proposers on consultant contracts and members of their teams may apply for certification as LIA, LBA, SBE and VSBE firms pursuant to Regulations 1.1, 1.2 and 1.3 and may receive the preference points allotted under Regulation 1.8 up to a maximum of fifteen (15) points.

2.3. The Port will establish a selection committee to evaluate consultant proposals and make a recommendation to the Executive Director. Factors of evaluation shall be established by the Contract Compliance Department and the Port Division seeking proposals.

2.3.1. Members of the Selection Committee are (1) the Executive Director or designee, (2) the Director of Social Responsibility or designee, (3) the Division Director requiring the services or designee, (4) the Project Manager designee, and at the discretion of the Executive Director, (5) a public member. The public member shall be appointed by the Executive Director and shall not be a Port employee.

2.3.2. The Committee will evaluate competing consultant proposals on a one hundred (100) point scale. Up to Eighty-five (85) of the points will be allocated on the basis of evaluation of technical excellence of the consultant; up to remaining fifteen (15) points will be allocated as preference points awarded pursuant to Regulation 1.8.

### **C. Selection of Design Builders**

3.1. The Port, through its Selection Committee, will evaluate competing design-builder proposals based on a one hundred (100) point scale. Up to eighty-five (85) of the points will be allocated based on an evaluation of technical excellence and price of the proposing firm; up to fifteen (15) points will be awarded pursuant to Regulations 1.9.

### **D. Post-Award NDSLBU Compliance Documentation**

#### 4.1 Certification of Subcontractor and Supplier Award for Public Works Contracts

4.1.1 For any annual contract awarded, prior to commencement of each instance of work, Bidder will be required to submit the names of all subcontractors and their respective item of work on a supplemental report form (Document 00430S), Port of Oakland Supplemental Subcontractor and Supplier List Form for Annual Contract, for those subcontractors who will perform any portion of work, including labor, rendering of services, or specially fabricating and installing a portion of the work or improvement according to detailed drawings contained in the plans and specification, in excess of one-half of one percent (0.5%) of the estimated cost of the work to be performed. Bidders must also submit the names of all trucking brokers on said document, regardless of whether the broker's portion of the work will or will not exceed one-half of one percent (0.5%) of the estimated cost of the work to be performed.

4.1.2 For any contract awarded, the successful bidder (prime) shall provide, pursuant to the invoice schedule, information included but not limited to a listing of any contract amount(s) due under said invoice to each tier subcontractor, material supplier (optional to the extent contractor desires to be credited with LIABE, LBABE, SBE or VSBE

supplier participation), and each JV partner or associate whose subcontract exceeds one-half of one percent (0.5%) of the estimated cost of the work, and amounts previously billed and paid (in any) to said subcontractors, material suppliers (optional), and JV partners under all prior invoices paid by the Port (Contractor's Payment Record for Public Works Projects). This information shall be inputted into the Port of Oakland's Web Accessed Monitoring System (WAMS).

#### 4.2 Compliance Documentation for Professional Services Contracts

4.2.1. For any contract awarded, the successful proposer (prime) shall provide, pursuant to the invoice schedule, information included but not limited to a listing of any contract amount(s) due under said invoice to each tier subconsultant, and each JV partner or associate, and amounts previously billed and paid (in any) to said subconsultants, and JV partners under all prior invoices paid by the Port (Consultant's Payment Record for Professional Services Contracts). This information shall be inputted into WAMS.

#### 4.3 Compliance Documentation for Design-Build Projects

4.3.1 For any design-build contract awarded, the successful proposer (prime) shall provide, pursuant to the invoice schedule, the information requested in Regulations 4.2.

### **E. Small Business Program.**

5.1. Regulations for Port Staff in Selecting Small Business Projects: The Engineering Division, in collaboration with the Social Responsibility Division shall select certain projects reserved only for Small Businesses. The Port, in determining whether to select a project for the reserved program shall consider the following:

5.1.1. On-going review of the Port's Capital Improvement Program;

5.1.2. After each such review, determine whether any projects exist that can be successfully completed by small local businesses;

5.1.3. Determine the costs of each project considered for placement in the reserved program. If economically and practically feasible, the project shall be reserved for the Small Business Program;

5.1.4. Before soliciting bids or proposals for such projects, the Small Business project(s) shall be submitted for Board approval;

5.1.5. The Port shall determine the availability of a minimum number of Small Businesses Enterprises (SBEs) able to perform the work. The Port requires a minimum of three (3) SBEs willing and able to bid or propose, for the project to remain in the Small Business Program.

5.1.6. The Social Responsibility Division shall maintain a current list of SBEs that qualify and wish to participate in the Small Business Program. The list shall identify each firm and its respective LIA and only firms on the list may submit bids;

5.2. Requirements for Inclusion in the Small Business Program: Any contracting or consulting firm desiring to be included in the Port's Small Business Program may apply for certification as an SBE. All applicants must satisfy the following:

5.2.1. Submit a completed application to the Social Responsibility Division. Applications are available from the Social Responsibility Division; and

5.2.2. Provide documentation, including tax returns, of status as a small business with average annual gross receipts not to exceed the State small business standards set forth in California Code of Regulations, Title 2, Chapter 4, Subchapter 8, over the past three (3) consecutive years. The pertinent size information from such State standards currently in effect is attached hereto in Exhibit B; and

5.2.3. Certification by the Social Responsibility Division as a LIABE pursuant to Regulation 1.1 and 1.2.

5.3. Bidding on Small Business Projects.

5.3.1. The Port shall notify businesses on the list established under Regulation 5.16 of projects selected for the Small Business Program.

5.3.2. Bidding shall be restricted to only those businesses listed as an SBE. The lowest bidder among the SBEs shall be considered the "lowest responsible bidder;"

5.3.3. If only one (1) SBE bids and its bid is within the budget for the project, it will be awarded the contract;

5.3.4. If no SBE is able to perform the work, the project will be bid as a general public works project or, if under the Port's bid limit, will be subject to the Port's program regarding projects below the bid limit as set forth in sections I.9 *et. seq.*.

5.4. Violations.

Any violations of the Small Business Program shall be subject to penalties set forth in section P.16 *et. seq.*

## **F. Very Small Business Program**

6.1. Regulations for Port Staff in Selecting Very Small Business Projects.

The Engineering Division, in collaboration with the Social Responsibility Division shall select certain projects reserved only for Very Small Businesses. The Port, in determining whether to select a project for the reserved program shall consider the following:

6.1.1. On-going review of the Port's Capital Improvement Program;

6.1.2. After each such review, determine whether any projects exist that can be successfully completed by very small local businesses;

6.1.3. Determine the costs of each project considered for placement in the reserved market. If economically and practically feasible, the project shall be reserved for the Very Small Business program;

6.1.4. Before soliciting bids or proposals for such projects, the Very Small Business project(s) shall be submitted for Board approval;

6.1.5. The Port shall determine the availability of a minimum number of Very Small Local Businesses Enterprises (VSBES) able to perform the work. The Port requires a minimum of three (3) VSBES willing and able to bid or propose, for the project to remain in the Very Small Business Program;

6.1.6. The Social Responsibility Division shall maintain a current list of VSBES that qualify and wish to participate in the Very Small Business Program. The list shall identify each firm and its respective LIA and only firms on the list may submit bids;

6.2. Requirements for Inclusion in the Very Small Business Program.

Any contracting or consulting firm desiring to be included in the Port's Very Small Business Program may apply for certification as a VSBE. All applicants must satisfy the following:

6.2.1. Submit a completed application to the Social Responsibility Division. Applications are available from the Social Responsibility Division; and

6.2.2. Provide documentation, including tax returns, of status as a very small business with three (3) year average annual gross income not to exceed \$2,000,000;

6.2.3. Certification by the Social Responsibility Division as a LIABE pursuant to Regulation 1.1 and 1.2.

6.3. Bidding on Very Small Business Projects.

6.3.1. The Port shall notify businesses on the list established under Regulation 6.16 of projects selected for the Very Small Business Program;

6.3.2. Bidding shall be restricted to only those businesses listed as a VSBE. The lowest bidder among the VSBES shall be considered the "lowest responsible bidder;"

6.3.3. If only one (1) VSBE bids and its bid is within the budget for the project, it will be awarded the contract;

6.3.4. If no VSBE is able to perform the work, the project will be bid as a general public works project, or if under the Port's bid limit, will be subject to the Port's program regarding projects below the bid limit as set forth in sections 1.9 *et. seq.*.

6.4. Violations.

Any violations of the Very Small Business Program shall be subject to penalties set forth in section P.16 *et. seq.*

### **G. Building Permits and Leases**

7.1. In addition to any other requirements for obtaining a building permit or lease, all applicants must also comply with the Port's Non-Discrimination and Small/Local Business Policy.

### **H. Purchasing Program**

8.1. The Purchasing Manager shall follow the non-discrimination policy as set forth herein in issuing purchase order contracts for goods and services.

8.2. The Purchasing Manager shall first seek to utilize vendors which are very small local businesses located in Oakland to the extent such vendors are available and the price of the goods and services sought is reasonable and competitive in the marketplace. If such vendors in Oakland are not available, the Purchasing Manager shall seek to utilize vendors which are small local businesses located in Oakland. If such vendors in Oakland are not available, such vendors will be sought next in the LIA and then as necessary in the LBA, the Bay Area, California, or nationwide.

8.3. The Purchasing Manager shall maintain records of purchase contracts issued to small and very small local businesses, located in Oakland, the LIA, and the LBA, and report the results annually to the Social Responsibility Division. This information will be included in the Social Responsibility Division's annual report to the Board.

### **I. Consultant Contracts Below the Bid Limit**

9.1. Port Division Directors and Managers (Staff) will follow the policy and procedures set forth in Regulations 2.1 to 2.3 hereinabove, except use of the Selection Committee set forth in subsection 2.31.

9.2. Staff shall consider use of different consultants when equally capable consultants are available, rather than using the same consultant on numerous occasions.

9.3. Staff shall maintain records on consultant contacts awarded to LBABEs, LIABEs, SBEs and VSBEs and report the results to the Social Responsibility Division on December 31 and on June 30 of each year.

### **J. Federal, State or Other Grants and Funding Sources**

10.1. From time to time, the Port may accept funding from the federal or state governments and from other sources for construction or other projects.

10.2. As each source may vary in its MBE, WBE and small local business utilization policies and programs, if applicable, the Port shall make its policies as to the subject project consistent with the funding sources policies to the extent permissible by law.

## **K. Technical Assistance Program**

11.1. The Port will cosponsor and encourage development of business skills courses so that small local businesses will be able to develop the sophistication needed to compete in the construction and consulting fields.

11.2. Availability of such development courses provided or cosponsored by the Port shall be limited to the following:

11.2.1. Certified small local businesses as defined in part II and pursuant to Regulations 5.22; and 5.23 and 6.22 and 6.23; and

11.2.2. Businesses certified by the Social Responsibility Division as a LIABE, SBE or VSBE pursuant to Regulation 1.1, 1.2 and 1.3.

11.2.3. Depending on the location of the courses, attendance may be limited as required by law or sponsoring entity.

11.3. The Port shall notify small local businesses of upcoming courses or events sponsored or cosponsored by the Port. Notification may consist of, but is not limited to, the following:

11.3.1. Advertisement in one or more daily or weekly newspapers, trade association publications, or trade oriented publications, trade journals, or other media;

11.3.2. Advertisement in a Port publication.

11.4. Due to practical constraints, the Port is not required to notify persons or businesses on an individual basis.

11.5. Registration for courses, if any, shall be conducted according to the procedures of each sponsoring entity.

## **L. Bonding Program for Small Local Businesses**

12.1. The Port will hire a consultant to implement a Surety Bond & Financing Services Program that encompasses the following services at no charge:

12.1.1. Bid, performance and payment bond guarantees to surety companies up to 40% of bond or \$750,000, whichever is less; and

12.1.2. Loan guarantees to banks up to 50% of loan or \$750,000, whichever is less; and

12.1.3. Payment of funds control fees up to 1% of the bond amount; and

12.1.4. Individual counseling and group workshops on bonding, financing and business management.

12.2. Upon request and receipt of all required documents, the Port shall:

12.2.1. Review the cost of compliance with contract bonding requirements; and

12.2.2. Determine whether the business is required to pay a higher bond premium than is generally charged in the industry due to its status as a small business.

12.3. Upon a finding that the business is required to pay a higher bond premium than is generally charged in the industry due to its status as a small business, the Port may:

12.3.1. Reduce the business' bid by the cost of bonding for the sole purpose of determining the lowest responsible bidder. If the bid is accepted on this basis, the actual bid before deducting the cost of bonding under these rules will be the bid awarded the contract.

### **M. Ombudsman**

13.1. The Executive Director may assign, at his or her sole discretion, an Ombudsman to aid small local businesses in obtaining Port contracts.

13.2. The Ombudsman shall:

13.2.1. Assist in the interpretation of plans and specifications/requests for proposals;

13.2.2. Provide information on resources for obtaining bonding and insurance;

13.2.3. Explain the process for the preparation and submission of bids and proposals;

13.2.4. Assist in the interpretation of and compliance with this Policy and the Regulations;

13.2.5. Assist in other Port processes and procedures as are in furtherance of this Policy.

### **N. Prompt Payment Program**

14.1. Payments on all construction and consulting contracts will be mailed to the contractor within ten (10) business days of receipt of properly documented invoices which have been reviewed and approved for payment.

14.1.1. Inadequate or defective invoices or billings will be returned to the contractor with reasons for the deficiency within five (5) business days of receipt.

14.1.2. Invoices or billings which cannot be paid for cause under the contract or by legal process such as stop notice, lien or levy shall be returned to the contractor with reasons therefore within five (5) business days of receipt.



14.2. To the extent it may do so under the law, the Port will require contractors and consultants to issue payments to subcontractors, and subconsultants within (5) business days of receipt of payment from the Port.

14.2.1. Payments will be made by an immediately negotiable instrument which the maker reasonably believes will be unconditionally paid when presented to the institution on which it is drawn.

14.2.2. This provision will not require payment where the contractor or consultant has a contractual or legal cause to withhold payment and notifies the subcontractor or subconsultant of the reasons therefore within five (5) business days of receipt of payment from the Port.

14.2.3. If the contractor or consultant fails to pay subcontractors or subconsultants as required in Regulation 14.2 herein, the Port shall withhold, upon notice by the subcontractor or subconsultant and subsequent verification, the amount due and invoiced by the subcontractor or subconsultant. The Port shall notify the contractor or consultant to make the overdue payments. When payment is made and receipts therefore are received, the Port shall release the amounts withheld.

14.3. Upon written request from the contractor, the Port may make twice-monthly payments on contracts under \$1,000,000 in contract price. The first payment will be based on a joint estimate by the Port and contractor, which estimate includes and identifies work performed by subcontractors. The second payment will be based on the actual work invoiced and accepted for the month, less payment already made and other amounts withheld pursuant to the contract. The contractor will follow the same procedure for payments to subcontractors and suppliers as a condition for the Port's acceptance of its request for twice-monthly payments.

## **O. Executive Director**

15.1. In addition to the powers authorized throughout this policy and these regulations, the Executive Director, with the advice and assistance of the Port Attorney shall have the authority to do the following:

15.1.1. Implement this policy and these Regulations;

15.1.2. Adopt, modify or rescind these Regulations and any other rules of practice and procedure hereunder;

15.1.3. Review, adjust or suspend any provision under this policy and these Regulations including provision for preferences from time to time, as is deemed reasonably necessary and in the best interests of the Port;

15.1.4. Waive, with cause, any provision under this policy and these Regulations;  
and

15.1.5. Revise, modify and adjust the forms attached as Exhibits hereto.

**P. Penalties for Willful, Knowing or Bad Faith Noncompliance of Port Policy and Regulations**

16.1. The Social Responsibility Division or any Port Division or Department in charge of a project shall report to the Executive Director of any suspicions that a business has violated the Port's Policy or Regulations.

16.2. The Executive Director, or his or her assigns, shall review such reports and determine whether there is cause to investigate.

16.3. If an investigation is implemented, the Executive Director, or his or her assigns, shall:

16.3.1. Provide notice and opportunity to be heard;

16.3.2. Review any documents submitted to the Port regarding the questioned business;

16.3.3. If necessary, request the cooperation of the business under investigation in obtaining further information;

16.3.4. Determine whether the violation has been a willful, knowing or bad faith noncompliance with the Port's Policy or Regulations. The decisions of the Executive Director shall be final.

16.3.5. If a business refuses to cooperate with the Port's investigation, the Port will presume the business is ineligible for any programs under this Policy pursuant to Regulation 16.4 *infra* and consider any current and future bids non-responsive until the matter is resolved.

16.4. Sanctions for a willful, knowing or bad faith noncompliance, including submission of information known or suspected to be false shall include, but are not limited to:

16.4.1. Banning of the business from bidding, working or providing goods and services on all Port contracts for a period up to ten years; and

16.4.2. Ineligibility, if applicable, as an SBE, VSBE, LBABE and LIABE, for the purposes of all programs, including subcontracting and joint ventures, under this Policy for a period up to ten years; and

16.4.3. Referral of the matter to Port Attorney for investigation and determination as to complaint to the District Attorney for criminal prosecution.

16.4.4. Any other penalty available at law or in equity.

16.5. Any violations found after awarding a contract will be considered a material breach and:

16.5.1. The Port may, at its option, consider the contract null and void; and

16.5.2. Recover any and all damages;

16.5.3. Immediately implement penalties under section 16.4 *et. seq.*

16.6. To the extent permissible by federal, state and local law and regulation, the Port may create, maintain and make available a list of businesses found to be in violation of its Policy or Regulations.

16.7. The sanctioned business shall have a one (1) time only right to seek review by the Executive Director after the passage of one-half the time of the original bar from Port contracts applied pursuant to Regulation 16.4 hereinabove. The decision of the Executive Director whether to modify or rescind the original bar shall be final.

16.8. If the Executive Director finds that a Port Department is in noncompliance, the Executive Director shall issue a letter stating the Executive Director's findings to the Board.

16.9. If the Executive Director has reason to believe that any Port staff has knowingly made, filed, or caused to be filed with the Port any materially false or misleading statement or report made under this Policy, the Executive Director shall report that information to the proper department head and/or the Board for appropriate action.

\*\*\*\*\*

TABLE OF EXHIBITS

- A. Publications for Advertising to Local and Small Business Enterprises
- B. East Bay Interagency Alliance Common Application for Local Certification - Port of Oakland a Partner Agency
- C. Contractor's Payment Record for Annual On-Call Projects

**Publications for Advertising to Small and  
Local Business Enterprises**

El Mundo  
405 14<sup>th</sup> Street, Suite 400  
Oakland, CA 94612  
510.287.8200

The Oakland Post  
405 14<sup>th</sup> Street, Suite 400  
Oakland, CA 94612  
510.287.8200

MECA  
(Minority Entrepreneurs Corporate Alliance)  
1924 Franklin Street, Suite 315  
Oakland, CA 94612  
510.272.0736

The Oakland Tribune  
7677 Oakport Street, #950  
Oakland, CA 94621  
510.208.6300

Sing Tao  
5000 Marina Boulevard, #328  
Brisbane, CA 94005  
650.808.8819

Port of Oakland website  
<http://www.portofoakland.com/business/bidnotic.asp>

The East Bay Interagency Alliance (EBIA) partner agencies have established a collaborative Common Application for Certification designed to streamline the certification process for local businesses working in Alameda County. The agencies involved are the Port of Oakland, the City of Oakland, Alameda County and the Alameda County Transit Improvement Authority (ACTIA). The Common Application is a sharing of information between agencies and NOT a reciprocal certification.

The Application is accepted by all the agencies but separate supplements are necessary for certification with each agency. For the purposes of this book, only the Common Application and the Port's Supplemental are included. If a firm is interested in certification by with the other agencies, additional information is available on the Port's website.

# East Bay Interagency Alliance (EBIA)

## COMMON APPLICATION for LOCAL CERTIFICATION

Alameda County – Alameda County Transportation Improvement Authority – City of Oakland – Port of Oakland

Check Certifying Agency:

Submittal Date: \_\_\_\_\_

- Alameda County – No supplemental required
- Alameda County Transportation Improvement Authority – Complete Supplemental **B**
- City of Oakland – Complete Supplemental **C**
- Port of Oakland – Complete Supplemental **D**
- All the above

**The Common Application is a sharing of information between agencies and NOT a reciprocal certification.**

### 1) Contact Information

Legal Name of Entity		Contact Person (Name & Title)		
Street Address of Entity (No P.O. Box)				
City		State	Zip Code	County
Telephone ( )	Fax # ( )	Cell# ( )		
Email Address		Web Site		

### 2) Company Profile

Primary Service undertaken/offered:		Specialty Service undertaken/offered:	
Date Entity was established (mm/dd/yr)	Does the entity have one or more additional offices outside the city of Oakland, CA? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, list other location(s)	Date Oakland office was established (mm/dd/yr)	
Method of Acquisition <input type="checkbox"/> New <input type="checkbox"/> Purchased existing <input type="checkbox"/> Secured concession		Federal ID Number:	
<input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Inherited <input type="checkbox"/> Other (explain)			
Has this entity operated under a different name during the past five years? <input type="checkbox"/>			
Type of Firm <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Publicly traded entity <input type="checkbox"/> Non-Profit or Church <input type="checkbox"/> Other _____		Ethnicity Group of owners(s) that own greater than 50% of the business. (for tracking purposes only) <input type="checkbox"/> African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific /Hawaiian <input type="checkbox"/> Multi ethnic ownership <input type="checkbox"/> Asian Indian <input type="checkbox"/> Multi ethnic minority ownership <input type="checkbox"/> Caucasian <input type="checkbox"/> ownership <input type="checkbox"/> Filipino <input type="checkbox"/> Other _____	
		Gender (for tracking purposes only) <input type="checkbox"/> Male <input type="checkbox"/> Female	
Gross Receipts for the last three recent fiscal years:		Total Receipts \$ _____	
Please attach copies of appropriate tax returns: (e.g. Form 990, Form 1040, Form 1120, etc)		Total Receipts \$ _____	
Year Ended _____	Year Ended _____	Total Receipts \$ _____	
Year Ended _____	Year Ended _____		

**2) Company Profile:** (Continue)

Number of Employees at the local office Permanent Full time _____  Permanent Part time _____	Temporary Full Time _____ Temporary Part Time _____	Seasonal Full Time _____ Seasonal Part Time _____
TOTAL Number of Employees at all locations. Permanent Full time _____ Permanent Part time _____	Temporary Full Time _____ Temporary Part Time _____	Seasonal Full Time _____ Seasonal Part Time _____

**3) Certifications:**

Name of Issuing Authority	Type	Number	Expiration Date
City / County Business Tax Certificate			
Internal Revenue Service (required) – If your firm is a Non-Profit, submit the Letter of Determination of Not For Profit Status.			
State of CA /CUCP Certification for DBE/ACDBE firm			
State of CA /SBA Certification for Small firm			
Other Certification			
Other Certification			
Other Certification			

**4) Professional Licenses, Permits and/or Certificates** (e.g. contractor, architect, engineer, etc. – list all that apply - attach copies. List on a separate page if additional space is needed)

Name of Issuing Authority	Type	Number	Expiration Date
State of CA Contractor’s License Board – Contractor’s License:			
State of CA Professional Service License or Permit:			
State of CA Service Provider License or Permit:			
Other:			
Other:			

**5) NAICS Codes:** Please review the NAICS<sup>1</sup> listing of work codes and indicate below your areas of expertise ranked in order of importance (begin with primary and specialty areas as indicated in the Company Profile section) NAICS Codes can be found at: <http://www.naics.com/search.htm> & <http://www.census.gov/epcd/naics02/>. Add separate sheet for additional NAICS codes if needed.

NAICS Code	Description of Work

**6) Additional Information:**

Are you a Trucking Firm?  Yes  No      Are you a Truck Broker?  Yes  No      Both?  Yes  No  
A supplier?  Yes  No

7) When submitting this application to any of the checked Certification Taskforce members, I consent to the sharing of information contained herein and declare under penalty of perjury that all statements made in this Application are true and correct :  Yes  No

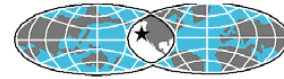
Signature \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> North American Industry Classification System – [www.naics.com](http://www.naics.com)  
Page 2 of 2

# D

Supplemental

## PORT OF OAKLAND



### Supplemental Questionnaire for Local Certification

Please check one of the following certification types. For a description of each please refer to the Port's Non Discrimination Small Local Business Utilization Policy available on the Port's website.

- Local Impact Area (LIA)                       Small Business Enterprise
- Local Business Area (LBA)                       Very Small Business Enterprise

Is certification related to an upcoming Port project?     Yes     No

If yes, please provide project name and bid date: \_\_\_\_\_

**APPLICATION MUST BE RECEIVED SEVEN (7) BUSINESS DAYS PRIOR TO BID DUE DATE**

**D1) Submit the following required documents:**

- 1 Completed and signed EBLA Common Application for Local Certification
- 2 A current and prior year City or County Business Tax License, certificate or permit from where the business is located. Document must show address of local business.
- 3 Copy of current lease/rental agreement for the business address (**must cover the past 12 months**)
- 4 Contractor/Professional Service/Service Provider license, certificate or permit
- 5 If this is a non-profit organization, submit a copy of the IRS Letter of Determination

If you are also applying for the Port's Small or Very Small certification status:

**Your firm must be located in the city of Alameda, Emeryville, Oakland or San Leandro to qualify.**

**Please submit the following in addition to the above documents:**

- 6 Signed Federal Tax Returns – submit the most recent three years
  - i. Sole Proprietor – Form 1040 w/Schedule C
  - ii. Partnership – Form 1065 for all owners
  - iii. Corporation – Form 1120
  - iv. Limited Liability Partnership – Form 1065 for all owners
  - v. Limited Liability Corporation – Form 1120
  - vi. Non-Profits – Form 990

If the firm is a Trucker and/or Trucking Broker, submit all of the above items (**EXCEPT BUSINESS TAX LICENSE**) AND complete the Truck/Truck Broker Section below and submit the additional trucking documents.

**D2) To be completed by Trucking Firms**

Please check all that apply:  <input type="checkbox"/> Trucking Broker (Prime Trucker) <input type="checkbox"/> Sub-Hauler <input type="checkbox"/> Puller Only <input type="checkbox"/> Owner-Operator  <input type="checkbox"/> Other _____ (Note: brokers must own/lease a complete operating unit)
<b>SUBMIT COPIES OF THE FOLLOWING:</b>  1. Current DMV Motor Carrier Permit 2. Current DOT-FHWA Random Drug & Alcohol Testing Certificate 3. Most recent CHP 343 Safety Report or CHP 342 Admin report or CHP 407-F Level I Inspection Form 4. Proof of current liability insurance 5. Current vehicle registrations (include up to 10 and list all below)
Number of staff ( <b>including owners</b> ) licensed to drive trucks for public works: _____
Are you enrolled in the Driver Pull Notice Program? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is your firm ( <b>not sub-haulers</b> ) licensed to haul hazardous waste materials <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list the class(s) of waste your firm is licensed to haul: _____
What type of materials do you haul for public works contractors? _____

Port of Oakland, Social Responsibility Department, Certification Unit, 530 Water Street, Oakland, CA 94607  
510 627-1419, fax 510 451-1656, www.portofoakland.com



# D

## Supplemental

## PORT OF OAKLAND



### D2) To be completed by Trucking Firms (Continued)

Please list each type of equipment used in hauling on public works projects:  
(use additional paper if necessary)

Equipment <i>(e.g. 10 wheeler, 2-axle tractor, 3-axle tractor, semi end dump, semi bottom dump, double bottom, transfer, high-sider, flat bed, etc.)</i>	Vehicle registration license plate number	Active or Inactive?
1.		
2.		
3.		
4.		
5.		

## DECLARATION OF CERTIFICATION

*The undersigned declares under penalty of perjury that the statements made in the EBIA Common Application for Local Certification and the Port of Oakland Supplement D Section(s) are **true and correct** and include all material information necessary to identify, describe and explain the operations and locations of this firm as well as the ownership thereof. I understand that the Port relies on the statements and representations contained in this Certification Application and Supplement Questionnaire. I further understand that **any** false statements or material misrepresentations will be grounds for termination of any contract which may be awarded, grounds for further penalties including debarment from participation in future Port contracts, grounds for De-Certification and grounds for possible prosecution under Federal or State laws concerning false or fraudulent representations.*

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Port of Oakland, Social Responsibility Department, Certification Unit, 530 Water Street, Oakland, CA 94607  
510 627-1419, fax 510 451-1656, www.portofoakland.com

**CONTRACTOR'S PAYMENT RECORD**  
**FOR PUBLIC WORKS PROJECTS**  
**Contract Payment No.: \_\_\_\_\_**

Please check appropriate Boxes

Type of Public Works Contract

- Regular  
 Annual./On-Call

- Technical Service Order (TSO)  
 - Work Authorization (WA)

TSO Number: \_\_\_\_\_  
 WA Number: \_\_\_\_\_

Project: \_\_\_\_\_

Port Project No.: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Port's Contract Administrator: \_\_\_\_\_

Phone: \_\_\_\_\_

Original Contract Authorization Amount: \_\_\_\_\_

Fax: \_\_\_\_\_

Change Orders to Date: \_\_\_\_\_

Total Contract Authorization: \_\_\_\_\_

**NOTE:**

For access into WAMS:  
 Contact: Elation Systems  
 510-764-1870  
[support@elationsystems.com](mailto:support@elationsystems.com)

Amount of Current Invoice: \_\_\_\_\_

Total Invoiced to Date: \_\_\_\_\_

Total Paid to Date: \_\_\_\_\_

Please list amounts billed from and paid to **each** tier (include subcontractors). For prime or JV partners or associates, list separately and include only the share due each of these firms. If annual/on-call project, please specify for each individual TSO/WA.

Each Firm's Invoiced Date	Contractor or other service provider, including prime, JV partners or subcontractors	Total contract amt., for each firm, incl. change orders	Current invoice amt. for each firm	Total paid to each firm to date

Under penalty of perjury the undersigned agrees that the foregoing information is true and correct.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00815

**PORT OF OAKLAND**  
**NON-DISCRIMINATION**  
**IN**  
**CONSTRUCTION WORKFORCE POLICY**  
**For**  
**Public Works Contracts**

Revised 7/19/04  
Revised 8/7/06

**I.**  
**Requirements**

- A. The Port requires all contractors to not discriminate in employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation; the contractor and its subcontractors shall maintain a working environment free of harassment, intimidation and coercion at all sites where employees are assigned. The contractor shall specifically ensure that all on-site supervisory personnel carry out these requirements.
- B. The contractor and all subcontractors must submit complete certified weekly payroll records for all workers covered under these contract provisions. Such payroll records shall be submitted via the Port's Web Accessed Monitoring System (WAMS). The contractor and all subcontractors are required to provide a listing of all employee-truck drivers and owner-operators used to perform covered work and to certify driver/owner-operator ("operator") status as more fully set forth in Document 00700. Owner-operator information must be provided on the document entitled "Trucking Certified Payroll Report Form".. Certification will be accepted only from the contractor or subcontractor, trucking broker or trucking firm employing the operator. Trucking certified payroll report forms will not be accepted directly from an owner-operator for his or her personal hauling work unless that owner-operator has been issued a valid motor carrier's permit by the Department of Motor Vehicles of the State of California to operate the truck or tractor for which the certified payroll is being submitted and is also an approved subcontractor or recognized lower tier subcontractor or trucking broker. Certified payrolls will be accepted from an owner-operator for hauls performed by the owner-operator's employee-drivers. The first payroll report submitted by the contractor and subcontractors shall be marked "First," while the last payroll report submitted shall be marked "FINAL" to indicate the beginning and completion of that contractor's and subcontractor's presence on the project. In the event that the contractor or any of its subcontractors does not work in a reporting period a statement, "Statement of Non-Performance," to such effect shall be submitted as part of the payroll reports. In case the contractor and subcontractors shall fail to submit the weekly payroll records within one (1) week after a subject payroll date, the partial, monthly or final payments as specified in the Contract documents, will not be given to the contractor until such required reports are received.
- C. If the contractor's failure to submit complete or timely payroll records for the work performed by a particular subcontractor that is the result of the contractor's inability to obtain satisfactory or timely information from that subcontractor, then the contractor may submit a statement with his payroll report form that he has

been unable to secure the payroll data from that subcontractor, and shall indicate the delinquent subcontractor. If the subcontractor has not submitted the missing payroll records to the contractor by the time the Port Project Manager prepares the next partial or monthly estimate of work done, the Port Project Manager will deduct from that estimate and withhold payments to the contractor of twice the value of all work done by the delinquent subcontractor since the last preceding estimate was prepared. Such value shall be determined by the Port Project Manager. Payments will be made to the contractor for the full amount of any payments withheld pursuant to this Paragraph C as soon as practicable after the contractor submits the missing payroll records for the work and periods involved.

\*\*\*\*\*

**II.**

**Exhibits**

## **BASIC INFORMATION RECAP**

**Reports due:**

- Certified weekly payroll reports- due weekly
- Fringe benefit statement - due with first certified weekly payroll report and upon addition of new craft
- Trucking Certified Payroll Report, due weekly

**Prevailing Wage:**

State prevailing wage is specified and updated by the Division of Labor Statistics and Research, Prevailing Wage Unit (415) 972-8628. It is also available on the internet: <http://www.dir.ca.gov/>

**Other:**

- Construction Workers Referral Agencies
- Required Posters

*This page intentionally left blank.*



# PAYROLL

U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

OMB NO. 1215-0149  
Expires: 04-30-87

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		PHONE NO.
PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.	

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE. PLEASE INDICATE ETHNICITY AND GENDER FOR EACH EMPLOYEE.	(2) NO OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION and <i>Craft Level</i>	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED (this project)	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										F I C A	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTION S	
			O															
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FORM WH-347 (1/68) – formerly sol 184 – PURCHASE THIS FORM DIRECTLY FROM THE SUPT. OF DOCUMENTS

Date \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_  
(Name of signatory party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_  
(Contractor or subcontractor) (Building or work)

\_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, and ending the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, all persons employed on said project have been paid and full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said:

\_\_\_\_\_ from the full  
(Contractor or subcontractor)

weekly wages earned by any person and that no deductions haven been made either directly or indirectly from the full wages earned by any person other than permissible deductions as defined in Regulations, Part 3 (29 CFR subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 73 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rate for laborers or mechanics contained therein are not less that the applicable wage rate contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(A) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- In addition to the basic hourly wage rate paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees except as noted in Section 4(c) below.

(B) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(C) EXCEPTIONS

Exception (craft)	EXPLANATION

REMARKS

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.



Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of signatory party) (Title)

do hereby certify under penalty of perjury:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_  
(Contractor or subcontractor) (Building or work)

\_\_\_\_\_; that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, all persons employed on said project have been paid and full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said:

\_\_\_\_\_ from the full  
(Contractor or subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than permissible deductions as defined in Regulations, Part 3 (29 CFR subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 73 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (5) That owner-operators listed have performed their services as bonafide owner operators (includes the owner of the trucking company driving his/her own truck); that the total rate of compensation paid for their services as owner-operators under their respective contracts is not less than the applicable wage rate required to be paid to workers employed to perform such services in any wage determination incorporated into the contract; and
- (6) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates contained therein are not less than the applicable wage rate contained in any wage determination incorporated into the contract; that the classifications set forth therein conform with the work performed.

(7) That:

- (A) Where fringe benefits are paid to approved plans, funds, or programs in addition to the basic hourly wage rate paid to each person listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees except as noted in Section 4(c) below.
- (B) Where fringe benefits are paid in **(CASH)** Each person listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(C) EXCEPTIONS

Exception (craft)	EXPLANATION

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

**FRINGE BENEFIT STATEMENT**

**PROJECT NAME:** \_\_\_\_\_

**CONTRACT NO:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs as listed below:

<u>Classification</u>	<u>Fringe Benefit Hourly Amount</u>	<u>Name and Address of Plans, Funds, or Program</u>
	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice/Training \$ _____	_____
	Other \$ _____	_____

	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
Pension	\$ _____	_____
	Apprentice/Training \$ _____	_____
Other	\$ _____	_____

	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
Pension	\$ _____	_____
Apprentice/Training	\$ _____	_____
Other	\$ _____	_____

\_\_\_\_\_  
Company Name (PLEASE PRINT)

\_\_\_\_\_  
Name and Title (PLEASE PRINT)

\_\_\_\_\_  
Signature

## **CONSTRUCTION WORKERS REFERRAL AGENCIES**

<b><u>Agency</u></b>	<b><u>Phone</u></b>	<b><u>Name</u></b>
CIL- Employment Services .....	(510) 841-4776.....	Michael Donnelly
Cypress Mandela Training Center.....	(510) 208-7354.....	Arthur Shanks
Filipinos for Affirmative Action .....	(510) 465-9876.....	Lilian Galedo
Intertribal Friendship House .....	(510) 452-1235.....	
Oakland Construction Employment Referral Program.....	(510) 238-3970.....	Jonathan Dumas
Oakland PIC.....	(510) 891-9393.....	Gay Plair
Tradeswomen, Inc.....	(510) 891-8773.....	Meg Vasey

## REQUIRED POSTERS

TITLE	SOURCE
JOB SAFETY AND HEALTH PROTECTION	U.S. Department of Labor Occupational Health and Safety Administration 450 Golden Gate Avenue San Francisco, CA. 94102
EQUAL EMPLOYMENT OPPORTUNITY	U.S. Equal Employment Opportunity Commission Office of Publications 2401 "E" Street, N.W. Washington, D.C. 20506
<p>PERSONS 40-70 YEARS NOTE! AGE DISCRIMINATION IS AGAINST THE LAW</p> <p>YOUR RIGHTS UNDER THE FAIR LABOR STANDARDS ACT. NOTE: There are also special posting requirements for Farm Labor Contractors and for employers performing work under a federal contract. For information about these special requirements, employers should contact their Wage and Hour Division Area Office.</p>	<p>U.S. Department of Labor Wage and Hour Division</p> <p>Area Office: 115 No. Central Avenue Glendale, CA. 91203</p> <p>Federal Building, Room 3251 300 No. Los Angeles Street Los Angeles, CA. 90012</p> <p>2800 Cottage Way, Room E-1603 Sacramento, CA. 95825</p> <p>211 Main Street San Francisco, CA. 94105</p> <p>1600 No. Broadway, Suite 440 Santa Ana, CA 92706</p>
DISCRIMINATION IN EMPLOYMENT IS PROHIBITED BY LAW	California Department of Fair Employment & Housing 2014 T Street, Suite 210 Sacramento, CA 95814-6824
NOTICE TO EMPLOYEES OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE. (English version, DE 1857A; Spanish version, DE 1857AS)	California Employment Development Department Forms and Supply Warehouse 805 R. Street Sacramento, CA. 95814
<p>PAY DAY NOTICE</p> <p>SAFETY AND HEALTH PROTECTION ON THE JOB</p> <p>INDUSTRIAL WELFARE COMMISSION'S ORDERS REGARDING WAGES, HOURS AND WORKING CONDITIONS. Note: When ordering, employers should specify their type of business, e.g., manufacturing, transportation, mercantile.</p>	<p>California Department of Industrial Relations Division of Labor Standards Enforcement P.O. Box 603 San Francisco, CA. 94101</p>
NOTICE OF COMPENSATION CARRIER	Your workers' compensation carrier.

Additional posting requirements for specific industries may be obtained from California Department of Commerce, Office of Small Business, 1121 L. Street, Suite 600, Sacramento, CA. 95814

- END OF DOCUMENT -





DOCUMENT 00822

**APPRENTICESHIP PROGRAM**

Contractor and subcontractors shall comply with the requirements of California Labor Code Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

Section 1777.5, as amended, requires a contractor or subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval by filling out the Public Works Contract Award Information (DAS 140) form. Please submit a copy of the completed form to:

Social Responsibility Division		Jake Sloan
Port of Oakland		Davillier-Sloan
530 Water Street	AND	1630 – 12 <sup>th</sup> Street
Oakland, CA 94607		Oakland, CA 94607
ATTN: Public Works Unit		

The certificate will also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract Documents. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three-month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

The Contractor is required to make contributions to funds established for administration of apprenticeship programs if the Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

This form should be sent to the Apprenticeship Committee of the craft or trade in the area of the site of the public work. If you have any questions as to the address of the appropriate Apprenticeship Committee, contact the nearest office of the Division of Apprenticeship Standards (DAS). Consult your telephone directory under California, State of, Industrial Relations, for the DAS office in your area. *Do not send this form to the Division of Apprenticeship Standards.*

**PUBLIC WORKS  
CONTRACT AWARD INFORMATION**

NAME OF CONTRACTOR	CONTRACTOR'S STATE LICENSE NO.
CONTRACTOR'S MAILING ADDRESS — NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & LOCATION OF PUBLIC WORKS PROJECT	DATE OF CONTRACT AWARD
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
<b>APPRENTICES</b>	
OCCUPATION OF APPRENTICE	NUMBER TO BE EMPLOYED
	APPROXIMATE DATES TO BE EMPLOYED

*Check One Of The Boxes Below*

*Please Note: Your election of options below is not to be deemed a request for the immediate dispatch of apprentices. Contractors must make a separate request for actual dispatch.*

- Box 1  We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations. We voluntarily choose to comply with the applicable Apprenticeship Committee Standards for the duration of this job only, with regard to training apprentices and to the payment of training contributions.
- Box 2  We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations, but do not agree to be bound by the applicable Apprenticeship Committee Standards in training the apprentices; instead, we agree to employ and train apprentice(s) in accordance with the California Apprenticeship Council regulations, including Section 230.1 of the California Code of Regulations, governing employment of apprentices on public work projects.
- Box 3  We are already approved to train apprentices by the applicable Apprenticeship Committee and we will employ and train under the Standards. We will request dispatch of apprentices for this job in accordance with Section 230.1 (A), California Code of Regulations.
- Box 4  We will not request the dispatch of apprentice(s) since apprentices are not required on this job under the provisions of California Labor Code Section 1777.5, because:

\_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

State of California — Department of Industrial Relations  
DIVISION OF APPRENTICESHIP STANDARDS

**DOCUMENT 00823**

PORT OF OAKLAND MARITIME AND AVIATION  
PROJECT LABOR AGREEMENT

ENTERED INTO BETWEEN  
DAVILLIER-SLOAN, INC./PARSONS CONSTRUCTORS, INC.  
AND THE  
BUILDING & CONSTRUCTION TRADES COUNCIL  
OF ALAMEDA COUNTY, AFL-CIO

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## **SIDE LETTERS AND OTHER AGREEMENTS**

- Appendix A. Agreed to Letter of Assent
- Appendix B. Letter of Understanding to Sloan from Luboviski regarding Union Initiation Fees dated February 28, 2000
- Appendix C. Letter of Understanding to Luboviski from Sloan regarding Superintendents' Contributions dated February 28, 2000
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- Appendix E. Letter of Understanding to Word from Sloan regarding Prefabrication dated February 28, 2000
- Appendix F. Letter of Understanding to Blevins from Sloan regarding Prefabrication dated February 28, 2000
- Appendix G. Letter of Understanding to Luboviski from Sloan regarding Small Business Utilization Program dated February 28, 2000
- Appendix G-1: Modifications to Appendix G: "Letter of Understanding re: Small Business Utilization Program"
- Appendix H. Letter of Understanding to Luboviski from Sloan regarding Workers' Compensation dated February 28, 2000
- Appendix I. Letter of Understanding to Luboviski from Sloan regarding Tenant Improvements dated February 28, 2000
- Appendix J. Letter of Understanding to Luboviski from Sloan regarding Hiring Hall Procedures dated February 28, 2000
- Appendix K. Draft Letter of Understanding to Luboviski from the Port of Oakland regarding Fringe Benefit Contribution Delinquencies
- Appendix L. Uniform Substance Abuse Prevention Policy
- Appendix M. Plan for the Settlement of Jurisdictional Disputes in the Construction Industry Including Procedural Rules and Regulations (on file with Davillier-Sloan, Inc./Parson Constructors, Inc.)
- Appendix N. Modification of Termination Dates, MAPLA, Article II, Section 1.a.
- Schedule A Agreements (on file with Davillier-Sloan, Inc./Parson Constructors, Inc.)

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

Davillier-Sloan Inc./Parsons Constructors, Inc., their successors or assigns (hereinafter "DSI/PCI" or "Project Contractor"), for and on behalf of themselves and the Port of Oakland, enter into this Project Labor Agreement (hereinafter the "Agreement") with the Building and Construction Trades Department, AFL-CIO (hereinafter the "Department"), its affiliated National and International Unions that become signatory to the Agreement, the Building and Construction Trades Council of Alameda County and the Local Unions or Councils that become signatory to the Agreement (collectively referred to as "Unions") The Agreement, once adopted by the Parties and the Board of Port Commissioners of the Port of Oakland, will cover all construction, demolition, modification, alteration and repair work covered by the Scope of the Agreement that is owned and contracted by the Port of Oakland (hereinafter the "Port" or the "Owner").

The Port seeks project stability and the economic savings that flow from the provisions of the Agreement. And the Port places high priority upon the development of comprehensive programs for the recruitment, training and employment of historically disadvantaged residents of the Port's Local Impact Area (LIA, defined as the cities of Alameda, Emeryville, Oakland and San Leandro), especially from Oakland on the Project. It also seeks to create business opportunities on the Project for small and disadvantaged companies and contractors in the LIA business community, especially for those located in Oakland. The Port sought terms and conditions that advanced those goals and removed obstacles that may have historically limited the full employment of such local residents or the access of such businesses to the opportunities available on projects of this kind. The Agreement contains provisions to achieve these important objectives, and recognizes that when those objectives cannot be met that the Parties will work to include workers and businesses from the Port's Local Business Area (LBA, defined as Alameda and Contra Costa counties) as a priority.

For the purposes of the Port's programs under the Agreement, residency for individuals shall mean residency for a period of not less than thirty (30) days prior to the date of dispatch/referral at a place not established or subsidized by a Contractor covered by the Agreement. Residency for businesses will be established as of the date the Port advertised or otherwise offered a contract for bid.

The parties to the Agreement understand that if the Port finds the Agreement acceptable, the Port will include the Agreement in the bid documents, contract specifications and other contract documents for work covered under the Agreement. Upon award, the prime contractor and its various subcontractors will become parties to the Agreement. For purposes of covering such work, the Unions agree that other Contractors may execute the Agreement through execution of a Letter of Assent binding them and their subcontractors to the Agreement. And, the Agreement will supersede the Port of Oakland Vision 2000 (1999 Facilities) Project Labor Agreement for work covered by that agreement that has not been advertised for bid as of the effective date of this Agreement.

DSI/PCI shall monitor and administer the compliance with the Agreement by all Contractors.

This Agreement uses the term "Contractor" and specifies the rights and obligations of each such Contractor as if already parties to this Agreement. The term "Contractor" (or "Contractors") includes all construction contractors and subcontractors of whatever tier that are engaged in work on the construction site within the scope of this Agreement, including DSI/PCI when it performs construction work within the scope of this Agreement.

The Unions, DSI/PCI and all Contractors agree to abide by the terms and conditions contained in the Agreement, including the listed Appendices and the referenced Schedule A agreements. Taken together they constitute the complete understanding of the Parties. No Contractor is required to sign any other agreement with a signatory union as a condition of performing work within the scope of the Agreement. No practice, understanding or agreement between a Contractor and a Union party which is not specifically set forth in this Agreement will be binding on any other party unless endorsed in writing by DSI/PCI.

The Unions agree that any Contractor successfully bidding for covered work has a right to and must become a signatory to the Agreement without regard to whether that successful bidder performs work at other sites on either a union or a non-union basis, and without regard to whether employees of such bidder are or are not members of a union. A signatory Contractor will only be subject to the Agreement for work defined in this Agreement. The Unions hereby pledge to work cooperatively with any Contractor awarded work covered by this Agreement, despite any other dispute the Unions may have with that Contractor over, for example, trust or benefit payments that arose on non-covered work. In consideration of the Unions' waiver of their right to withhold labor from a Contractor delinquent in the payment of Trust Fund contributions, should a Contractor performing work on this Project be delinquent in the payment of Trust Fund contributions required under this Agreement with respect to employees represented by the Union, the Union may request, pursuant to the conditions and prerequisites contained in the attached letter of understanding between the Port and the Unions, that the Owner issue joint checks payable to the Contractor and the appropriate employee benefit Trust Fund(s) until such delinquencies are satisfied. It is agreed, however, with respect to contractors delinquent in trust or benefit contribution payments, that nothing in this Agreement shall affect normal contract remedies available under the local collective bargaining agreements against general contractors or upper-tier subcontractors signatory to those agreements for recovery of subcontractor delinquencies.

The Unions recognize that the Port, at its sole discretion, has the right to contract for work through its Non-Discrimination and Small Local Business Utilization Program as set out in the letter of understanding re: the small business utilization program attached hereto. The Unions pledge to work cooperatively with the Contractors awarded work under that program in order to aid the Port in its effort to increase capacity among historically disadvantaged businesses within its Local Impact Area.

## **ARTICLE I PURPOSE**

The Port of Oakland's Maritime Division Capital Improvement Program, including its urgent Vision 2000 Project, is a multi-year program, currently estimated at in excess of \$640,000,000. The timely and successful completion of the Vision 2000 Project, and complementary elements of its total Maritime Capital Improvement Program is critical to the Port. Otherwise, the Port cannot meet the shipping requirements of its shipping company tenants, the Oakland and San Francisco Bay Area community, the region's industries and businesses and the Nation's international commerce. The Vision 2000 Project Maritime program will significantly expand the capacity of the Port's maritime facilities through the development of new berths and yards and the construction of a highly efficient Joint Intermodal Terminal for increasing the efficiency of ship-to-rail transfer of international container traffic. This physical expansion will more than double the size of the Port's maritime facilities and will require a highly integrated, efficient, cost-effective and time-sensitive construction endeavor to succeed on the critical time path that has been identified for the needs of the industry and the Nation's growing international commerce. Timely and efficient execution of the Project is necessary to avoid severe disruption to the Port's maritime operations. In addition, bringing the other Maritime modernization and realignment programs on line promptly is a highly complementary element of the Port's strategy to provide a state of the art intermodal container facility to its maritime tenants and partners. Failure to execute this overall program in an efficient and timely manner will cause severe disruption to the Port's operations would dramatically reduce the competitiveness of the Port's maritime operations. The consequences of such an outcome would send profound adverse reverberations throughout the local, state and national economies and be very detrimental to the Port.

The Aviation Development Program (ADP) is a multi-year program, currently estimated at in excess of \$665,000,000, to expand the Port's international airport and general aviation facilities. The timely and successful completion of the ADP is critical to the Port. Otherwise, it cannot meet the operational requirements of its tenants or furnish the necessary capacity for air service to the Oakland and San Francisco Bay Area community and the region's airlines, industries, businesses and the general aviation community. Completion of the ADP will enhance regional aviation efficiency and public safety, reduce traffic congestion and improve environmental quality of life for the region. The ADP will expand the capacity of the Port's aviation facilities through the development of new terminal, runway, apron, parking, roadway and other facilities. The physical expansion will significantly increase the capacity of the airport and will require a highly integrated, efficient, cost effective and time sensitive construction endeavor to succeed on the critical time path that has been identified for the needs of the industry and to minimize disruption to on-going operations. Timely and efficient execution of the ADP is necessary to avoid severe disruption to the Port's aviation operations and reductions in their competitiveness, both of which would be very detrimental to the Port.

For purposes of this Agreement, these elements of work, and major maintenance work of the Port's Maritime and Aviation Divisions, will be collectively known as the Project.

In order to accomplish the Project successfully, the Port must ensure that the Contractors that execute the construction projects have available to them a highly trained, skilled and



effective workforce and that the work performed will not be subject to major disruption. In addition, the Port seeks to ensure that the construction is undertaken with the greatest efficiencies in integrating the work of various crafts and trades. And it seeks to establish a mechanism that will quickly resolve, without disruption in work, disputes between Contractors and Unions or among Unions.

In recognition of the special needs of the Project and to maintain a spirit of harmony, labor-management peace and stability during the term of the Agreement, the Parties agree to establish effective and binding methods for the settlement of all labor misunderstandings, disputes or grievances that may arise. And in recognition of such methods and procedures, the Unions agree not to engage in any strikes, picketing, slow downs or interruption of work and the Contractor agrees not to engage in any lockout. And the parties agree to cooperate throughout the term of the Agreement to develop methods to reduce Port construction and project administrative costs.

The Parties commit to provide open access to bidding opportunities for all contractors and to assure that an adequate supply of craft workers possessing the requisite skills and training to perform the construction in order to provide the Port a project of the highest quality.

## **ARTICLE II SCOPE OF AGREEMENT**

This Agreement, hereinafter designated as “The Project Labor Agreement” or “Agreement” shall apply to all on-site construction, modifications, alterations, repair and demolition performed by those contractors of whatever tier that are awarded contracts by the Port for such work, which may include DSI/PCI, as is described in Section 1 (a) of this Article.

It is understood by the parties that the Owner may at any time and at its sole discretion determine to build segments of the Project under this Agreement not currently proposed, or to modify or not to build any one or more of the particular segments proposed to be covered. If segments are added to the Project scope, they would be automatically covered by this Agreement.

Section 1. (a) The projects covered by the Agreement include the following elements contained in the current “PORT OF OAKLAND 5-YEAR CAPITAL IMPROVEMENT PROGRAM” for the Aviation and Maritime Divisions, including major maintenance:

Maritime Division Program:

Vision 2000 (1999 Facilities) Project Labor Agreement: For those projects set out in the Vision 2000 (1999) Facilities Project Labor Agreement that have not yet been advertised for bid prior to the effective date of this Agreement, those projects shall be included in coverage of this Agreement.

Vision 2000 additional facilities: Construction of channel for Berths 57/58 Wharf, fill, demolition, gates and yard; construction of Berth 59 channel, bank, berth and

yard behind “Berth 59”; expansion of Knight RR yard; wharf and channel modifications, embankment; related work including mitigation for historic structures, traffic and water quality associated with Vision 2000 projects; construction of new road; Joint Intermodal Terminal Phase 2; and construction of Middle Harbor Park.

Other Maritime Division expansion and modernization: Those projects, known or currently unknown, for which the estimated cost exceeds \$50,000 that appear on the Capital Improvement Program list for the Maritime Division and have been advertised for bid, invitations to bid have been made, or solicitation for proposals from contractors or sub-contractors have been issued on or before December 31, 2004.

The Aviation Development Program:

Terminal expansion: Expansion of both existing air passenger terminals by up to 750,000 gross square feet. Terminal expansion will provide 12 additional aircraft parking and loading gates, as well as new concourse, circulation and waiting areas, and new passenger service facilities (e.g., ticketing, baggage claim).

Landside Access: Construction of the Airport Roadway Project; a six-story parking garage; realignment, widening, and double-decking of the Airport Drive terminal loop; and relocation of existing parking and rental car facilities displaced by construction of other project components, as well as construction of additional permanent parking and rental car facilities.

Airline and Airport Support: Construction of a building of up to 15,000 gross square feet to expand existing MOIA in-flight provisioning capabilities; consolidation of existing ground vehicle equipment service facilities (fueling, service, and storage) at a single site; relocation of the existing MOIA jet-fuel dispensing facility; and expansion of the existing United Airlines maintenance base.

Other Aviation Division expansion and modernization: Those projects, known or currently unknown, for which the estimated cost exceeds \$50,000 that appear on the Capital Improvement Program list for the Aviation Division and that have been advertised for bid, invitations to bid have been made, or solicitation for proposals from contractors or sub-contractors have been issued on or before December 31, 2004.

(b) Port Work (Notice): Immediately upon determining which company is the apparent low bidder for any work on the Project, and not later than 48 hours after such determination, the Port shall notify the Building Trades Council of the identity of the apparent low bidder and the next two apparent low bidders for all such work. The Port shall notify the Building Trades council no later than 48 hours after awarding contracts for work to be performed on the Project of the identity of the work in question and the Contractor to whom such contract was awarded. The

Port shall notify the Building Trades Council no later than 24 hours after issuing a notice to proceed to any contractor that such notice has issued and shall provide the Buildings Trades Council with a copy of such notice to proceed.

(c) Tenant Work (Notice): The Port shall notify the Building Trades Council of the details of all construction work to be performed by tenants on leased property of the Port within 48 hours of the tenant's notification to the Port of the contemplated work, unless the work is to be performed in less than 48 hours, in which case the Port shall immediately notify the Building Trades council that the tenant is commencing work.

Section 2. Items specifically excluded from the scope of this Agreement include the following:

(a) Work of non-manual employees, including but not limited to, superintendents, supervisors above the level of General Foreman, staff engineers, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees.

(b) Equipment and machinery owned or controlled and operated by the Port or railroad, shipping lines, airlines, concessionaires or stevedoring companies, except where such equipment is being operated to perform work on the Project and covered by this Agreement.

(c) All employees of design teams or any other consultant of the Port for, architectural/engineering design services and other professional services not expressly covered by the Agreement.

(d) Any work performed on or near or leading to or onto the site of work covered by this Agreement and undertaken by state, county, city or other governmental bodies, or their contractors; or by public utilities or their contractors; and/or by the Owner (for work which is not part of the Scope of this Agreement as defined in Section 1(a) of this Article).

(e) Non-construction support services contracted by the Owner or DSI/PCI in connection with this Project .

(f) All work by employees of the Port or by railroad or shipping lines, airlines, concessionaires or stevedoring companies doing business at the Port.

(g) Construction work ancillary to the Project but contracted by others. When DSI/PCI is informed of such construction work, it will notify the Building Trades Council as soon as possible thereafter, but not later than twenty-four (24) hours prior to the commencement of such work.

Section 3. (a) The Owner, DSI/PCI, and/or Contractors, as appropriate, have the absolute right to award contracts or subcontracts on this Project notwithstanding the existence or non-existence of any collective bargaining agreements between the prospective Contractor and any Union party, and provided that such Contractor is willing, ready and able to comply with this Project Labor Agreement and shall execute a Letter of Assent (in the form attached as Appendix A), should such Contractor be awarded work covered by this Agreement.

(b) It is agreed that all subcontractors of a Contractor, of whatever tier, who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept and to be bound by the terms and conditions of this Project Labor Agreement, and shall evidence their acceptance by the execution of a Letter of Assent provided to the Contractor by DSI/PCI, prior to the commencement of work. A copy of the Letter of Assent executed by the Contractor shall be immediately transmitted to the Union(s) prior to the dispatch of employees to the job site.

Section 4. (a) The provisions of this Project Labor Agreement (including the Schedule As, which are the local Collective Bargaining Agreements between bona fide contractor groups or representatives and the signatory Unions) shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or National Agreements which may conflict with or differ from the terms of this Agreement. Notwithstanding the foregoing, the Elevator Constructors' National Agreement shall be applied to Qualifying Work falling within the jurisdiction of the Elevator Constructors, except that Articles VIII, IX and X of this Agreement shall prevail and be applied to such work. DSI/PCI and each local union shall agree upon the local collective bargaining agreement to be designated as the applicable Schedule A for work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

(b) Any dispute as to the applicable source between this Agreement and any Schedule A for determining the wages, hours and working conditions of employees on the Project shall be resolved by Gerald McKay, under the procedures established in Article IX. It is understood that this Agreement, together with the referenced Schedule As, constitutes a self-contained, stand-alone agreement and that, by virtue of having become bound to this Project Labor Agreement, the Contractor will not be obligated to sign any other local, area or national agreement as a condition of performing work within the scope of this Agreement.

Section 5. This Agreement shall only be binding upon the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Nothing in this Section shall be construed to limit or prevent the Unions or fringe

benefit trust funds from asserting or enforcing legal rights to collect delinquent contributions from Contractors signatory to this Agreement or their related entities.

Section 6. This Agreement shall be limited to the on-site construction work within the scope of this Agreement, as set forth in Section 1 of this Article, for which bids have been advertised, invitations to bid have been made, or solicitations for proposals from contractors or subcontractors have been issued on and after the effective date of this Agreement, including, specifically, site preparation and related demolition and deconstruction work. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function awarded to any contractor before the effective date of this Agreement or which may be performed by the Owner for its own account on the property or in and around the construction site.

Section 7. It is understood that the liability of the Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the Owner or DSI/PCI and/or any Contractor, except in a case when DSI/PCI terminates or directs the termination of the employee of a Contractor.

Section 8. None of the provisions of this Agreement shall be construed to prohibit or restrict the Port or its employees from performing work not covered by this Agreement on or around the construction site. As areas of covered work are accepted by the Owner, the Agreement shall have no further force or effect on such items or areas except where the Contractor is directed by the Owner to engage in repairs or punch list modifications.

Section 9. It is understood that the Owner, at its sole option, may terminate, delay or suspend any and all portions of the covered work at any time.

### **ARTICLE III SOCIAL JUSTICE COMMITTEE**

The Parties have agreed to various provisions of the Agreement to achieve the inclusion of historically disadvantaged businesses and individuals in the contracting and employment opportunities created by the covered work. In order to implement and monitor the progress of these social justice provisions, the Port and the Unions, in recognition of their mutual commitment to and the partnership they have established to achieve those goals, shall form a Social Justice Committee. The Social Justice Committee will serve as the central forum for representatives of all interested or affected parties to exchange information and ideas and to advise the Port staff and DSI/PCI concerning the operation and results of the Port Social Justice Program and the ongoing role of this Project Labor Agreement as an integral component of the Port's program. As part of these responsibilities, the Committee will assess the obstacles to success of achieving inclusion of disadvantaged workers in the construction opportunities and shall make recommendations for a program to overcome some of those obstacles.

Section 1. Membership and organization

(a) The Port shall appoint representatives of all interested segments of the community to a Social Justice Committee, which will include local, minority and female business organizations, community-based organizations, the Unions signatory hereto, DSI/PCI and Contractors participating under this Agreement. The Port shall seek the advice of the Social Justice Committee in considering the appointment of subsequent members.

(b) The Committee will establish its rules of procedure.

(c) DSI/PCI, or some other person or entity selected by the Port will chair the Committee.

Section 2. Meetings

(a) The Committee will meet monthly or, more frequently at the call of the Chair.

(b) DSI/PCI will establish agenda topics with input from the Committee and send notices of meetings with the agenda in advance of the meetings.

(c) The meetings will receive reports and consider work progress and practices, disadvantaged business utilization, pre-apprentice recruitment, training and referral, apprentice development and utilization, and other issues of concern to the Committee.

(d) DSI/PCI and the Contractors shall report on monthly progress on these issues and provide ongoing workforce projections for their work.

Section 3. Relation to the Social Justice Subcommittee

(a) The Committee has the right to refer to the Social Justice Subcommittee of the Joint Administrative Committee concerns about a Party's compliance with the Agreement's provisions relating to the utilization of LIA residents and businesses on the Project.

(b) The Committee shall make recommendations to the Social Justice Subcommittee established in Article IV on elements of a Social Justice Program.

Section 4. Funding

- (a) Reasonable costs of the Social Justice Program shall be borne in partnership between the Port and industry (labor/management).
- (b) Industry shall pay its share from existing industry contract administration or similar trust funds as referenced in Article XI, Section 3.
- (c) Any expenditure in behalf of the Social Justice Program from funds received for those purposes under this Agreement shall be made only upon a vote of the Social Justice Subcommittee, with the concurrence of the Joint Administrative Committee, both of which are established in Article IV of this Agreement.

Section 5. Actions by the Committee

Any action taken by the Committee will not be deemed official until it has been ratified by the Social Justice Subcommittee.

**ARTICLE IV  
LABOR/MANAGEMENT COOPERATION  
JOINT ADMINISTRATIVE COMMITTEE**

Section 1. The parties to this Agreement recognize the necessity for cooperation and communication between Labor and Management, the elimination of disputes and misunderstandings between the parties. To this end, a representative of DSI/PCI will meet monthly with the representatives of the signatory Building Trades Unions to promote harmonious and stable labor/management relations on this Project, and to insure effective and constructive communications between the labor and management parties. The date and time of this meeting will be determined by the parties and will be open to all representatives of Contractors signatory to this agreement. The meetings will be held at the offices of the Alameda County Building & Construction Trades Council.

At this meeting, the DSI/PCI representative will give a report on the safety and progress of on-going contracts and any outstanding issues pertaining to this Project, and will entertain questions and discuss labor relations matters of mutual interest affecting the work and administration of the Agreement.

Section 2. A Project Labor Agreement Joint Administrative Committee will be formed consisting of five (5) Union representatives selected by the Unions and five (5) Contractor representatives selected by DSI/PCI. The Committee shall be jointly chaired by a representative of DSI/PCI and a representative of the Unions appointed by the Building and Construction Trades Council of Alameda County. The purpose of the Committee will be to resolve disputes or misunderstandings and to review,

and, if it agrees, to concur in the disposition of funds allocated to the Social Justice Program.

The Committee shall meet at the call of the Joint Chairs of the monthly Labor/Management meeting to discuss any labor/management problems that may arise or any other matters consistent with this Agreement. DSI/PCI shall be responsible for the scheduling of the meetings, the preparation of the agenda topics for the meeting with input from the Unions and Contractors. Notice of the date, time and place of the meeting shall be given to the Committee members at least three (3) days prior to the meeting. In an emergency, a meeting of the Committee may be held within forty-eight (48) hours at the request of any member, Union or Contractor.

The Unions and the Contractors each agree to notify the other party upon discovery of any potential violation of this Agreement or practices that might lead to a misunderstanding or dispute between the parties. Any agreement or resolution reached pursuant to this paragraph shall not supersede, alter, modify, amend, add to or subtract from this Agreement.

All parties signatory to this Agreement acknowledge the importance of attendance and active support of the Joint Administrative Committee and agree to participate in the meetings as their responsibility that may be required on the Project.

Section 3 (a) The Parties to this Agreement shall establish a standing Subcommittee on Social Justice to this Joint Administrative Committee which shall be comprised of representatives of the Unions, DSI/PCI, Contractors and Community-based organizations located in the LIA and selected by the Port, in consultation with the Social Justice Committee, and mutually accepted by DSI/PCI and the Unions. The Subcommittee on Social Justice will be comprised of four (4) representatives of the community one of which will be primarily involved in preparatory training for prospective construction applicants, three (3) representatives from the Unions, three (3) contractor representatives, one (1) representative from DSI/PCI and one (1) representative from the Building Trades Council. Except for DSI/PCI and the representative for the Building Trades Council, the other members of the Subcommittee will serve for two years, except that half of them will serve initial terms of only one year, which terms shall be established by lot, and the terms will be two Community terms of two years and two of one year each, one Contractor term of two years and two of one year each, and one Union term of two years and two terms of one year each. The subcommittee's purpose shall be to promote and support on an ongoing basis the utilization on this Project, to the maximum extent possible, of Oakland-based small and historically disadvantaged businesses and the training, placement and retention of LIA residents, especially applicants who reside in Oakland and who are members of groups that have been historically disadvantaged in construction industry employment opportunities. To that end, it will administer, with the concurrence of the Joint Administrative Committee, funds received under Article XI, Section 3, to fund a Social Justice Program.



(b) The Subcommittee shall meet on a regularly scheduled monthly basis or at the call of DSI/PCI to discuss business, training and job opportunities, disposition of funds for the Social Justice Program, and any issues concerning alleged non-compliance with the Agreement's "social justice provisions" referred to it by the Social Justice Committee. DSI/PCI shall chair and be responsible for the scheduling of the meetings and the preparation of the agenda topics with input from the other Subcommittee members. Timely notice of the location and time of the meetings shall be given to all Subcommittee members, and the meetings shall be open to attendance by Social Justice Committee members, except that when the Subcommittee meets to consider matters involving an individual or a contractor that may involve personal or proprietary information, such meetings will be closed.

## **ARTICLE V UNION RECOGNITION AND EMPLOYMENT**

- Section 1. The Contractor recognizes the Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.
- Section 2. The Contractor has the right to determine the competency of all employees, the number of employees required, subject to the lawful manning provisions of applicable local collective bargaining agreements (provided that such provisions will not be recognized if they unduly restrict the productivity or efficiency of the work and the full utilization of the workforce), and shall have the sole responsibility for selecting employees to be laid off, consistent with Article VI, Section 3 below.
- Section 3. (a) For Local Unions now having a job referral system as contained in Schedule A, the Contractor agrees to comply with such system and it shall be used exclusively by such Contractor, except as it may be modified by this Article. Such job referral system will be operated in a non-discriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and non-discrimination, and referrals shall not be affected by obligations of union membership or the lack thereof, except that nothing in this section shall preclude the lawful exercise of rights under the union security clause as to employees delinquent in their proper dues payments. All of the foregoing hiring procedures, including related practices affecting apprenticeship and training, will be operated so as to facilitate the ability of the contractors to meet any and all equal employment opportunity/affirmative action obligations, and to permit and facilitate compliance with the Port's Social Justice Program. The Contractor may reject any referral for any lawful reason, provided the Contractor complies with Article XII, Section 6(a).
- (b) To the extent permitted by law, the Unions will give credit for bona fide, provable past experience to applicants, including work for non-union contractors who become signatory to the PLA. The experience and practical knowledge of

applicants will be reviewed and tested by the applicable Joint Apprenticeship Training Committee. Applicants will be placed at the appropriate stage of apprenticeship or at the journey level, as the case may be. Final decisions will be the responsibility of the applicable Joint Apprenticeship Training Committee, subject to final review by the California Division of Apprenticeship Standards.

(c) From time to time or as requested, the appropriate Joint Apprenticeship Coordinator(s) will make progress reports on the number and disposition of applicants to the Social Justice Committee.

(d) The Port and the unions agree to establish one or more centers to facilitate the entry into and retention of Local Impact Area residents interested in careers in the building and construction trades. The center(s) will be known as "Community Resource Centers". The center(s) will serve as a resource for preliminary orientation; assessment of construction aptitude; referral to pre-apprenticeship and apprenticeship programs or hiring halls; needs assessment; counseling and mentoring; support network for women; employment opportunities and other needs as identified for prospective workers.

(e) The Unions agree to coordinate with the "Community Resource Centers" established in subsection (d) above to create and maintain an integrated database of hiring list members from the LIA and LBA, and agree that such local union out-of-work-list registrants may use the Community Resource Center(s) as a facility from which they may be referred for work covered under this Agreement, consistent with normal union hiring hall procedures. Further, the Parties agree, that a Contractor may use the Community Resource Center(s) as a resource for identifying LIA/LBA local union out-of-work-list registrants who could be made subject to name call for the purpose of meeting the LIA/LBA hiring goals. A Contractor will contact the applicable Union dispatcher to request a name-call worker, and the Union will agree to dispatch such a worker from the Union hall consistent with normal union hiring hall procedures. The Community Resource Center(s) will provide the necessary confirmation to the Union dispatcher that the worker has received and accepted the dispatch and will also provide confirmation to the Contractor. Unions that maintain dispatch facilities within the Port LIA, or which dispatch by telephone to the job, will not be required to utilize this provision for dispatch of workers.

Section 4. In the event that Local Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ applicants from any other available source, including community-based organizations in the LIA. The Contractor shall inform the Union and DSI/PCI of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Project.

- Section 5. Except as required by law, the Local Unions shall not knowingly refer an employee currently employed by any Contractor working under this Agreement to any other Contractor.
- Section 6. The parties agree to a goal that residents of the Port's Local Impact Area defined as Alameda, Emeryville, Oakland and San Leandro) will perform fifty percent (50%) of all hours worked, on a craft-by-craft basis but, that if sufficient and qualified workers from the Local Impact Area are not available to achieve this goal, then residents of the Port's Local Business Area (defined as Alameda County and Contra Costa County) may be utilized. The Contractor shall make good faith efforts to reach this goal through the utilization of normal hiring hall procedures listed in the Schedule A agreements and the resources of the "Community Resource Centers" set out in Section 3 of this Article. Sanctions may be imposed for failure to meet the goals or demonstrate "good faith" effort to do so. In cases of alleged noncompliance, the issue may be referred by the Social Justice Committee to the Social Justice Subcommittee of the Labor/Management Cooperation Joint Administrative Committee for resolution. If a majority of the Subcommittee can make no resolution, the issue may then be referred by the Social Justice Subcommittee to Step 3 of the grievance procedure of Article IX for submission to an arbitrator for a final and binding determination. For purposes of resolution of any dispute arising under this Section, the Port shall be considered a party-in-interest with full right of participation in the arbitration proceeding.
- Section 7. In the event that a signatory Local Union does not have a job referral system as set forth in Section 3 above, the Contractor shall give the Union equal opportunity to refer applicants. The Contractor shall notify the Union of employees hired from any source other than referral by the Union.
- Section 8. The Unions will cooperate with the Port, the City of Oakland and other LIA communities, the Contractors and DSI/PCI in conducting outreach activities to recruit and refer local resident applicants to apprenticeship programs or on-the-job employment positions for which they are qualified or qualifiable. Working with the Joint Administrative Committee's Subcommittee on Social Justice, the Unions will, after their out-of-work lists are exhausted, use Community-based organizations (to be identified by the Port of Oakland/Community Social Justice Committee) or State-approved apprenticeship or training programs as a "First Source" for hiring qualified or qualifiable local residents, especially applicants from groups that have been historically disadvantaged in construction industry employment opportunities, before recruiting from other union locals not signatory to this Agreement.
- Section 9. No employee covered by this Agreement can be required to join any Union as a condition of being first employed on the Project; provided, however, that an employee who is a member of the referring union at the time of the referral shall maintain that membership while employed under the Agreement. All employees shall, however, comply with the union security provision of the applicable Schedule A Agreement for the period during which they are performing on-site Project work,

except as modified by this Agreement including the attached letter of understanding. The Contractor agrees to deduct initiation fees, union dues or representation fees from the pay of any employee who executes a voluntary authorization for such deductions and to remit the dues and fees to the applicable Union or Council.

Section 10. The Parties recognize the Owner's commitment to provide opportunities to participate on the Project to emerging business enterprises as well as other enterprises that may not have previously had a relationship with the Unions signatory to this Agreement. To ensure that such enterprises will have an opportunity to employ their "core" employees on this Project, the parties agree that in those situations where a Contractor not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work is a successful bidder, the Contractor may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

(1) possess any license required by state or federal law for the Project work to be performed;

(2) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;

(3) were on the Contractor's active payroll for at least sixty (60) out of the one-hundred eighty (180) calendar days prior to the contract award; and

(4) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired ten (10) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

Section 11. Except as provided in Article VI, Section 3, individual seniority will not be recognized or applied to employees working on the Project.

Section 12. The selection of craft foremen and/or general foremen and the number of foremen required shall be entirely the responsibility of the Contractor.

**ARTICLE VI**  
**UNION REPRESENTATION AND STEWARDS**

- Section 1. Authorized representatives of the Union shall have access to the Project, provided that such representatives fully comply with posted visitor, security and safety rules and the environmental compliance requirements of the Project. It is understood that because of the geographical scope of the Project, and the type of work being undertaken on the Project site, visitors may be limited to certain times, or areas, or to being accompanied at all times while on the Project site; with this in mind, however, the Contractor recognizes the right of access set forth in this Section and such access will not be unreasonably withheld from an authorized representative of the Union.
- Section 2. (a) Each signatory Local Union shall have the right to designate a working journeyman as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.
- (b) In addition to his work as an employee, the steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward shall be concerned with the employees of the steward's Contractor and if applicable, subcontractors, and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his union duties.
- (c) When a Contractor has multiple, non-contiguous work locations on the site, the Contractor may request, and the Union shall appoint additional working stewards to provide independent coverage of one or more such locations. In such cases a steward may not service more than one work location without the approval of the Contractor and the Union.
- (d) The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.
- Section 3. The Contractor agrees to notify the appropriate Union forty-eight (48) hours prior to the layoff of a steward, except in the case of disciplinary discharge for just cause. If a steward is protected against such layoff by the provisions of any Schedule A, such provisions shall be recognized to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the appropriate Union shall be notified immediately prior to dismissal or discipline by the Contractor.

Section 4. On work where the personnel of the Port may be working in close proximity to the construction activities, the Union agrees that the Union representatives, stewards and individual workers will not interfere with the Port personnel.

## **ARTICLE VII MANAGEMENT'S RIGHTS**

Section 1. The Contractor retains the full and exclusive authority for the management of its operations. Except as expressly limited by other provisions of this Agreement, the Contractor retains the right to direct the workforce, including the hiring, promotion, transfer, layoff, discipline or discharge for just cause of employees; the selection of foremen; the assignment and schedule of work; the promulgation of reasonable work rules; and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices that limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction.

Section 2. There shall be no limitation or restriction by a signatory Union upon a Contractor's choice of materials, design or manufacture, nor, upon the full use and utilization of equipment, machinery, tools, or other labor saving devices. The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the Owner may be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role, or, in limited circumstances requiring special knowledge of the particular item(s), may be performed by employees of the vendor or other companies where necessary to protect a manufacturer's warranty or where the employees working under this Agreement lack the required skills to perform the work.

Section 3. The use of new technology, equipment, machinery, tools and/or laborsaving devices and methods of performing work may be initiated by the Contractor from time-to-time during the Project. Consistent with law and safe practices, the Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article IX of this Agreement.

**ARTICLE VIII  
WORK STOPPAGES AND LOCKOUTS**

- Section 1. There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason (including disputes relating to the negotiation or renegotiation of the local collective bargaining agreements which serve as the basis for the Schedule As or disputes directed at non-construction services companies at the Project site) by the Union(s) or employees at or affecting the Project site or against any Contractor covered under this Agreement at this Project site and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to the Agreement, or by any other organization or individual at the Project construction site is a violation of this Article.
- Section 2. The Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible for rehire under this Agreement for a period of up to 120 days. The Union shall take all steps necessary to obtain immediate compliance with this Article but shall not be held liable for conduct for which it is not responsible.
- Section 3. (a) If the Contractor contends that any Union has violated this Article, Article X, Section 4 or Article XIX, Section 3, it will notify in writing the International President(s) of the Union(s) involved, advising him of the fact, with copies of such notice to the Local Union(s) involved, to the Building Trades Council and to the Building and Construction Trades Department, and to DSI/PCI. The International President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union(s) to cease any violation of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union.
- (b) If the Union contends that any Contractor has violated this Article, it will notify the Contractor and DSI/PCI setting forth the facts which the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 5. It is agreed by the parties that the term "lockout" for purposes of this Agreement does not include discharge, termination or layoff of employees by the Contractor, nor does it include the contractor's decision to terminate or suspend work on the Project or any portion thereof for any reason, provided the Union is given thirty (30) days notice. This provision will not affect the contractor's right to suspend or terminate work on any portion of the Project for operational or special circumstances.
- Section 4. There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity affecting the project site during the term of this Agreement. Any Union or Local Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union or

Local Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 5(h).

Section 5. Any party, including the Owner, whom the parties agree is a party in interest for purposes of this Article, or DSI/PCI, may institute the following procedure, in lieu of or in addition to any other contractual procedure or any action at law or equity, when a breach of Section 1, above, Section 4 of Article X, or Section 3 of Article XIX is alleged:

(a) A party invoking this procedure shall notify Gerald McKay, Esq., who the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, he/she shall appoint an alternate. Invocation of this procedure and notification of the arbitrator on behalf of Contractor parties shall be made by DSI/PCI. Notice to the arbitrator shall be by the most expeditious means available, with notices to the party alleged to be in violation and to the Council if it is a Union alleged to be in violation. For purposes of this Article, written notice may be given by, facsimile, hand delivery or overnight mail but will be deemed effective upon receipt.

(b) Upon receipt of said notice, the arbitrator named above or his/her alternate shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after the notice to the International President(s) required by Section 3, above.

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

(d) The sole issue at the hearing shall be whether or not a violation of Section 1, above, Section 4 of Article X, or Section 3 of Article XIX, has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or, except as expressly provided by Section 5(h) of this Article, to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such Award shall be served on all parties by hand or registered mail upon issuance.

(e) Such award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Written



notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 5(d) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or by delivery to their last known address by registered mail.

(f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.

(g) The fees and expenses of the arbitrator shall be equally divided between the moving party or parties and the party or parties respondent.

(h) If the Arbitrator determines that a violation of Section 1, above, Section 4 of Article X, or Section 3 of Article XIX, has occurred in accordance with Section 5(d) above, the Union(s) shall, within eight (8) hours of receipt of the Award, direct all of the employees they represent on the Project to immediately return to work. If the trade involved does not return to work by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's Award, and the Union(s) has not complied with Section 2 of this Article, then the Union(s) shall be required to pay liquidated damages to the Owner in an amount not less than \$10,000, or more than \$25,000, at the discretion of the arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$25,000, at the discretion of the arbitrator, for each subsequent shift thereafter on which the trade has not returned to work. If the Arbitrator determines that a lockout has occurred in violation of Section 1, and the Contractor does not return the locked-out employees to work within eight (8) hours of the Contractor's receipt of the Award, then the Contractor shall be required to pay liquidated damages to the Owner in an amount not less than \$10,000, or more than \$25,000, at the discretion of the Arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$25,000, at the discretion of the Arbitrator, for each subsequent shift thereafter on which the employees have not been returned to work. The Arbitrator is empowered to award back pay to the employees who were locked out. The Arbitrator shall retain jurisdiction to determine compliance with this section and Section 2 of this Article.

Section 6. Procedures contained in Article IX shall not be applicable to any alleged violation of this Article, with the single exception that any employee discharged for violation of Section 1, above, may resort to the procedures of Article IX to determine whether or not he was engaged in that violation and what remedy should be assessed.

Section 7. DSI/PCI is a party in interest in all proceedings arising under this Article and Articles IX and X and shall be sent contemporaneous copies of all notifications

required under these articles, and, at its option, may initiate or participate as a full party in any proceeding initiated under these articles.

## **ARTICLE IX DISPUTES AND GRIEVANCES**

Section 1. (a) This Agreement is intended to provide close cooperation between management and labor. DSI/PCI and the Alameda County Building and Construction Trades Council, AFL-CIO, shall each assign a representative to this Project for the purpose of assisting the Department, the International and Local Unions, together with the Contractor, to complete the construction of the Project economically, efficiently, continuously and without interruption, delays or work stoppages.

(b) DSI/PCI, Contractors, Unions, and employees collectively and individually, realize the importance to all parties of assuring continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the arbitration provisions set forth in this Article.

(c) DSI/PCI shall administer the processing of the grievance, including the scheduling and arrangement of facilities for meetings at Step 2 and above, the selection of the arbitrator to hear the case and any other administrative matters necessary to facilitate the timely disposition of the case.

Section 2. Any question arising out of and during the term of this Agreement involving its interpretation and application (other than trade jurisdictional disputes or alleged violations of Article VIII, Section 1, or Article X, Section 4) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels aggrieved by a violation of this Agreement, the employee shall, if intending to grieve the Employee's complaint, give notice of the Employee's grievance through the Employee's Local Union business representative or job steward to the work site representative of the involved Contractor. Such notice, to be timely, shall be given within five (5) working days after the occurrence of the alleged violation, stating the provision(s) alleged to have been violated. The business representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the grievance procedure provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 shall be non-precedental,

except as to the parties directly involved, unless endorsed in writing by DSI/PCI within five (5) days after resolution has been reached.

(b) Should the Local Union(s) or DSI/PCI or any other Contractor have a dispute with the other party and, if after conferring within ten (10) working days after the disputing party knew or should have known of the facts or occurrence giving rise to the dispute, a settlement is not reached within three (3) working days, the dispute shall be reduced to writing and proceed to Step 2 as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager of the involved Local Union or the Business Manager's designee, together with the International Union representative or the International Union representative's designee of that Union, the site representative of the involved Contractor, and the labor relations representative of DSI/PCI shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days after the initial meeting at Step 2.

Step 3. (a) If the grievance has been submitted but not resolved under Step 2, either party may request in writing within seven (7) calendar days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator designated from a permanent panel of five (5) arbitrators to this Agreement. Designation of the arbitrator from the panel to hear any grievance will, consistent with arbitrator availability by rotation among the panel members and will be made jointly by DSI/PCI, in consultation with the involved Contractor, and the representative of the Alameda County Building Trades Council on behalf of the parties. If the panel has not been agreed upon by the parties, arbitrator selection shall be made pursuant to the rules of the American Arbitration Association, which shall also govern the conduct of the arbitration hearing. The decision of the arbitrator shall be final and binding on all parties and the fee and expenses of such arbitration shall be borne equally by the involved Contractor and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended by oral or written consent of the parties involved at the particular step where the extension is agreed upon. An oral consent shall be confirmed in writing by the party to whom it accrues. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 3. No adjustment or decision may provide retroactivity exceeding sixty (60) days prior to the date of the filing of a written grievance.

Section 4. Any grievance involving a safety issue shall proceed under an expedited arbitration procedure and shall not be subject to the step requirements set forth above.

Section 5. DSI/PCI is a party in interest in all proceedings under this Article, and must be notified by the involved Contractor of all actions at Steps 2 and 3 and shall, upon its request, be permitted to participate fully in all proceedings at these steps.

## **ARTICLE X JURISDICTIONAL DISPUTES**

Section 1. Work shall be assigned by the Contractor in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry Including Procedural Rules and Regulations (hereinafter the "Plan" or "The Green Book", a copy of which is on file with DSI/PCI), effective June 1, 1984, or any successor plan, and will be based upon the appropriate agreements of record, decisions of record and previously provided local written agreements between or among the Unions. Such assignments will be disclosed by the Contractor at a pre-job conference called by the Contractor and held in accordance with industry practice, which pre-job conference will include a representative of DSI/PCI.

Section 2. (a) The parties agree that all jurisdictional disputes over assignment of work will be settled in accordance with the procedural rules and regulations of the Plan. All Contractors on this project agree to assign work and be bound to the terms and conditions of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry, and all signatory Unions agree that the assignments of the Contractors shall be followed until the dispute is resolved in accordance with this section.

(b) Any award or resolution made pursuant to this procedure, shall be final and binding on the disputing Unions and the involved Contractor under this Agreement only, and may be enforced in any court of competent jurisdiction in accordance with the Plan. Such award or resolution shall not establish a precedent on any construction work not covered by this Agreement. In all disputes under this Article, the Project Contractor shall be considered a party in interest, with a full right of participation.

Section 3. In making any determination hereunder, there shall be no authority to assign work to a double or composite crew, that is, to more employees than the minimum required to perform the work involved; nor to assign the work to employees who are not qualified to perform the work involved. The aforesaid determination shall decide only to whom the disputed work belongs.

Section 4. There will be no strikes, work stoppages, slowdowns, or other disruptive activity arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall proceed as assigned by the Contractor. The award or resolution shall be

confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award or any resolution.

## **ARTICLE XI WAGES AND BENEFITS**

- Section 1. All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rate determination. If a wage increase negotiated in a local agreement becomes the prevailing wage under state law, the Contractor will pay that rate retroactive to the effective date of the locally negotiated wage increase. If the prevailing wage laws are repealed during the term of this Agreement, the Contractor shall pay the wage rates established under the Schedule As, except as otherwise provided in this Agreement.
- Section 2. All employees covered by this Agreement shall be paid by check or at the employee's option by direct deposit and shall be paid no later than the end of the work shift on Friday. No more than three (3) day's wages may be withheld. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff. Notification of layoff shall be at the contractor's discretion but shall not be given later than the end of the work shift on the date that the layoff is to be effective. Such notification may be verbal.
- Section 3. The Contractor will pay contributions to the established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions and will make all employee-authorized deductions in the amounts designated; provided, however, that the Contractor and the Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be included in this requirement and be paid by the Contractor on this Project. With respect to other Fund contributions, such as, but not limited to, contract administration funds, contractors who are signatory to Schedule A agreements are not excused from making such contributions by virtue of this Project Labor Agreement. The Contractor shall make contributions only to those Funds that have submitted a written letter of commitment to contribute financial support to the Social Justice Program of this Agreement to help defray the costs of the Program, in an account of the Social Justice Subcommittee's designation, an account that will be established with the concurrence of the Joint Administrative Committee. Such level of commitment must be acceptable to the Port. The parties agree to use their best effort to secure such commitments of the Funds. Contractors who are not signatory to Schedule A agreements may voluntarily make payments to such Funds or, in lieu thereof, shall pay an equivalent amount monthly to the account established by the Project Labor Agreement Social Justice Subcommittee mentioned above. Bona fide jointly-trusted benefit plans or authorized employee deduction programs established or negotiated under the applicable Schedule A or by the parties to this Agreement

during the life of this Agreement may be added, subject to the limitations upon such negotiated changes contained in Article XIX, Section 2 of this Agreement. Such contributions shall be made in compliance with the applicable prevailing wage determination and shall be due and payable on the due date contained in the applicable Schedule A.

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

Section 4. Contractors of whatever tier shall make regular and timely contributions required by Section 3 of this Article in amounts required by this Agreement and on the time schedule set forth in the appropriate Schedule A.

## **ARTICLE XII HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

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

Section 2. Paid Times.  
(a) Employees shall be at their place of work at the starting time (as designated by the Contractor) performing their assigned functions. The parties reaffirm their policy of a fair day's work for a fair day's wage.

(b) A worker is entitled to pickup time at the end of each work day, the particular amount of such pickup time depending upon accessibility to the area to which the employee is assigned. The amount of pickup time will be determined by mutual agreement at a jobsite conference between representatives of the Unions, DSI/PCI and representatives of the Contractors.

Section 3. Overtime. Overtime will be paid in accordance with the requirements of the applicable General Prevailing Wage Determination. There will be no restriction on the contractor's scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime. Steward overtime shall be as

provided in the applicable Schedule A, provided the steward is qualified to perform the work available. There shall be no pyramiding of overtime pay under any circumstances.

Section 4. (a) Shifts. Shift work may be performed at the option of the Contractor(s) upon three (3) days' prior notice to the Union, unless a shorter notice period is provided in the applicable Schedule A, and shall continue for a period of not less than five (5) working days. Saturdays and Sundays, if worked, may be used for establishing the five (5) day minimum work shift. If two shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the second shift shall consist of seven and one-half (7-1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period. Any third shift shall consist of seven (7) hours of continuous work exclusive of one-half (1/2) hour non-paid lunch period. All shifts shall be paid eight (8) hours straight time pay with any premium or differential paid at the applicable Schedule A rate of pay. Multiple shifts, if worked, will not be required on the entire project. When multiple shifts are worked, the number of employees on each shift of the operation may vary according to the conditions applicable to each shift and nothing will require that there be a "man-for-man" relief in successive shifts.

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

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

(c) Tide Work. All work requiring a Contractor to establish a starting time or other special conditions which will vary from the regularly scheduled starting time set forth in this Agreement and which is established due to the tide schedule shall

perform such work under the applicable Schedule A "Tide Work" provisions of the Craft performing the work.

(d) Alternate Work Week. The Contractor may, upon five (5) days notice to the appropriate union(s), establish a work week of four (4) consecutive ten (10) hour work days (exclusive of one-half hour unpaid lunch, approximately midway through the shift). Such work week shall consist of the same four days each week, with a fifth day available as a make-up day if needed and if permitted by the applicable Schedule A. Compensation for such shifts will be at the straight-time rate of pay for the first ten (10) hours of work with the addition of shift premium, and overtime levels, if any required by the applicable prevailing wage determination.

(e) Uninterrupted Work. The parties acknowledge that certain construction activities may pose unique work scheduling issues, including a requirement for continuous work 24 hours per day, seven days a week, particularly during the placement of concrete. The parties agree to establish, in good faith, hours of work provisions to assure uninterrupted work on concrete placement in accordance with contract specifications for Qualifying Work.

Section 5. Holidays. Recognized holidays on this Project shall be New Year's Day, Martin Luther King's Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day. Holidays that fall on a Saturday shall be observed on the preceding Friday and holidays that fall on a Sunday shall be observed on the following Monday

Section 6. (a) Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification pursuant to an applicable Schedule A not to report to work, will receive two (2) hours pay at the regular straight time hourly rate. Employees who work beyond two (2) hours but not more than four (4) hours will receive four (4) hours pay. Employees who work more than four hours but not more than eight hours will receive eight (8) hours pay. Employees who work beyond eight hours will be paid for actual hours worked. Whenever reporting pay is provided for employees, they will be required to remain at the Project site available for work for such time as they receive pay, unless released earlier by the principal supervisor of the Contractor(s) or their designated representative. Each employee shall furnish his Contractor with his current address and telephone number, and shall promptly report any changes in each to the Contractor.

(b) One-day Reporting Pay. When an employee is sent to the job site from the union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for the shift, or when called out on the same day for one (1) day's work and appears within a reasonable time from the time of dispatch from the union referral facility, the employee will be paid eight (8) hours.



(c) Make Up Day. Make up day provisions contained in a local collective bargaining agreement that serve as a basis for a Schedule A shall be applied to work on this project.

(d) Call Out Pay. Any employee called out to work outside of his shift shall receive a minimum of four hours pay at the appropriate rate, including any applicable premium. This does not apply to time worked as an extension (before or after) of the employee's normal shift.

(e) Pay Under Discharge or Voluntary Departure from Job Site. When an employee leaves the job or work location of his own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Article XIV, Section 3, the employee shall be paid only for the actual time worked.

(f) Premium Rate Calculated. In all cases, if the employee is reporting on a day on which a premium rate is paid, reporting pay shall be calculated at that rate.

Section 7. Time Keeping. The Contractor may utilize brassing systems to check employees in and out. Each employee must check himself in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

Section 8. Meal Period. The Contractor will schedule a meal period not more than one-half (1/2) hour duration at the work location at approximately the mid-point of the scheduled work shift (five hours), consistent with Section 1; provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through his meal period, he shall be compensated in a manner established in the applicable Schedule A.

### **ARTICLE XIII APPRENTICES**

Section 1. The parties recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry. The Port and the unions agree to provide financial and other assistance to enhance and sustain such programs through appropriate sources. The Contractor(s) will employ apprentices in the respective crafts, which are performing work on the project, and within the jurisdiction of the craft in which those apprentices are working.

Section 2 (a). Subject to any restrictions contained in law, the Parties agree to a goal that apprentices will perform up to twenty percent (20%) of the total craft work hours unless an applicable Schedule A provides for a greater percentage. The Union agrees to cooperate with the Contractor in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with provisions contained within the Schedule A.

(b). The parties agree to a goal that only residents of the Port's Local Impact Area (LIA, defined as Alameda, Emeryville, Oakland and San Leandro) shall be utilized as apprentices but, that if sufficient and qualified apprentices from the LIA are not available to achieve this goal, then residents of the Port's Local Business Area (defined as Alameda County and Contra Costa County) may be utilized. The Contractor shall make good faith efforts to reach this goal through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs.

(c) For the purposes of meeting the goal established in (b) above, a Contractor may qualify for up to one-half (1/2) of the goal by employing LIA-based apprentices on other work the Contractor is performing during the time it is working on Qualifying Work under this Agreement.

(d) Sanctions may be imposed for failure to meet the goals or demonstrate "good faith" effort to do so. In cases of alleged noncompliance, the issue may be referred to the Social Justice Subcommittee of the Labor/Management Cooperation Joint Administrative Committee for resolution. If a majority of the Subcommittee can make no resolution, the issue may then be referred by the Social Justice Subcommittee to Step 3 of the grievance procedure of Article IX for submission to an arbitrator for a final and binding determination. For purposes of resolution of any dispute arising under this Section, the Port and DSI/PCI shall be considered a party-in-interest with full right of participation in the arbitration proceeding.

**ARTICLE XIV**  
**SAFETY**  
**PROTECTION OF PERSON AND PROPERTY**  
**JOINT LABOR/MANAGEMENT SAFETY COMMITTEE**

Section 1. Safety. (a) Safe working conditions. It shall be the responsibility of each contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Owner, DSI/PCI or the Contractor. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Owner.

(b) Rules. Employees shall be bound by the safety, security and visitor rules and environmental compliance requirements established by the Contractor, DSI/PCI or the Owner. These rules will be published and posted in conspicuous places throughout the work site. An Employee's failure to satisfy his obligations under this Section may subject him to discipline, including discharge.

(c) Prohibited Items. The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time before or during the work day is prohibited. Accordingly, the parties agree to adopt appropriate procedures

and safeguards for the testing of employees for prohibited or controlled substances. It is agreed, with respect to such testing procedures, that:

(i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program;

(ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time the person reported for the test(s); and

(iii) where a contractor requests a person to report for purposes of a pre-hire substance abuse test, and does not intend to place the person in an active work position on that day, the person shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.

(iv) Once mutually agreed to, this uniform substance abuse prevention policy will become an Appendix to this Agreement.

(d) Smoking. The parties acknowledge that the environmental and safety restrictions governing conduct at the Project site may prohibit smoking at any time in any location or facility. Violation of this restriction by any person may constitute grounds for removal from the site and may result in termination.

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

Section 2. Inspections. The inspection of incoming shipments of equipment, machinery and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice. All employees shall comply with the security procedures established by the Owner, DSI/PCI and/or Contractor.

Section 3. Suspension of Work for Safety. A Contractor may suspend all or a portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the contractor requests employees to remain at the site and be available for work, the employees will be compensated for the standby time at their basic hourly rate of pay.

- Section 4. Water and Sanitary Facilities. The Contractor is responsible to provide adequate supplies of drinking water and sanitary facilities for all employees. Proper notification of this requirement shall be provided to the Contractor at the pre-bid and pre-job conference mark-up to insure compliance with this Section.
- Section 5. Joint Labor/Management Safety Committee. The parties to this Agreement will form a Joint Labor/management Safety Committee consisting of Contractor and Union representatives, which shall be jointly chaired by the site representative of DSI/PCI (or designee) and an official of the signatory Building and Construction Trades Council of Alameda County (or designee) appointed by the Union). The Committee shall meet at least monthly, or more often at the call of the Joint Chairs, to receive reports on safety programs instituted by the Port, DSI/PCI and the individual contractors on the Project site and to discuss and advise such parties to the Agreement with regard to recommended safety programs and procedures to maintain the highest level of occupational safety on the Project site. The Joint Chairs shall rotate the position of Meeting Chair on a monthly basis.
- Section 6. Workers' Compensation. All employees working under this Agreement shall be covered as required by the provisions of the California Labor Code affecting workers' compensation benefits (hereinafter "the Code"). The parties agree to develop a program, consistent with the California Labor Code, for efficient and economical handling of worker injuries and compensation claims pursuant to the commitments set forth in Appendix H – Letter of Understanding: Workers' Compensation.

#### **ARTICLE XV NON-DISCRIMINATION**

- Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation in any manner prohibited by law or regulation. The Union shall cooperate with the Contractors' obligations to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Any complaints regarding the application of this provision shall be brought to the immediate attention of the involved Contractor for consideration and resolution, with notice of such complaint brought to DSI/PCI and the Unions.

Section 2. It is recognized that special procedures may be established by joint agreement of the parties to this Agreement and governmental agencies for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this Agreement. The parties agree that they will make all good faith efforts to assist in the proper implementation of such orders, regulations or agreements for the general benefit of the residents of the Local Impact Area.

Section 3. It is recognized that the Port has certain policies and commitments for the utilization of emerging business enterprises. The parties shall jointly endeavor to assure that these commitments are fully met, consistent with commitments and all applicable federal and state laws and regulations relating to public contracting and employment and utilization of minorities and minority- and/or women-owned businesses. Copies of such policies and commitments shall be furnished to the Union.

## **ARTICLE XVI TRAVEL AND SUBSISTENCE**

Travel expenses, travel time, subsistence allowance and/or zone rates and parking reimbursements will not be applicable to work under this Agreement except as expressly provided and to the extent provided for in any applicable prevailing wage determination.

The Contractor shall provide workers with safe and secure parking at the Project site. If such parking is not reasonably available, the Contractor shall provide a safe and secure remote parking site and transportation for workers between those remote parking area(s) and the employee's point of entry to the Project. Transportation for workers between such remote parking area(s) and the employee's point of entry shall be provided. Where employees are required to be transported to the Project site, time shall begin in accordance with the provisions of Article XII, Section 2 and shall end at the remote parking area. Compensated time between the project site and the parking area will be paid at the rate of pay (i.e., straight-time or overtime) at which the employee was working when the employee left the work site. Where an employee boards the last-scheduled vehicle for Contractor-provided transportation from the remote parking area before the scheduled starting time, the employee will be compensated from the starting time notwithstanding any unforeseen delay in arrival by the transport at the site.

## **ARTICLE XVII WORKING CONDITIONS**

Section 1. There will be no organized breaks or other non-working time established during working hours unless provided for in a prevailing wage determination and/or Industrial Wage Order issued by the State of California. Individual nonalcoholic beverage containers will be permitted at the employee's work location.

- Section 2. The Owner and/or DSI/PCI shall establish such reasonable Project rules as the Owner or DSI/PCI deems appropriate and not inconsistent with this Agreement. These rules will be explained at the pre-job conference and posted at the Project site by the Contractor and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge. In any dispute over the application of a rule, the grieving party may contest the reasonableness of the rule, the fact of the alleged violation, and the appropriateness of any discipline imposed.
- Section 3. There shall be no restrictions on the emergency use of any tools by any qualified employee; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.
- Section 4. Recognizing the nature of the work being conducted on the site, employee access by a private automobile may be limited to certain roads and/or parking areas.

### **ARTICLE XVIII SAVINGS AND SEPARABILITY**

- Section 1. It is not the intention of either the Contractor or the Union parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any provisions of this Agreement are finally held or determined to be illegal or void by a court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of any applicable law and the intent of the parties hereto.
- Section 2. Should a court of competent jurisdiction issue any order which results, temporarily or permanently enjoining the use of the Agreement in the bidding, awarding, and/or construction work on the Project, the Owner may withdraw, at its absolute discretion, the inclusion of this Agreement as part of any bid specification affected by such court order for contract packages to be advertised. In the event of such court order, the Parties agree to enter into negotiations in an effort to conform the Agreement to the terms of the court order and otherwise to keep the Agreement in full force and effect on the Project, to the maximum extent legally possible for work in progress and for inclusion in bid specifications for future work.
- Section 3. If a court order invalidates only a part of the Agreement but permits the balance of the Agreement to remain in effect and operative on the Project, the provisions of Article VIII shall not be waived. If the effect of the court order is to invalidate or bar the use of the entire Agreement, during the negotiations between the parties to

achieve conformity with the requirements of the court order or applicable law, the Unions agree to continue to work without interruption for a period of at least thirty (30) days before exercising any right to engage in any strike, picketing or other disruption of the Project.

## **ARTICLE XIX DURATION OF THE AGREEMENT**

This Project Labor Agreement shall be effective on the date approved by the Port, and shall continue in effect for the duration of the Project Construction work described in Article II hereof.

### **Section 1. Duration.**

(a) Turnover. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor and the Owner has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved by the Construction Manager and accepted by the Owner or third parties with the approval of the Owner, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the Construction Manager or Owner to engage in repairs or modifications required by its contract(s) with the Owner or the Construction Manager.

(b) Notice. Notice of each final acceptance received by the Contractor will be provided to the union with a description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch" list, and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner and Notice of Acceptance is given by the Owner to the Contractor.

(c) Termination. (1) Final termination of all obligations, rights and liabilities and disagreements shall occur upon receipt by the Union of a notice from DSI/PCI or the Owner saying that no work remains within the scope of the Agreement for DSI/PCI or its successor.

(2) Any claim for non-payment of wages or fringe benefits shall be governed by the applicable statutes of limitation, i.e., the Labor Code, ERISA, etc. and shall not be affected by the provisions of this Section.

**Section 2. Changes to Schedule As.** (a) Incorporation. Schedule As incorporated as part of this Project Agreement shall continue in full force and effect until the contractor and/or union parties to the Collective Bargaining Agreements which are the basis for such Schedule As notify DSI/PCI of mutually agreed upon changes in such Agreements and their effective date(s).

(b) Limits to Incorporation. The parties agree to recognize and implement such changes on their effective dates, provided, however, that any provisions negotiated in said collective bargaining agreements will not apply to work covered by this Agreement if such provisions are less favorable to the Contractor for work covered by this Agreement than those uniformly required of contractors for construction work normally covered by those Agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement.

(c) Retroactivity. As part of this understanding, the Contractor agrees and consents to pay the increased contributions to the relevant jointly administered trust funds pursuant to the provisions of any collective bargaining agreements negotiated by the unions during the work performed on the Project retroactively to the expiration date of the applicable Schedule A, provided, however, if the provisions of any such new collective bargaining agreement provide that said increases shall not become effective until a later date after the date following the expiration date, then that later date shall prevail, and provided, further, that such increased contribution does not exceed the corresponding fringe benefit component of the applicable prevailing wage rate then existing or as thereafter amended. In the event that the increased contribution exceeds the then-current prevailing wage fringe benefit component and the prevailing wage is subsequently adjusted upward, the fringe benefit contribution shall also be adjusted upward by an equal level to the applicable level of the Schedule A or the maximum prevailing wage determination level, whichever is less, and shall be paid retroactive to the effective date of the locally negotiated increase.

(d) Resolution of Disputes Concerning Incorporation. Any disagreement between the parties over the incorporation into a Schedule A of any such provision agreed upon in the negotiation of the local Collective Bargaining Agreement which serves as the basis for the Schedule A shall be referred to Gerald McKay, for resolution under the procedures established in Article IX.

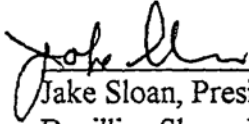
Section 3. No Strike/Lockout During Negotiations. The Union agrees that there will be no strikes, work stoppages, sympathy strikes, picketing, slowdowns, or any other disruptive activity affecting the Project by any Union involved in the negotiation of such local Collective Bargaining Agreements and the resulting Schedule As, nor shall

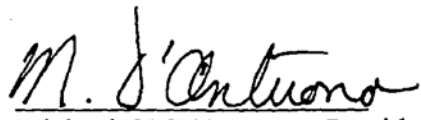


there be any lockout on this Project affecting the Union during the course of such negotiations.

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

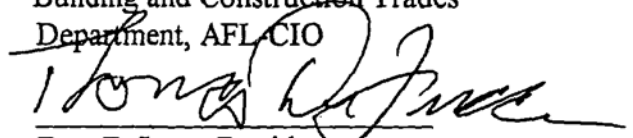
For the Project Contractor:

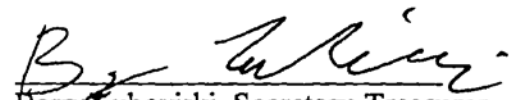
  
\_\_\_\_\_  
Jake Sloan, President  
Davillier-Sloan, Inc.

  
\_\_\_\_\_  
Michael W. D'Antuono, President  
Parsons Constructors, Inc.

For the Unions:

\_\_\_\_\_  
Robert A. Georgine, President  
Building and Construction Trades  
Department, AFL-CIO

  
\_\_\_\_\_  
Tom DeLuca, President  
Building and Construction Trades  
Council of Alameda County

  
\_\_\_\_\_  
Barry Luboviski, Secretary-Treasurer  
Building and Construction Trades  
Council of Alameda County

**Its Affiliated International Unions**

International Association of Heat and Frost Insulators and Asbestos Workers

By: \_\_\_\_\_  
William G. Bernard

International Union of Bricklayers and Allied Craftworkers

By: \_\_\_\_\_  
John T. Joyce

International Brotherhood of Electrical Workers

By: \_\_\_\_\_  
J.J. Barry

International Association of Bridge, Structural and Ornamental Iron Workers

By: \_\_\_\_\_  
Jake West

International Union of Operating Engineers

By: \_\_\_\_\_  
Frank Hanley

United Union of Roofers, Waterproofers and Allied Workers

By: \_\_\_\_\_  
Earl J. Kruse

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers

By: \_\_\_\_\_  
Charles W. Jones

United Brotherhood of Carpenters and Joiners of America

By: \_\_\_\_\_  
Douglas J. McCarron

Operative Plasterers' and Cement Masons' International Association of the United States of America

By: \_\_\_\_\_  
John J. Dougherty

International Brotherhood of Teamsters

By: \_\_\_\_\_  
James P. Hoffa

International Union of Painters and Allied Trades

By: \_\_\_\_\_  
Michael E. Monroe

Sheet Metal Workers' International Association

By: \_\_\_\_\_  
Michael J. Sullivan

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

By: \_\_\_\_\_  
Martin J. Maddaloni

Laborers' International Union of North America

By: \_\_\_\_\_  
Terrence O'Sullivan

International Union of Elevator Constructors

By: \_\_\_\_\_  
Edward C. Sullivan

**And Their Affiliated Local Unions:**

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

By: Don O'Leary

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

By: Frank Seereet

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

By: Greg Miranda

Northern California Carpenters' Regional Council

By: John Casey

Carpenters 46 Northern California Counties Conference Board

By: Fred R. Wright

District Council of Plasterers and Cement Masons of Northern California

By: Phineas O'Leary

Plasterers' and Shophands' Local Union No. 66

By: Chit Murphy

Plasterers' and Cement Masons' Local Union No. 300

By: Samuel Hawkins, III

International Brotherhood of Electrical Workers, Local No. 595

By: Arthur Lewis

District Council of Iron Workers of the State of California and Vicinity

By: Richard Zampa

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

By: James P. White

Northern California District Council of Laborers'

By: Arthur Thomas

Construction and General Laborers' Union Local No. 304

By: Paul

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

By: Jim B.

Hod Carriers Local Union No. 166

By: Samuel Robinson

International Union of Operating Engineers, Local Union No. 3

By: Donald R. Dur

District Council No. 16, International Union of Painters and Allied Trades

By: \_\_\_\_\_

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

By: Larry Blewins

Sprinkler Fitters and Apprentices, U.A. Local 483

By: Harley W. Smith

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

By: Bruce Wood

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

By: Douglas Ziegen

Teamsters Local 853

By: Pat Semm

International Union of Elevator Constructors Local Union No. 8

By: Michael J. Hopkins

Sign Display and Allied Crafts, Local 510

By: \_\_\_\_\_

**Agreed to Letter of Assent**

[Date]

[Addressee]

[Address]

[Address]

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

Dear Ms./Mr. \_\_\_\_\_:

The undersigned party confirms that it agrees to be a party to and bound by the Port of Oakland Maritime and Aviation Project Labor Agreement (the "Labor Agreement") as entered into by and between Davillier-Sloan, Inc./ Parsons Constructors Inc. ("DSI/PCI") on behalf of the Port of Oakland, its successors or assigns, and the Building and Construction Trades Department, AFL-CIO, the Building and Construction Trades Council of Alameda County, AFL-CIO, and their affiliated unions, executed \_\_\_\_\_, 2000, as such Labor Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

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

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

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

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

California State License Number: \_\_\_\_\_

Name and Signature of  
Authorized Person:

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Telephone Number)



Letter of Understanding re: Union Initiation Fees

February 28, 2000

Mr. Jake Sloan, President  
Davillier-Sloan, Inc.  
1630 12<sup>th</sup> Street  
Oakland, CA 94607

Re: Port of Oakland Maritime and Aviation Project Labor Agreement: Union Initiation Fees

Dear Mr. Sloan:

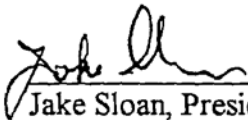
In our negotiations of the captioned Project Labor Agreement, the participating unions objected to any provision that would exempt employees from payment of legal uniformly required fees and, to the extent allowed by law, dues imposed upon members. This will, therefore, confirm the understanding we reached in negotiations that local unions and intermediate bodies will afford new member applicants the most liberal time payment and organizing entry fees otherwise available for new member applicants with respect to such local union or intermediate body.

Sincerely,



Barry Luboviski, Secretary-Treasurer,  
Alameda County Building and Construction Trades Council  
on behalf of the signatory Unions and Councils to the Project Labor Agreement

Acknowledged and agreed to this 10 day of March 2000:



Jake Sloan, President, Davillier-Sloan, Inc.  
on behalf of the Project Contractor

**Letter of Understanding re: Superintendents' Contributions**

February 28, 2000

Mr. Barry Luboviski, Secretary-Treasurer  
Alameda County Building and Construction Trades Council  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Maritime and Aviation Project Labor Agreement:  
Benefit Plan Contributions for Superintendents

Dear Mr. Luboviski:

In our negotiations for the captioned Project Labor Agreement a questions was raised concerning the exclusion from the scope of the Agreement's coverage of "superintendents" contained in Article II, Section 2(a) of the Agreement. Specifically, your negotiating committee informed us that some of the local union collective bargaining agreements and applicable multiemployer plan documents provide for payment of contributions to such benefit plans for plan participants even when they are working as superintendents for the employer. We agreed that the exclusion from coverage of this classification would not preclude or supersede the provision of any current local collective bargaining agreement allowing for such contributions to be made on behalf of any plan participants who work as superintendents on this project, as and to the extent permitted under such plans.

It is, however, further understood that this agreement does not affect the exclusion of the superintendent classification from the coverage of the Agreement, nor does it require contributions on behalf of any superintendents who are not at the time of their work on the project current participants in the relevant plans.

I trust that this clarification is consistent with our discussion. If you agree that this letter accurately states the terms of our understanding, please indicate your agreement and acceptance on behalf of the Unions in the space provided below.

Sincerely,



Jake Sloan, President, Davillier-Sloan, Inc.  
on behalf of the Project Contractor

AGREED AND ACCEPTED on behalf of the Alameda County Building and Construction Trades Council and the local unions signatory to the Port of Oakland Maritime and Aviation Project Labor Agreement. This  
\_\_\_\_\_ day of \_\_\_\_\_ 2000.



Barry Luboviski, Secretary-Treasurer  
Alameda County Building and Construction Trades Council

Letter of Understanding re: Inspectors and Testers

February 28, 2000

Mr. Don Doser, Business Manager  
International Union of Operating Engineers, Local 3  
1620 S. Loop Road  
Alameda, CA 94502

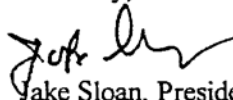
Re: Port of Oakland Maritime and Aviation Project Labor Agreement:  
Coverage of Inspectors and Testers

Dear Mr. Doser:

This letter will confirm the understanding we reached in negotiations concerning the treatment of workers classified as "Inspectors" or "Testers" under the terms of the captioned project labor agreement. Specifically, Article II, Section 2(a) states that among the categories of employees who are excluded from the scope of the Agreement are "inspectors" and "testers." You have informed us that the Operating Engineers' local collective bargaining agreement covers inspectors and testers, whether the Contractor hires them directly or engages the services of an inspection or testing firm. Our review of the applicable language leaves that question open to interpretation based upon past industry practice under the Schedule A. However, we are agreed that the referenced exclusion applies only to the inspectors and testers that may be independently employed by the Port, but shall not apply to inspectors or testers directly employed by the execution Contractors in the classifications set out in the Schedule A. Moreover, we are agreed that a Contractor's or firm's obligations with regard to subcontracting inspector or tester personnel will be governed by the historic interpretation of this issue under the Schedule A agreement made part of this project labor agreement by reference and by any applicable provisions of law governing work away from the job site.

I trust that this clarification is consistent with our discussion. If you agree that this letter accurately states the terms of our understanding, please indicate your agreement and acceptance on behalf of the Union in the space provided below.

Sincerely,

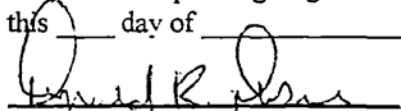


Jake Sloan, President, Davillier-Sloan, Inc.  
on behalf of the Project Contractor

AGREED AND ACCEPTED

on behalf of Operating Engineers Local 3

this \_\_\_\_\_ day of \_\_\_\_\_ 2000



Don Doser, Business Manager



**Port of Oakland  
Maritime and Aviation Project Labor Agreement**

**Construction Field Inspectors / Testers  
Guidelines**

This document is intended to provide guidelines concerning field construction inspecting and testing services for the Port of Oakland on projects under its project labor agreement. It applies to the Port's testing and inspection services contractors, its construction managers or similar project managers or their subcontractors, its construction contractors and that work performed by the Port's tenant construction managers or their subcontractors and tenants construction contractors. It reflects the understanding reached between the Port, Parsons/DSI and Operating Engineer Local #3. Effective August 19, 2002 the following shall be required:

- All construction inspecting and field soils and material testing shall be performed under the terms and conditions of the project labor agreement. Firms are to sign a letter of assent to the project labor agreement.
- Individuals performing such field work shall be paid California prevailing wage. Currently this is the Group 6 classification of Operating Engineer #3 as shown in the prevailing wage determination.
- As the Operating Engineers do not have a hiring hall for referral in the classifications covered by this understanding, contractors may employ their workers from within their own ranks or from any source, except that the PLA requires that the contractors will give the union "equal opportunity" to refer qualified workers. Additionally, the limitation otherwise applicable in hiring hall referral situations whereby the contractor is allowed to employ "core" employees only on a set ratio with hiring hall referrals, does not apply to the employment of workers under this arrangement.
- No employee covered by the project labor agreement can be required to join Operating Engineer #3 as a condition of being first employed on the Project; provided, however, that an employee who is a member of Local #3 at the time of referral shall maintain that membership while employed under the project labor agreement.

All employees not members of Local #3 in good standing effective August 19, 2002 and all employees hired subsequent to that date, shall as a condition of continued employment, pay the required initiation fees and union dues on or after the thirty-first (31<sup>st</sup>) day following the beginning of their employment or August 19, 2002 whichever is later.

The inspecting/testing firm must notify Local #3's Job Placement Center within five (5) workdays after a new employee is put to field construction and testing work under the project labor agreement.

- This understanding between the Port, Parsons/DSI and Operating Engineers Local #3 does not modify any established collective bargaining agreements or rights between the Union and the testing and inspection services contractors relating to work performed off the site of construction and not covered by the Port's PLA.
- This understanding does not cover or apply to any off construction site testing facilities or off construction site activities of inspection or testing services contractors. It does not apply to "runners" whose duties may cause them to be present at the construction site to perform their normal work but not to perform any soils and material testing or inspection work at the construction site.

Please direct any questions to:

Ed Manning, Parsons  
Project Labor Agreement Administrator  
510-563-2756 (o) 510-867-7477 (c)

PORT OF OAKLAND MARITIME AND AVIATION PLA

Letter of Understanding re: Prefabrication

February 28, 2000

Mr. Bruce Word, Business Manager  
Sheet Metal Workers' International Association, Local Union No. 104  
1939 Market Street  
San Francisco, CA 94103

Re: Port of Oakland Maritime and Aviation Project Labor Agreement, Article VII,  
Management's Rights: Prefabrication

Dear Mr. Word:

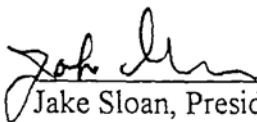
This letter will confirm the discussions we had during the negotiation of the captioned Project Labor Agreement and the clarifications we made concerning the application of Article VII, Section 2, of the Agreement. Consistent with the provisions of that Article, the on-site fabrication and installation of prefabricated duct and components which are customarily the work of the Sheet Metal Workers will continue to be recognized as such.

As you know from the discussions in negotiations, if fabrication work recognized by this letter as customarily the work of SMWIA members is to be done off-site, this work will be performed in the San Francisco Bay Area and in shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established in the area under the prevailing wage laws for employees represented by the Sheet Metal Workers International Association, unless such work is performed otherwise pursuant to the provisions of this letter.

The Sheet Metal Workers union recognizes that the timely completion of this project is vital to the Port and the Community it is intended to serve. Therefore, if the nature of the work or the project schedule make it necessary to obtain fabrication outside the region, the Sheet Metal Workers International Association agrees to make reasonable efforts to address timely requirements accommodating the reasonable needs of the Project. The Project Contractor and the Union agree to discuss such circumstances affecting off-site fabrication contracting purchases where an accommodation is sought and any reasons making it necessary to depart from the conditions set forth above. The Sheet Metal Workers International Association and Local 104 will not unreasonably withhold consent to such accommodations and Local 104 agrees to install on-site any components fabricated pursuant to the terms of this letter without limitation. The parties will make every effort to keep an open channel of communication to insure that both parties are fully informed of the facts affecting the substance of this letter.

If you agree that this letter accurately sets forth the substance of our understanding and provides the basis for resolving any questions concerning the interpretation and application of Article VII, Section 2, of the Project Labor Agreement, please indicate your acceptance in the space provided below.

Signed on behalf of the Project Contractor:




Jake Sloan, President, Davillier-Sloan, Inc.

**Letter of Understanding re: Prefabrication**

Page two of two

Agreed and accepted this \_\_\_\_ day of \_\_\_\_\_ 2000  
on behalf of Sheet Metal Workers International Association  
Local Union No. 104

  
\_\_\_\_\_  
Bruce Word

Letter of Understanding re: Prefabrication

February 28, 2000

Mr. Larry Blevins, Business Manager  
United Association, Local 342  
935 Detroit Avenue  
Concord, CA

Re: Port of Oakland Maritime and Aviation Project Labor Agreement  
Article VII, Management's Rights: Prefabrication

Dear Mr. Blevins:

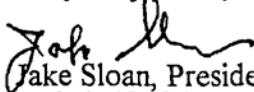
This letter will confirm the discussions we had during the negotiation of the captioned Project Labor Agreement and the clarifications we made concerning the application of Article VII, Section 2, of the Agreement. Consistent with the provisions of that Article, the on-site fabrication and installation of pipe and pipe formations between manufactured components which are customarily the work of UA members will continue to be recognized as such.

As you know from the discussions in negotiations, if fabrication work recognized by this letter as customarily the work of U.A. members is to be done off-site, this work will be performed in the Port's Local Business Area and in shops or at off-site assembly yards employing workers whose terms and conditions of employment equal or exceed those established in the area under the prevailing wage laws for employees represented by the United Association, unless such work is performed otherwise pursuant to the provisions of this letter.

The United Association recognizes that the timely completion of this project is vital to the Port and the Community it is intended to serve. Therefore, if the nature of the work, the project schedule, or contracting circumstances make it necessary to obtain fabrication outside the region or under conditions different than those described above, the United Association agrees to cooperate in accommodating the reasonable needs of the Project. The Project Contractor and the Union agree to discuss such circumstances affecting off-site fabrication contracting purchases where an accommodation is sought and any reasons making it necessary to depart from the conditions set forth above. The United Association will not unreasonably withhold its consent to such accommodations and Local 342 agrees to install on-site any components fabricated pursuant to the terms of this letter without limitation. The parties will make every effort to keep an open channel of communication to insure that both parties are fully informed of the facts affecting the substance of this letter.

If you agree that this letter accurately sets forth the substance of our understanding and provides the basis for resolving any questions concerning the interpretation and application of Article VII, Section 2, of the Project Labor Agreement, please indicate your acceptance in the space provided below.

Very truly yours,



Jake Sloan, President, Davillier-Sloan, Inc.  
on behalf of the Project Contractor

Agreed and accepted this \_\_\_\_\_ day of \_\_\_\_\_ 2000.  
United Association Local 342

By: Larry Blevins  
Larry Blevins, Business Manager

**Letter of Understanding re: Small Business Utilization Program**

February 28, 2000

Mr. Barry Luboviski, Secretary-Treasurer  
Building and Construction Trades Council of Alameda County  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Non-Discrimination and Small Local Business Utilization Program  
Port of Oakland Maritime and Aviation Project Labor Agreement

Dear Mr. Luboviski:

In our negotiations for the Maritime and Aviation Project Labor Agreement, we discussed the Port's desire to continue to utilize its Non-Discrimination and Small Local Business Utilization Program (hereafter Program) to assist qualifying small historically disadvantaged businesses to become capable of bidding and completing construction work. The parties understand that the Unions believe that such a program can operate completely within the framework of the Agreement, and that they have pledged to cooperate with the Port for the purpose of growing such local business capacity and overcoming the disadvantages that have resulted from the operation of various economic, social and cultural forces. The parties reach the following understanding concerning the utilization of Local Impact Area businesses that qualify as small businesses under the Program.

The parties agreed that for the purposes of this agreement, the term "advertised" in Article II, Section 1(a) does not include bid packages managed under the Program for work otherwise covered by the scope of this Agreement that have an estimated value before bidding at or below \$300,000 where in the sole discretion of the Owner such exclusion will further the goal of increasing the participation of small and historically disadvantaged Oakland-based construction businesses. The aggregate value of all bid packages chosen by the Owner for exclusion from the coverage of this Agreement will not exceed nine million dollars (\$9,000,000) over the duration of this Project Labor Agreement, except subject to the procedure outlined in this Letter of Understanding. However, if work awarded under the Port of Oakland Vision 2000 (1999 Facilities) Project Labor Agreement has not resulted in the utilization of the \$1,000,000 contained for such a program, the balance of such funds shall be available for use under this program in order to reach the \$10,000,000 original conceived for such efforts. All other contracts awarded under the Program will be covered by the terms of the Project Labor Agreement.

It was further agreed that where a contractor qualifying for this Small Business exclusion has received aggregate awards of \$150,000 or a single award that exceeds \$150,000 under the Program excluded from coverage of this Project Labor Agreement, that such contractor will thereafter be required to agree to comply with the PLA for all future contract awards within the Scope of this Agreement whether or not the bid package is reserved for bidding under the Program.



**Letter of Understanding re:  
Small Local Business Utilization Program**

Page two of two

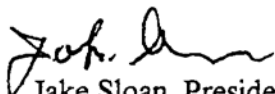
If, in the sole judgment of the Social Justice Subcommittee established under this agreement, the Subcommittee determines that the objectives outlined in this Letter of Understanding will be furthered by the addition of \$5,000,000 to the program's \$10,000,000 limit. It shall make such a decision, by majority vote. DSI/PCI shall give notice to all Subcommittee members when it determines that the \$10,000,000 program limit is being neared, and schedule the matter for inclusion on the Subcommittee's agenda.

It is further agreed that the Port, in managing this Program, will work with the signatory parties to this agreement to ensure that the operation of this understanding does not have significant disproportionate impact on any particular craft or upon small disadvantaged contractors signatory to Schedule As. Further, the Port pledges that in any event no more than 20% of the value of contracts awarded effecting any particular craft shall be issued under this understanding.

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity at the Project site for any reason (including disputes relating to the negotiation or renegotiation of the local collective bargaining agreements which serve as the basis for the Schedule As) or disputes directed at contractors exempt from coverage pursuant to the terms of this letter. This agreement in no way limits the rights of signatory Unions to seek to organize and utilize legal and administrative remedies not precluded by this letter, according to applicable federal and state law, to secure adherence to any such successful effort.

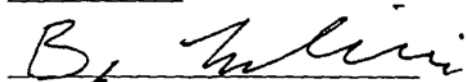
I trust that the foregoing accurately describes the understanding we reached on this Small Business Utilization Program treatment of successful bidders under the terms of this Project Labor Agreement.

Very truly yours,



Jake Sloan, President, Davillier-Sloan, Inc.  
on behalf of the Project Contractor

Acknowledged and agreed to on behalf of the signatory Union parties this \_\_\_\_ day of \_\_\_\_\_ 2000



Barry Luboviski, Secretary-Treasurer  
Alameda County Building and Construction Trades Council

## APPENDIX G-1

Appendix G-1, modifying Appendix G: “Letter of Understanding re: Small Business Utilization Program”

Pursuant to settlement agreements reached among the Alameda County Building & Construction Trades Council, AFL-CIO, the Operating Engineers Local Union Number 3, AFL-CIO, Parsons Constructors, Inc., and the Port of Oakland, the Maritime and Aviation Project Labor Agreement, Appendix G (“Letter of Understanding re: Small Business Utilization Program”, dated February 28, 2000) has been modified as follows:

- 1. Letter of Understanding re: Small Business Utilization Program (02/28/2000), second paragraph:** A bid package with an estimated value before bidding of \$300,000 or less may be subject to the MAPLA Small Business exclusion, under which the contract awardee is exempted from compliance with the MAPLA.  
**Modified to:** A bid package with an estimated value before bidding of \$1,000,000 or less may be subject to the MAPLA Small Business exclusion.
- 2. Letter of Understanding re: Small Business Utilization Program (02/28/2000), third paragraph:** A contractor is precluded from receiving further contracts under the MAPLA Small Business exclusion if the aggregate value of contracts already awarded to the contractor under the exclusion exceeds \$150,000.  
**Modified to:** The aggregate value of all contracts awarded to a contractor under the MAPLA Small Business exclusion may not exceed \$1,000,000.
- 3. Letter of Understanding re: Small Business Utilization Program (02/28/2000), fifth paragraph:** No more than 20% of any particular craft’s work may be subject to the MAPLA Small Business exclusion.  
**Modified to:** No more than 20% of any particular craft’s work may be subject to the MAPLA Small Business exclusion. No more than \$300,000 in testing and inspection work may be subject to the exclusion. If the Social Justice Subcommittee increases the aggregate value of all bid packages that may be subject to the exclusion from \$10,000,000 to \$15,000,000, an additional \$100,000 in testing and inspection work may be subject to the exclusion.

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**NOTE:** The provisions of Appendices G and G-1 apply to subcontractors of any tier, as well as to the prime contractor. If a subcontractor receives work under a contract subject to the MAPLA Small Business exclusion, and if said subcontractor would exceed the aggregation limit, it must sign the Letter of Assent to the MAPLA, and the contractor issuing the subcontract must so notify the subcontractor. The provisions of Appendices G and G-1 do not, in any way, limit the eligibility of any contractor to bid for and receive work that is covered by MAPLA.

**Letter of Understanding: Workers' Compensation**

February 28, 2000

Mr. Barry Luboviski, Secretary-Treasurer  
Building and Construction Trades Council of Alameda County  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Maritime and Aviation Project Labor Agreement: Workers' Compensation

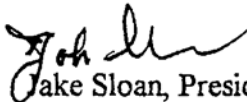
Dear Mr. Luboviski:

During our negotiations on the above captioned Agreement the Union side objected strenuously to our proposals for an alternative dispute resolution mechanism that would substitute for the provisions of the California Labor Code governing the processing of workers' compensation claims.

This will confirm, therefore, our agreement that the Unions and DSI/PCI (with input from the Owner's workers' compensation insurance carrier) will agree to a workers' compensation program within the constraints of the State Labor Code, which preserves the substantive and procedural rights of the employees under the Code, and which is designed to insure a safe work environment on the Project, prompt and effective treatment of worker injuries, and efficient and effective claims handling. An integral component of the program will be the effective communication to employees of information about their rights and obligations under the State workers compensation structure.

If you agree that this accurately reflects the understanding reached during our negotiations, please acknowledge by signing this letter in the space provided below.

Sincerely,



Jake Sloan, President  
Davillier-Sloan, Inc.  
On behalf of the Project Contractor

Acknowledged and agreed to on behalf off the signatory Union parties this \_\_\_ day of \_\_\_\_\_ =  
2000.



Barry Luboviski, Secretary-Treasurer, Alameda County Building and Construction Trades Council

**Letter of Understanding: Tenant Improvements**

February 28, 2000

Mr. Barry Luboviski, Secretary-Treasurer  
Building and Construction Trades Council of Alameda County  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Maritime and Aviation Project Labor Agreement: Tenant Improvements

Dear Mr. Luboviski:

During our negotiations of the above-captioned Agreement, the Unions sought commitments from the Port to cover construction improvements that may be done by Port and Airport tenants during the life of the Project Labor Agreement. You and we acknowledged that we could not impose such a commitment on the tenants for both legal and practical reasons. At the same time, we recognize that without the unique protections that a project labor agreement offers, there is no way to insulate tenant contractors from the kinds of disruptions that come about in circumstances where local bargaining results in a strike against the contractors in the area or when union workers work alongside nonunion workers.

The Unions have advised us that the PLA protections will not be extended to any work that is not expressly covered by the Agreement. That is, you have specifically reserved the Unions' normal rights to conduct lawful concerted and protected activities at the Project site directed at any entities not covered by the Agreement. We have, in turn, expressed our position that the Unions have the ability (and the obligation) to manage any disputes that may arise in a manner calculated not to disrupt covered work under the Agreement. You have agreed that it is not the Unions' intent to disrupt the Project work in any way.

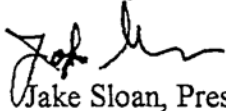
We therefore share a mutual desire for the Project site to be free from such potential labor tensions and disruption. In the interest of promoting labor harmony and recognizing that the Port is not legally or practically empowered to compel its tenants to adopt and adhere to the terms of a PLA, the Port will notify each of its tenants when they undertake construction work on their leased premises of the importance of maintaining labor stability in the performance of their work. This notification will specifically include a description of the PLA and its benefits as one means for achieving stability. The Unions agree that this PLA or one of comparable terms (including specifically the commitments not to engage in strikes, picketing or other economic pressure) will be made available to the tenants for their work if they should choose to have such an agreement for their work.

**Letter of Understanding: Tenant Improvements**  
**Page two of two**

Attached to this letter is the notice the Port will give to its tenants when it is advised that a tenant is contemplating construction work during the term of this PLA. I trust that this letter accurately states the positions of the parties and the understanding we have reached to resolve this difficult issue.

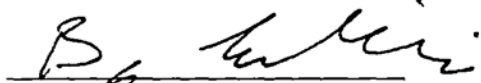
Please indicate your acceptance and agreement to this letter in the space provided below.

Sincerely,



Jake Sloan, President  
Davillier-Sloan, Inc.  
On behalf of the Project Contractor

Acknowledged and agreed to on behalf off the signatory Union parties this \_\_\_ day of \_\_\_\_\_  
2000.



Barry Laboviski, Secretary-Treasurer  
Alameda County Building and Construction Trades Council

## “Notice to Tenant”

“It has come to our attention that you are contemplating construction activities on Port property. That work is proposed to be conducted in proximity with and during the time that work is being performed by the Port under the terms of a Project Labor Agreement (“PLA”) with the Building and Construction Trades Council of Alameda County (“the Council”).

“As you know, the Council and its affiliated unions have a strong interest in the work that is done on Port property and the contractors that are engaged to do the work. This is particularly true if nonunion contractors are brought to the site. Disputes that one or more unions may have with those contractors could be brought to the site and result in strikes, picketing or other forms of disruption. Similarly, any strikes or economic action directed at union contractors during the renegotiation of local collective bargaining agreements can also affect the labor stability for union work on the project. The PLA immunizes us from the occurrence of such disputes directed at our work. It cannot, however, insure that the occurrence of disputes directed at contiguous or proximate work will not adversely affect Port work.

“Therefore, we ask that you give careful consideration to this potential for disruption on Port property that may be caused by the work you undertake and urge that you further consider how you will schedule work and select contractors to minimize this risk. You should know that the PLA (or one like it) and the unique protections it affords can be extended to your work should you choose to adopt it. Your choices in this regard are, of course, yours to make, but the consequences can be significant for you and the Port.

“We would be pleased to discuss with you the concerns that we have raised here and the options for addressing these concerns based upon our dealings with the interested unions. Regardless of your conclusion, we would ask that you advise Ms. Cheryl Perry-League, the director of our Office of Equal Opportunity, as to your decision. She may be reached at our headquarters: 530 Water Street, Oakland, CA 94607 or by telephoning 510-627-1417.”

**Letter of Understanding: Union Hiring Hall Procedures**

February 28, 2000

Mr. Barry Luboviski, Secretary-Treasurer  
Building and Construction Trades Council of Alameda County  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Maritime and Aviation Project Labor Agreement:  
Union Hiring Hall Procedures

Dear Mr. Luboviski:

During our negotiations, the local unions raised concerns that their agreement to the provisions of the Project Labor Agreement sought by the Owner to enhance employment and contracting opportunities for local workers and businesses could give rise to potential fair representation claims by members. There were concerns that the local hire goals contained in Article V, Section 6, whereby 50% of all craft hours would be performed by Local Impact Area residents, could expose the local unions to claims by workers on the local unions' out-of-work lists.

During our discussions with the Union negotiating committee and in explanatory conversations with concerned Locals, we confirmed the intent and effect of that Article to be that the identified social justice goals are to be pursued and achieved only in the context of the established hiring hall procedures and their normal operation. No Local Union is being asked to alter or dispense with their hiring hall procedures. Article V, Section 6 makes it plain that: "The Contractor shall make good faith efforts to reach this goal through the utilization of normal hiring hall procedures listed in the Schedule A agreements and the resources of the "Community Resource Centers" set out in Section 3 of this Article." (See also, Section 3(e), "...to request a name call consistent with normal union hiring hall procedures. (Emphasis added.)) Additionally, Section 8 of that Article states the Unions will use the Community-based organizations as a source for hiring qualified local residents only, "after their out-of-work lists are exhausted".

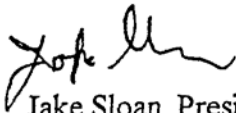
The Unions have agreed to partner with the Owner and the Project Contractor in many valuable areas of cooperation to achieve these mutual and agreed upon goals. They have been asked only to respond to dispatch requests, consistent with their hiring hall procedures, in a manner that will enhance the Contractors' ability to meet these goals.

I trust that this accurately describes our agreement on this issue. If you and the Union Negotiating Committee agree that these comments are consistent with your understanding of our

**Letter of Understanding: Union Hiring Hall Procedures**  
**Page two of two**

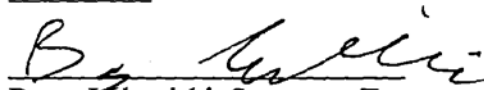
agreement, please indicate your concurrence and acceptance on behalf of the Committee in the space provided below.

Sincerely,



Jake Sloan, President  
Davillier-Sloan, Inc.  
On behalf of the Project Contractor

Letter acknowledged and agreed to on behalf off the signatory Union parties this \_\_\_ day of \_\_\_\_\_ 2000.



Barry Luboviski, Secretary-Treasurer  
Alameda County Building and Construction Trades Council



**Letter of Understanding: Contractor Fringe Benefit Contribution Delinquencies  
Draft**

Mr. Barry Luboviski  
Secretary-Treasurer  
Building and Construction Trades Council of Alameda, AFL-CIO  
8400 Enterprise Way, Room 101  
Oakland, CA 94621

RE: Port of Oakland Maritime and Aviation Project Labor Agreement  
Contractor Fringe Benefit Fund Contribution Delinquencies

Dear Mr. Luboviski:

In our negotiations for the captioned Project Labor Agreement, the Unions expressed concerns about their ability to recover unpaid fringe benefit contributions from delinquent contractors if they agreed, as part of the general commitment not to strike or otherwise disrupt the project or the work of a Contractor, to waive the right reserved in some local collective bargaining agreements to withdraw labor from a delinquent contractor. We emphasized the importance of an unqualified no-strike clause and the removal of any basis for economic action against any Contractor or the Project generally.

In consideration of the Unions' agreement to the commitments contained in Article X of the Project Labor Agreement and their waiver of the right to withhold labor in delinquency circumstances on this Project, the Port of Oakland will agree to a procedure to assist in the recovery of delinquent payments. The Port agrees, consistent with the General Conditions of its contract with the Contractor, to hold retainage monies owed to a delinquent Contractor and to issue joint checks to the applicable trust funds to cover demonstrated delinquencies under the following conditions. This commitment is independent of and does not interfere with the contractual remedies that may otherwise be available to the Unions against such Contractors or the general contractor of a delinquent subcontractor under the applicable Schedule As.

Any trust fund claiming that a Contractor is delinquent in its fringe benefit contributions to the fund, will provide written notice of the alleged delinquency to the affected Contractor, with copies to DSI/PCI and the Port. The notice will indicate the amount of delinquency asserted and the period that the delinquency covers.

Upon request by the Port, the trust fund or the involved Union will provide documentation of the delinquency sufficient to establish the fact and amount of the delinquency. If the Contractor acknowledges the delinquency and agrees that the payment may be made from retained funds, or

**Letter of Understanding: Contractor Fringe Benefit Contribution Delinquencies**

**Page two of two**

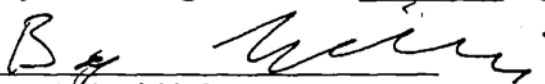
if the delinquency is disputed but has not been satisfactorily resolved by the parties within thirty days following the notice required above, a joint check (or checks) payable to the Contractor and the applicable trust fund(s) will be issued. The checks to be issued by the Port will not exceed the value of any retainage held by the Port for the delinquent contractor.

I trust that this procedure is consistent with the understanding reached by the parties in the negotiations. If the terms of this letter and the procedure it contains are agreeable to the signatory Unions, please indicate your acceptance in the space provided below.

Sincerely,

\_\_\_\_\_  
On behalf of the Port of Oakland

AGREED and ACCEPTED on behalf of the Building and Construction Trades Council of Alameda, AFL-CIO and the local unions signatory to the Port of Oakland Maritime and Aviation Project Labor Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2000

  
\_\_\_\_\_  
Barry Luboviski, Secretary-Treasurer

PORT OF OAKLAND  
MARITIME AND AVIATION  
PROJECT LABOR AGREEMENT  
UNIFORM SUBSTANCE ABUSE PREVENTION POLICY

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

This Uniform Substance Abuse Prevention Policy, hereinafter referred to as “Policy,” has been adopted by the Davillier-Sloan Inc./Parsons Constructors, Inc. (hereinafter “DSI/PCI”) and their successors or assigns, for and on behalf of themselves and the Port of Oakland, and the Building and Construction Trades Council of Alameda County, the Local Unions or Councils and the Building and Construction Trades Department, AFL-CIO (hereinafter the “Department”), its affiliated National and International Unions that become signatory to the Agreement, (collectively referred to as “Unions”) and is binding on the Contractors who agree to be bound by the Port of Oakland Maritime and Aviation Project Labor Agreement.

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

**POLICY**

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

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

The intention of this Program is to comply with the Port of Oakland's Aviation and Maritime Project requirement of maintaining a drug and alcohol free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Program have been carefully defined and intentionally restricted. The Substance Abuse Prevention Coordinator will retain oversight over the Programs and will monitor test procedures for consistency and policy compliance.

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

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

### **NOTICE**

1. When calling the Union hiring hall for workers, the Contractor shall advise the Union dispatcher that the Contractor will require any dispatched worker to take a pre-employment drug and alcohol test, and that worker(s) will be subject to further testing in accordance with specified circumstances outlined in this policy.
2. At the commencement of a contract, the Contractor shall also provide notice in advance of the first dispatch request either by certified mail, by facsimile transmission or by hand delivery.
3. The Contractor shall provide written notice to each employee, attached hereto as Appendix C, of the major provisions of the drug and alcohol testing policy and its consequences.

4. A contractor that fails to provide notice to the dispatcher shall be liable for two hours show up pay for any dispatched worker that refuses to take a pre-employment test, and a dispatched worker's refusal to take the test may not be used in any adverse manner against that worker, except that no dispatched worker will be hired without having taken a pre-employment drug test.

## **TERMS / DEFINITIONS**

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

1. **Illegal Drugs:**

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

2. **Prescription Drug:**

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

3. **Reasonable Cause:**

Reasonable cause to test (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) an employee for illegal drugs or alcohol will exist when specific, reliable objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while on the jobsite. These indicators will be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, and will be indicators not reasonably explained as resulting from causes other than the use of such controlled substances (such as, but not by way of limitation, fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.) If cause results from an observation, the observation must be confirmed by a second member of the Individual Contractor's supervision and those Contractor representatives will endeavor to consult with the Contractor's Safety Representative or a jobsite management representative, one who must be trained in detection of drug use, and whose training will be documented. The specific behavioral, performance or on-the-spot physical indicators of being under the influence of drugs or alcohol on the job will be substantiated in writing by the use of an Incident Report Form (attached as Appendix E).

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

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

#### 4. Post-Accident Testing

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

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

#### 5. Adulterated, Substituted or Dilute Specimens

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

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an "adulterant", "interfering substance" and/or "masking agent" or the sample is identified as a "substituted specimen" will be deemed a violation of this Project Labor Agreement and Policy and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an "adulterated", "interfering substance", "masking agent", or "substituted" specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant shall be required to show certification of rehabilitation and satisfactory



participation in a Substance Abuse Prevention Coordinator-approved rehabilitation program, not at the expense of the Contractor or Owner, as a condition of the employee's return to work at that time.

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

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

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

#### 6. Project.

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

### **IDENTIFICATION AND CONSENT PROCEDURES**

1. When a prospective employee or dispatched worker arrives at the job site for potential employment, he/she will be shown and sign a copy of the Pre-Employment Substance Abuse Prevention Testing Consent/Waiver Form attached as Appendix D before taking a pre-employment drug or alcohol screening test. An employee who is working on the Project and has submitted to the pre-employment drug and alcohol test and has tested negative may thereafter be required to submit to drug or alcohol testing only if the Contractor has "reasonable cause" to believe that the employee is under the influence of drugs or alcohol in violation of this Policy or in connection with an accident as set out above in this Policy. The Contractor may order urine (or in the case of alcohol, breathalyzer) testing only.
2. If a management representative (preferably not in the bargaining unit) makes observations of an employee which may constitute reasonable cause for drug or alcohol testing, the supervisor shall

immediately take the following actions:

- A. Inform the employee that he/she may have a Union Representative present, if reasonably available. The employee will be shown the Substance Abuse Prevention Testing Consent/Waiver Form attached as Appendix B.
  - B. Fill out the Incident Report Form, including a statement of the specific facts constituting reasonable cause to believe that the employee is under the influence of drugs or alcohol, and the names of the person(s) making the supporting observations;
  - C. Provide a completed copy of this Incident Report Form to the bargaining unit employee before he/she is required to be tested, (and one copy made available to the Union Representative, if present). After being given a copy of the Incident Report Form, the bargaining unit employee will be allowed enough time to read the entire document, to understand the reasons for the test.
  - D. Provide the employee with an opportunity to provide an explanation of his/her condition, including providing evidence (e.g., doctor's prescription or note, or prescription container) of existing medical treatment or reaction to a prescribed drug. If available, the Union Representative shall be present during such explanation; and will be entitled to confer with the employee before the explanation is required;
  - E. If the Management representative(s), after observing the employee, and hearing any explanation, concludes that there is in fact reasonable cause to believe that the employee is under the influence of drugs or alcohol, the employee may be ordered to submit to a drug and/or alcohol test and will be asked to sign the Consent/Waiver Form attached as Appendix B.
3. Failure to follow any of these procedures will result in the elimination of the test results as if no test had been administered; the test results will be destroyed and no discipline shall be imposed against the bargaining unit employee. Refusal of the employee to submit to the test where these procedures have been followed will be treated as a positive test and subject the employee to discipline including removal from the Project and discharge.
  4. Unless there is reason to believe that the person being tested has previously altered a sample, or unless there is agreement in writing, an individual will be allowed to provide the required specimen in the privacy of a stall or partitioned area.
  5. A worker initially dispatched to a Project jobsite where this Policy is in effect will be required to submit to testing for illegal drugs or alcohol as defined in this Policy. The testing of such workers must be conducted in compliance with the "Drug Testing Procedures" described in this Policy, and be required of dispatched workers only on the first day of reporting to the initial jobsite. The urine drug and alcohol testing of these dispatched workers, is the only testing allowed under this Policy other than for "reasonable cause" or in connection with an accident as set out above in this Policy. Notwithstanding this provision, if a rehabilitation program or drug treatment program determines that periodic testing is appropriate or necessary for the employee who has tested positive under this Policy, then that employee will be subject to future urine drug testing as recommended by the rehabilitation program.

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

6. If the Individual Contractor has reasonable cause to believe an employee is under the influence of drugs or alcohol, or requires a post accident drug or alcohol test, as set forth in this Policy, and the employee refuses to submit to a drug test, the refusal shall be treated as a positive test result and the employee/applicant shall be subject to discipline, including removal from the Project and discharge.
7. The following rules control the pay for dispatched workers tested on the first day of their employment:
  - A. A dispatched worker who is put to work immediately after having passed the test shall be paid starting at the time the worker reported for the test(s).
  - B. Where a contractor requests a dispatched worker to report for purposes of a pre-hire substance abuse test, and does not intend to place the worker in an active work position on that day, the worker shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.
  - C. If the dispatched worker is not allowed to work until the results of the drug test are received, and the test results are positive, the dispatched worker is not entitled to any form of pay (including show-up pay).
  - D. If the dispatched worker is put to work, that dispatched worker is entitled to pay and benefits under the Project Labor Agreement for all hours worked, regardless of the results of the drug test.
  - E. Where a contractor fails to provide notice, pursuant to this Policy, to the Union hiring hall that the job site is a drug and alcohol testing site, a dispatched worker who refuses to take the pre-employment test will be paid two hours show up pay, except that no dispatched worker will be hired without having taken a pre-employment drug test.

### **DRUG TESTING PROCEDURES**

1. The testing shall be done at a certified laboratory located in California. The collective bargaining parties retain the right to inspect the laboratory to determine conformity with the standards described

in this policy. The laboratory will only test for alcohol and the illegal drugs listed in the Definition Section of this Policy and Appendix A. All testing will be at the Contractor's expense.

Testing procedures, including controlled substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol tests shall be by breathalyzer. Any test revealing a blood/alcohol level equal to or greater than 0.08 or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or crane any test revealing a blood/alcohol level equal to or greater than 0.04 or the established California State standard for commercial motor vehicle operations, percent shall be positive and will be conducted under procedures consistent with California State law.

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

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

2. The specific required procedure is as follows:
  - A. Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee's option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.
  - B. Immediately after the specimen is collected, it will be divided into two (2) urine bottles which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.

- C. A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
3. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3) ions. In order to be considered "positive" for reporting by the laboratory to the employer, both samples must be tested separately in separate batches and must also show positive results on the GC /MS confirmatory test.
  4. All positive drug, alcohol or adulterant test results must be reported to a Medical Review Officer (MRO) appointed by the designated testing laboratory. The MRO shall review the test results and any disclosure made by the employee/prospective or dispatched worker and shall attempt to interview the employee/ prospective or dispatched worker to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the employee/applicant, but failing to make contact within two (2) working days, may deem the employee/applicant's result a "lab positive." After the issuance of a "lab positive", the employee/applicant will be barred from the Project until the employee/applicant makes contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of a negative result.
  5. If the testing procedures confirm a positive result, as described above, the employee/dispatched worker and the Substance Abuse Prevention Coordinator will be notified of the results in writing by the MRO, including the specific quantities. If requested by the employee or the Union, (with the written consent of the member), the laboratory will provide copies of all laboratory reports, forensic opinions, laboratory work sheets, procedure sheets, acceptance criteria and laboratory procedures.
  6. In the event of a positive drug or alcohol test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the request of the employee at his/her expense. Re-tests may be conducted by the same or any other approved laboratory. The laboratory shall endeavor to notify the MRO of positive drug, alcohol or adulterant tests results within five (5) working days after receipt of the specimen. The employee may request a re-test within five (5) working days from notice of a positive test result by the MRO. Costs of re-tests will be paid in advance by the requesting party.
  7. The Substance Abuse Prevention Coordinator shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
  8. All information from an employee's or dispatched worker's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.

9. Every effort will be made to insure that all employee substance abuse problems will be discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in any disciplinary procedure, and those persons will be identified in writing at the time of the procedure.

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

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

### **CONSEQUENCES FOR VIOLATING THE RULES AND PROVISIONS OF THIS POLICY**

1. Prospective or dispatched workers: Dispatched workers who test positive to the pre-employment drug and alcohol test conducted pursuant to this Policy will be denied employment by the Individual Contractor until their test is confirmed to the dispatched worker in writing. Dispatched workers will be informed in writing if they are rejected on the basis of a confirmed positive drug test result. A dispatched worker may utilize the Project Labor Agreement grievance procedure to challenge the validity of a positive test result.
2. Employees: If the initial results of a drug or alcohol test administered by the Individual Contractor show that the employee was under the influence of drugs or alcohol while on duty, the employee will be removed from the Project until the test results have been confirmed by the procedures contained in this Policy.
  - (a) If the final test is negative, the employee will be reinstated with full backpay for lost time.
  - (b) If the initial positive test result is confirmed, the employee will be barred from the Project effective the date and time of the collection of the test specimen. The employee is subject to termination, subject to the provisions of this section below.
  - (c) Discipline imposed for a first positive test for an employee subjected to reasonable-cause testing, or subject to post-accident testing when in fact drugs or alcohol played no role in the accident, and any grievance filed in response thereto, will be held in abeyance pending voluntary participation by the employee in a Substance Abuse Prevention Coordinator-approved treatment program during an unpaid leave of absence.
  - (d) The employee may return to work if work is available after a certificate of either rehabilitation or satisfactory participation in the program. If the program determines that periodic testing is appropriate or necessary, the employee will be subject to future urine drug or alcohol testing, even on a random basis.

- (e) If the employee successfully completes or participates in such a program or is not disciplined for substance use, possession or being under the influence of drugs or alcohol for twenty-four (24) months following the initial confirmed positive test, the discipline shall be revoked.
- (f) A second positive test will result in the imposition of discipline, including termination and removal from the Project and the lifting of any suspension regarding discipline imposed for a first test less than twenty-four months preceding the date of the second positive test.

### **NOTICE AND CONSENT/WAIVER FORMS**

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

### **SUBSTANCE ABUSE PREVENTION COORDINATOR**

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

### **SUPERVISOR TRAINING**

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

### **EMPLOYEE VOLUNTARY SELF-HELP PROGRAM**

An employee who engages in drug/alcohol abuse is encouraged to participate in an Employee Voluntary Self-Help Program. Employees who seek voluntary assistance for alcohol and/or substance abuse not arising out of or in connection with the occurrence of any testing incident or related disciplinary action may not be disciplined for seeking such assistance. Request by employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Such Voluntary Self-Help Program will not be at the expense of the Owner or Contractor. An Employee Voluntary Self-Help Program Counselor shall not disclose information on

drug/alcohol use received from an employee for any purpose or under any circumstances, unless specifically authorized in writing by the employee.

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

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

### **GRIEVANCE PROCEDURE**

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

### **SAVINGS CLAUSE**

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

### **TERM OF AGREEMENT**

This Policy constitutes the only Agreement in effect between the parties to the Project Labor Agreement concerning drug abuse, prevention and drug testing. No revisions or amendments will be made to this Policy except with the written approval of the parties hereto. This Policy shall become effective for all work covered by the Project Labor Agreement (and, to the current work covered by the Port of Oakland Vision 2000 (1999 Facilities) Project Labor Agreement, pursuant to the terms of Section 1(c) of Article XIV, “Safety, Protection of Person and Property Joint Labor/Management Safety Committee”, of that Agreement) upon the effective date of the Project Labor Agreement and shall remain in effect for the duration of the Agreement unless terminated or amended by the mutual consent of the parties hereto.

The parties to the Project Labor Agreement agree to meet on an annual basis to review this Policy, to



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

## APPENDIX A

### SUBSTANCE ABUSE PREVENTION AND DETECTION THRESHOLD LEVELS

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

\* All controlled substances including their metabolite components

\*\* SAMHSA specified threshold

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

EMIT – Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

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

**TO:** (Name of Contractor/Employer) \_\_\_\_\_  
**FOR:** (Project Name) \_\_\_\_\_

**Name of Dispatched Worker/Employee:** \_\_\_\_\_  
**Social Security Number:** \_\_\_\_\_  
**Home Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip code:** \_\_\_\_\_  
**Home Telephone:** \_\_\_\_\_  
**Other phone numbers: Pager** \_\_\_\_\_ **Mobile** \_\_\_\_\_

**Consent for Testing**

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

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

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

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

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

**I have read, understand and agree to the above:**

\_\_\_\_\_  
Witness Signature  
Date: \_\_\_\_\_

\_\_\_\_\_  
Employee Signature  
Date: \_\_\_\_\_



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

**TO:** (Name of Contractor/Employer) \_\_\_\_\_  
**FOR:** (Project Name) \_\_\_\_\_

**Name of Dispatched Worker/Employee:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip code:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_

**Other phone numbers: Pager** \_\_\_\_\_ **Mobile** \_\_\_\_\_

**Consent for Testing**

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

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

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

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

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

**I have read, understand and agree to the above:**

\_\_\_\_\_  
Witness Signature  
Date: \_\_\_\_\_

\_\_\_\_\_  
Prospective/Dispatched Worker  
Date: \_\_\_\_\_

**APPENDIX E**

**INCIDENT REPORT FORM**

Employer \_\_\_\_\_

Employee Involved \_\_\_\_\_

Date of Incident \_\_\_\_\_ Time of Incident \_\_\_\_\_

Location of Incident \_\_\_\_\_

Employee's Job Assignment/Position \_\_\_\_\_

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

Date/Time Notified \_\_\_\_\_  
DATE TIME

Employee's Initials \_\_\_\_\_

Witness to Incident \_\_\_\_\_

OBSERVATIONS \_\_\_\_\_

\_\_\_\_\_

EMPLOYEE'S EXPLANATION \_\_\_\_\_

\_\_\_\_\_

Action Recommended: \_\_\_\_\_

\_\_\_\_\_

Action Taken \_\_\_\_\_

\_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_

Signature Signature  
Employer Representative Union Representative (if present)

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date/Time/Action Taken: \_\_\_\_\_

**APPENDIX N**

**Notice: Modification of Termination Dates**  
**MAPLA Article II, Section 1.a.**

September 20, 2004

Pursuant to a settlement agreement reached on August 2, 2002, between the Port of Oakland with Parsons Constructors, Inc./Davillier-Sloan, Inc. and the Building and Construction Trades Council of Alameda County, AFL-CIO regarding among other things, application of the Maritime and Aviation Project Labor Agreement (MAPLA) to Port of Oakland tenant construction projects, application of MAPLA was extended to certain Port projects as set forth in Section 7 of the Settlement Agreement, which reads as follows:

- “7.a. The Parties acknowledge that Port-owned construction projects defined in MAPLA, Article II Section 1.a. as Maritime Division Program Vision 2000 (1999 Facilities) Project Labor Agreement and Vision 2000 additional facilities projects and as Aviation Development Program Terminal Expansion, Landside Access and Airline and Airport Support projects remain subject to MAPLA until completed, according to the terms of MAPLA.
  
- “b. The Parties agree to extend MAPLA coverage of other Port-owned Maritime and Aviation division construction projects (defined in MAPLA, Article II, Section 1.a. as “Other Maritime Division expansion and modernization” or “Other Aviation Division expansion and modernization”) through December 31, 2006 subject to the other provisions of those two paragraphs.

Please take note of these changes to the Port of Oakland Maritime and Aviation Project Labor Agreement.





DOCUMENT 00824

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

## **CONTRACTOR REGISTRATION PACKET**

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- ◆ Contractor Q&A's
- ◆ Program Management Pricing
- ◆ Enrollment Instructions
- ◆ Registration Form
- ◆ Who Should Your Communicator Be?
- ◆ Communicator Authorization and Setup Forms (2)
- ◆ DCC Service Agreement
- ◆ Drug & Alcohol Addendum



# CONTRACTOR QUESTIONS

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1. **Q. What is the DCC (Drugtest.com Contractors Consortium)?**
  - A. The DCC is an association for participating contractor (subcontractor) companies and their employee members who agree to comply with the standardized contractor's consortium substance abuse policy to meet participating owner requirements. DCC is the data management company charged with providing the administration of the owner rules.
2. **Q. What is the objective of the DCC?**
  - A. The primary objective of the DCC is to assist the contractor members and owners in obtaining a drug free workplace by providing consistent, objective, fair, and manageable procedures for drug and alcohol testing which comply with applicable owner requirements.
3. **Q. Who is a participating contractor?**
  - A. A participating contractor is a contractor company who works on participating owner job sites and has contracted with Drugtest.com to comply with the owner's substance abuse policy requirements.
4. **Q. Who can work on the participating owner job sites?**
  - A. Only employees who can demonstrate an (eligible) status in the DCC database. The entire DCC system is based on reporting status only (eligible/in eligible) to participating owners.
5. **Q. How do participating contractor employees get into the database?**
  - A. They are entered into the fully automated DCC database by utilizing what are called, fax forms. The form is filled out by an appointed contact person at a participating contractor office, signed by the employee, faxed to the dedicated database fax line and uploaded into the database.
6. **Q. What about my Department of Transportation (DOT) people?**
  - A. Your DOT people can be included under the same account number with a separate random pool to meet all DOT requirements.
7. **Q. What about the drug policy I now have in place?**
  - A. The DCC in no way limits your own company policy and procedures. Drugtest.com can also administer your company policy separate from the DCC and DOT programs.
8. **Q. How will billing be handled?**
  - A. One single bill from Drugtest.com covering drug and alcohol tests, MRO, administration, record storage, training etc. is sent to each participating contractor.
9. **Q. How will the owners audit my drug testing program?**
  - A. Owners can audit contractor programs through computer access to the DCC reporting system.

- 10. Q. Can our company link into Drugtest.com's computer system?**
- A. Yes, with full internet access
- 11. Q. Why doesn't the DOT program satisfy the owner requirements?**
- A. The owners require more stringent testing provisions than the DOT.
- 12. Q. Who should be the contact person in our company responsible for receiving information from Drugtest.com?**
- A. The contact person (communicator) should be assigned to someone who has the authority to receive any and all confidential information. We recommend that a minimum of two persons be assigned as communicators.
- 13. Q. What are the communicator's responsibilities?**
- A. To verify the applicant, receive and disburse random selection list and communicate with the Medical Review Officer (MRO) and Drugtest.com.
- 14. Q. Who can get actual test results?**
- A. Only the communicator(s) at the company who paid for the test and the person who submitted the specimen.
- 15. Q. How will the contractors be trained to operate the program?**
- A. Drugtest.com's (Quickstart) communicator certification program consists of a two hour session that is designed to prepare the designated company communicator to administer the drug testing program. They are certified by completing the session and correctly answering the test questions. There is no additional charge for this.
- 16. Q. How does the communicator handle a positive drug/alcohol test result on a DCC test?**
- A. They would handle it in accordance with the policy and procedure. The employee is given a letter explaining the policy rules for rehabilitation opportunities/procedures.
- 17. Q. Will this program keep me in compliance with all owner requirements?**
- A. The DCC program is designed to meet all owner requirements. Client compliance is dependent upon meeting responsibilities outlined by the DCC with regard to each program.
- 18. Q. Can my entire company operate within the DCC?**
- A. Yes, variations are available for multiple testing requirements (tests, random pools, etc.) in addition to full DCC compliance. Drugtest.com can also run your corporate and/or DOT program(s) separate from the DCC program.

# Program Management Pricing

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## Annual Corporate Member Enrollment Fee

*Maintenance of Total Program per Reporting Location*  
*Additional \$100 Annual Fee per Additional Program (FHWA, RSPA,...)* **\$300.00**

## Record Set-up Fee Per Person

*Initial One-time Employee Record Set-up and Maintenance Fee* **Included**

## Administrative Transaction Fee ( C.O.C. Processing ) **\$64.50**

Collection Site Selection & Administration	Included
Chain of Custody (C.O.C.. Processing)	Included
Necessary Collection Supplies	Included
Specimen Collection	Client Expense
Transportation of Specimen	Included
Specimen Adulteration Testing	Included
Specimen Analysis	Included
DHHS Certified Laboratory GC/MS Confirmations	<b>\$37.00</b>
Medical Review of Test Results (MRO)	Included
MRO Return to Duty Program Set-up	Client Expense
Storage and Documentation of Positive Specimens	Included
Automated Test Reporting "Negative/Reject" Reporting by Fax/Mail	Included
Random Selection Pool Management	Included
Annual Statistical Report	Included
Drug Program compliance Verification ID Cards	Included
Employee Status Verification (Active - Inactive)	Included

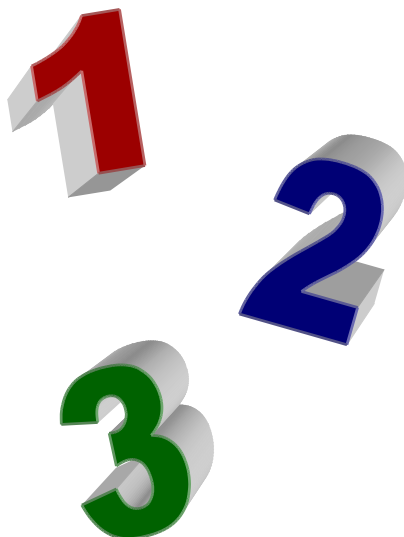
## Alcohol Program Management/Record Keeping

Alcohol Evidential Breath Testing (EBT) at DISA/BTARS Sites	<b>\$10.00</b>
Alcohol Evidential Breath Testing (EBT) Third Party Sites	<b>Actual Cost + \$5.00</b>



# ENROLLMENT INSTRUCTIONS

**As  
Easy  
as...**



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**In order to enroll in Drugtest.com**, please review the enclosed materials and **take the following actions**. (Enrollment materials must be submitted at least 7-10 days before initial testing request.)

**1. Complete Required Forms**

**A. Drugtest Inc. Service Agreement**

**B. Registration Form :** **Please complete the highlighted areas**

(Companies wishing to utilize Drugtest.com for DOT compliance should indicate so under the DOT Program section.)

**C. Communicator Authorization and Setup:** **Please complete the highlighted areas** (One each for primary and backup communicators, see "Who Should Your Communicator Be?")

**2. Mail Completed Forms A, B, and C:**

10750 Hammerly Blvd.  
Houston, Texas 77043  
Attn: Account Implementation

**3. Annual Corporate Fee Payment** must be included (each additional program and/or emergency setup add \$100.00)

---

Should you have any questions regarding these procedures, please contact  
Loreili Babilon, Area Manager, at 510-412-0295

or  
**1-800-DRUGTEST.**

# Drugtest.com

10750 Hammerly Blvd, Houston, TX 77043 (713)972-3472 Fax: (713)972-3421

## REGISTRATION FORM

**All information must be completed and a check or purchase order received before account will be activated.**

<b>Client Name:</b>	Phone:	Fax:
Physical Address:	Physical Suite:	
Phys City, State Zip:	Mailing Address:	
Mailing Suite:	Mail City, State, Zip:	

<b>Invoice To Attn:</b>	Billing Address:
Billing Suite:	City, State Zip:
Billing Phone:	Billing Fax:

<input type="checkbox"/> <b>Drugtest.com Consortium Program</b> # Employees: _____ Region: _____ Genentech? _____ Exxon? _____ Drugtest.com Card? Yes _____	Included
Consortium Drug Panel, Medical Review Officer (MRO) Services, and Consortium Policy	Included
Random Selection: Rate: _____ Start Date: _____ Frequency: monthly	
Per Drug Specimen Analyzed	
Employee Record Setup Fee (Per employee, one-time fee)	

<input checked="" type="checkbox"/> <b>Drugtest.com PLA / Port of Oakland Program</b> # Employees: _____ Drugtest.com Card? _____	
Check all desired panels: Drugtest.com 10 with 20ng THC cutoff <input type="checkbox"/> Drugtest.com 5 (DHHS levels) <input checked="" type="checkbox"/> Drugtest.com 9 Panel	Included
Medical Review Officer (MRO) Services: Yes Review: Positives Only Review pre-employments? Yes	Included
Random Selection: NO Rate: _____ Start Date: _____ Frequency: _____	Included
Drugtest.com Policy: Do you require a policy?NO	Included
Per Drug Specimen Analyzed	64.50
Employee Record Setup Fee (Per employee, one-time fee)	0.00

<input type="checkbox"/> <b>DOT Program</b> School Bus? _____ # Employees: _____ Drugtest.com Card? _____ Drug? _____ Alcohol? _____	
Governing Agencies (check all that apply): <input type="checkbox"/> DOE <input type="checkbox"/> FAA <input type="checkbox"/> FHWA <input type="checkbox"/> FRA <input type="checkbox"/> FTA <input type="checkbox"/> RSPA <input type="checkbox"/> USCG	Included
Split Specimen Options: RSPA: _____ USCG: _____ All Others: split mandated	Included
Medical Review Officer (MRO) Services:	Included
Random Selection: Rate: 50% or 25%, as required by agency Start Date: _____ Frequency: _____	Included
DOT Policy: Do you require a policy? Policy should include _____ language	Included
Per Drug Specimen Analyzed	
Employee Record Setup Fee (Per employee, one-time fee)	

<b>Collection Services</b>	
Drug Collection	Client Expense
Breath Alcohol Screen, Confirm, and Record-Keeping at Drugtest.com site	10.00
Alcohol Screen or Confirm at non-BTARS site	Client Expense
Alcohol Record-Keeping at non-BTARS site: yes	5.00
Biosite Triage Drug Screening Kits: no	
Saliva Swabs: no	
Blood Alcohol: no	

<b>Training</b>	
Communicator Training (required)	No Charge
Supervisor Training Information (required by DOT and DCC):	yes
Employee Education Information:(required by DOT):	yes

<b>Administrative</b>	
Emergency Setup: no	
Annual Corporate Fee (per reporting location)	300.00
Overnight, Shipping & Handling Charges	Client Expense

<b>For Office Use Only:</b>
Account #: _____ Sales: _____ MRO: 600 Lab: _____ Affil.: _____ Special: _____ Subsidiary: _____

\_\_\_\_\_  
Company Representative Date

\_\_\_\_\_  
Drugtest.com Representative Date



## **WHO SHOULD YOUR COMMUNICATOR BE?**

### **The confidential link between drugtest.com and your company:**

- The only authorized person to receive confidential information
- Contact between your company and employees

### **Duties include:**

- Enrolling employees into program
- Making sure employees test according to policy
- Ordering supplies
- Updating Operations Manual

### **Your company will designate:**

- Primary Communicator
- Backup Communicator

**Drugtest.com**

10750 Hammerly Blvd., Houston, TX 77043-2304 Ph: (713) 972-3472 Fax (713) 972-3449

**COMMUNICATOR AUTHORIZATION AND SETUP FORM**

**THIS FORM MUST BE COMPLETED FOR ALL AUTHORIZED COMMUNICATORS TO BE SET UP IN OUR SYSTEM. PLEASE MAKE A COPY FOR EACH COMMUNICATOR YOU WISH TO SET UP AND FAX EACH COMPLETED FORM BACK TO Drugtest.com.** Drugtest.com can provide sophisticated routing of communications based on content. Unless otherwise specified, all communications are sent to the Primary communicator by default. If you would like to have additional communicators, please contact your Drugtest.com sales representative for information on our additional communications capabilities.

**Client Name:**

Please circle one type of communicator:

(Primary Backup Positives Positive Backup Randoms Master Random Forms  
Bulletins)

**Communicator Name (first, middle initial, last)** \_\_\_\_\_

**Phone** (\_\_\_\_) \_\_\_\_\_ **Fax** (\_\_\_\_) \_\_\_\_\_ **E-Mail** \_\_\_\_\_

**Mailing Address** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Physical Address** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

Please circle one method for receiving negative test results:

(E-mail Fax Mail Regular)

Drugtest.com allows you to search for nearby collection sites, submit forms, and print employee rosters over the internet. If you would like to sign up for this service, please fill out the following User ID and Password Information:

**Note: Both User ID and Password MUST BE a minimum of 6 characters long, including at least 2 numbers and 2 letters. For example,**

**User ID: John25 Password: Blue32.**

User ID: \_\_\_\_\_ Password: \_\_\_\_\_

If you would like to restrict times during which Drugtest.com will attempt to send you communications, please complete the table below.

	Mon-Thur	Fri	Sat	Sun
<b>Call After</b>				
<b>Call Before</b>				

Please provide the answers to these three security questions in the table below.

Questions	Answers
1) What is your Social Security Number?	
2) What Month were you born?	
3) What numeric day were you born?	



### Drugtest.com

10750 Hammerly Blvd., Houston, TX 77043-2304 Ph: (713) 972-3472 Fax (713) 972-3449

#### COMMUNICATOR AUTHORIZATION AND SETUP FORM

**THIS FORM MUST BE COMPLETED FOR ALL AUTHORIZED COMMUNICATORS TO BE SET UP IN OUR SYSTEM. PLEASE MAKE A COPY FOR EACH COMMUNICATOR YOU WISH TO SET UP AND FAX EACH COMPLETED FORM BACK TO Drugtest.com.** Drugtest.com can provide sophisticated routing of communications based on content. Unless otherwise specified, all communications are sent to the Primary communicator by default. If you would like to have additional communicators, please contact your Drugtest.com sales representative for information on our additional communications capabilities.

#### Client Name:

Please circle one type of communicator:

(Primary Backup Positives Positive Backup Randoms Master Random Forms  
Bulletins)

Communicator Name (first, middle initial, last) \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_\_) \_\_\_\_\_ E-Mail \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

Physical Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

Please circle one method for receiving negative test results:

(E-mail Fax Mail Regular)

Drugtest.com allows you to search for nearby collection sites, submit forms, and print employee rosters over the internet. If you would like to sign up for this service, please fill out the following User ID and Password Information:

**Note: Both User ID and Password MUST BE a minimum of 6 characters long, including at least 2 numbers and 2 letters. For example,**

User ID: John25 Password: Blue32.

User ID: \_\_\_\_\_ Password: \_\_\_\_\_

If you would like to restrict times during which Drugtest.com will attempt to send you communications, please complete the table below.

	Mon-Thur	Fri	Sat	Sun
Call After				
Call Before				

Please provide the answers to these three security questions in the table below.

Questions	Answers
1) What is your Social Security Number?	
2) What Month were you born?	
3) What numeric day were you born?	



## DRUGTEST, INC. MASTER SERVICES AGREEMENT

This Master Services Agreement is made this \_\_\_\_\_, 200\_ (“Effective Date”) between DRUGTEST, INC., a Delaware corporation with its principal place of business located at 10750 Hammerly, Houston, Texas 77043 and \_\_\_\_\_(Company) with its principal office located at \_\_\_\_\_, \_\_\_\_\_(zip) \_\_\_\_\_. Now, therefore, for good and valuable consideration, the parties agree as follows:

I. **PROGRAM TERM.** This Agreement shall be effective as of the Effective Date and shall remain in effect for three (3) years (“Initial Term”) ending on the third anniversary of the Effective Date. This Agreement will automatically renew after its Initial Term for additional one year terms, unless either party terminates the Agreement, in writing, 30 days prior to the Agreement’s anniversary date.

II. **PROGRAM SERVICES.** DRUGTEST, INC. agrees to provide the services (“Services”) specified in the registration form (“Registration Form”) attached hereto in accordance with any attached addenda relating to the specific Services requested by Company (“Addenda”). The Services may also include, but are not limited to, on-line services or courses, equipment, supplies or materials provided by third parties (“Third Party Services”). The Registration Form and/or the Addenda shall be amended in writing from time to time by the parties, before DRUGTEST, INC. provides any additional Services to Company. The Registration Form, Addenda and any amendments thereto shall be deemed a two-party agreement between the parties and shall be deemed to incorporate and shall be subject to all of the terms and conditions of this Agreement. This Agreement does not prevent DRUGTEST, INC. from providing Services to other companies, including competitors of Company.

III. **COORDINATION OF ACTIVITIES** – DRUGTEST, INC. will coordinate the Services, as described in the Registration Form and any Addenda, through designated persons known as the “Communicators” within the Company organization. The Company shall designate a “Communicator” and “Backup Communicator” and shall notify DRUGTEST, INC., in writing, of any subsequent designations or changes to the designations within 5 days of such change.

IV. **INDEMNIFICATION** – DRUGTEST, INC. is an independent contractor providing the Company with the Services as specified in the Registration Form, as may be amended, and shall not be deemed to be an employee, agent or representative of Company, except to the extent necessary to comply with applicable U.S. Department of Transportation, DHHS, or state and local laws and regulations. DRUGTEST, INC. AGREES TO INDEMNIFY AND HOLD HARMLESS THE COMPANY AGAINST ANY CLAIMS ARISING OUT OF DRUGTEST, INC.’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN REPORTING FALSE DATA OR RESULTS TO COMPANY. DRUGTEST, INC. SHALL NOT BE LIABLE FOR THIRD PARTIES SERVICES, FOR ANY ACTIVITIES RESULTING FROM THE ENFORCEMENT OF THE COMPANY’S POLICIES OR FOR THE ACTIONS OF THE COMPANY’S APPLICANTS OR EMPLOYEES RELATING TO THE SERVICES. COMPANY AGREES TO INDEMNIFY AND HOLD DRUGTEST, INC. HARMLESS FROM ANY CLAIM, LIABILITY, LOSS OR DAMAGE BROUGHT BY THIRD PARTIES OR COMPANY APPLICANTS OR EMPLOYEES, OF WHATEVER NATURE, ARISING OUT OF THE SERVICES, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DRUGTEST, INC.. IN NO EVENT SHALL DRUGTEST, INC.’S LIABILITY EXCEED, IN THE AGGREGATE, THE SERVICES FEE PAID TO DRUGTEST, INC. DURING WHICH ANY OF SUCH EVENTS OCCURRED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY BREACH THEREOF. THIS LIMITATION OF LIABILITY, HOWEVER, SHALL NOT APPLY TO ACTIONS WITH RESPECT TO INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS OF EITHER PARTY OR TO ACTIONS FOR INDEMNITY.

V. **PAYMENT TERMS.** In consideration for the Services, Company shall pay DRUGTEST, INC. the fee for the Services (“Service Fees”) and the fee and/or costs for any Third Party Services (“Additional Fees”) within thirty (30) days of the date of the DRUGTEST, INC. invoice. DRUGTEST, INC. may change its Service Fees or Additional Fees upon written notice to Company. If Company fails to pay any payment when due, Company shall also pay to DRUGTEST, INC. interest thereon from the date due to the date of payment at a rate equal to the lesser of one and one half percent (1.5%) or the maximum rate permitted by law per month on balances due over thirty (30) days. DRUGTEST, INC. may terminate this Agreement if Company does not pay any invoice within thirty (30) days from the invoice date.

VI. **TERMINATION OF AGREEMENT.** DRUGTEST, INC. may terminate this Agreement on 30 days’ written notice to Company. Should either party breach the terms of this Agreement, the non-breaching party shall have the right to terminate this Agreement upon thirty (30) days written notice to the breaching party, if the breaching party does not correct the violation before the expiration of such thirty (30) day notice period to the satisfaction of the non-breaching party. If either party terminates this Agreement due to a breach, the non-breaching party shall notify the appropriate contracting or regulating agency of the suspension or termination of this Agreement. Within 20 days following termination, Company shall pay all charges incurred to date of termination.

VII. **DISCLAIMER OF WARRANTY.** DRUGTEST, INC. PROVIDES THE SERVICES ON AN “AS IS, AS AVAILABLE” BASIS. DRUGTEST, INC. DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ARISING OUT OF THE SERVICES AND THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE, AVAILABILITY, FUNCTIONALITY, QUALITY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER ASPECT OF THE SERVICES OR THIRD-PARTY SERVICES. DRUGTEST, INC. SPECIFICALLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, IN REGARD TO THE SUITABILITY OR FITNESS OF ANY ONLINE OR OTHER COURSE FOR THE PURPOSES OF COMPLIANCE WITH ANY AND ALL ADMINISTRATIVE, REGULATORY, OR GOVERNMENTAL CERTIFICATION OR TRAINING REQUIREMENTS. DRUGTEST, INC. CANNOT CONTROL THE MAINTENANCE NEEDS OF OR TIMING OR VOLUME OF ATTEMPTS TO ACCESS ANY ON-LINE PRODUCTS SERVER. AS A RESULT, DRUGTEST, INC. CANNOT GUARANTEE THAT THE COMPANY WILL BE ABLE TO ACCESS ANY ONLINE PRODUCTS OR THE DRUGTEST, INC. WEBSITE AT ANY PARTICULAR TIME.

VIII. **INTELLECTUAL PROPERTY.** The Parties acknowledge that trademarks, trade names, service marks, copyrights, programs, software (including but not limited to source code and scripts), techniques, enhancements, documentation, business models, pictures, audio, multi-media materials, manuals, ideas or formulas provided or utilized by DRUGTEST, INC. or developed by DRUGTEST, INC. or its providers (“Intellectual Property Rights”) shall remain the sole and exclusive property of DRUGTEST, INC. or its providers. Nothing in this Agreement grants to Customer the right to use or display the Intellectual Property Rights without DRUGTEST, INC.’s prior written consent to each such instance.

IX. **COMPUTER VIRUS.** Company agrees to include up-to-date and reputable anti-virus computer software on its computer systems which access the DRUGTEST, INC. website and to routinely scan for computer viruses at least once per day. Company shall protect against any computer virus infecting the DRUGTEST, INC. website as a result of Company accessing the DRUGTEST, INC. website. In the event a computer virus compromises the DRUGTEST, INC. website, and the Company’s equipment is the likely source of the computer virus, Company agrees to correct any problems caused by the computer viruses promptly upon written notification to Company by DRUGTEST, INC. without cost to DRUGTEST, INC..

[form continued on next page]

[form continued from previous page]

X. **MISCELLANEOUS.** This Agreement will be construed under the laws of the State of Texas without regard to conflicts of laws principles. DRUGTEST, INC. shall not be liable to the Company for failure or delay in performance which results from or is due to, directly or indirectly and in whole or part, any cause or circumstances beyond the reasonable control of DRUGTEST, INC.. "Confidential Information" includes any non-public information from or about DRUGTEST, INC. that would normally be treated as confidential by DRUGTEST, INC. in the ordinary course of its business, including but not limited to course content and materials, business models, marketing data and products. Company agrees, during the term of this Agreement and *for three (3) years thereafter*, to hold Confidential Information in strict confidence and not to disclose such Confidential Information, in whole or in part, orally or in writing, to others or use it in any way without DRUGTEST, INC.'s prior written authorization. Company further agree to take all precautions to protect the confidentiality of DRUGTEST, INC.'s Confidential Information that it uses to protect its own Confidential Information. In consideration of the disclosure of Confidential Information to Company and in furtherance of Company's obligations under this Agreement, during the term hereof and for a period of *two (2) years* thereafter, Company agrees not to, either directly or indirectly, for Company or on behalf of any other person, firm, partnership, corporation, Representative or other entity, whether located in Texas or anywhere else world-wide, (i) engage in providing services or products similar or related to the Services or (ii) hire, solicit, attempt to solicit, or cause to be solicited, the services of any employee of DRUGTEST, INC. without the prior written consent of DRUGTEST, INC.. This Agreement, including, without limitation, the indemnification provisions, shall inure to and bind the permitted successors and assigns of the parties. Company shall not assign or transfer this Agreement without the prior written approval of DRUGTEST, INC.. DRUGTEST, INC. may assign this Agreement upon written notice to Company. Nothing herein shall be construed as limiting DRUGTEST, INC.'s rights to subcontract or outsource the Services. In the event any portion of this Agreement shall be determined to be invalid or unenforceable, that portion will be null and void, and the remainder of this Agreement will continue to be valid and enforceable to the extent permitted by applicable law. No term or provision shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach by the other party shall constitute consent to, waiver of, or excuse of any other different or subsequent breach. This Agreement, the Registration Form and Addenda constitute the entire agreement between the parties and it supersedes all other agreements and representations, oral or written, express or implied. No modification or amendment of this Agreement, the Registration Form or the Addenda shall be enforceable, unless in writing and executed by the parties. Notwithstanding any other provisions in this Agreement, the obligations, rights and remedies for all indemnity, limitation of liability and confidentiality obligations set forth in this Agreement shall survive the termination or expiration of this Agreement.

_____	DRUGTEST, INC.
_____	_____
Signature	Signature
_____	J.A. "Skip" Richardson _____
Name	Name
_____	President/CEO _____
Title	Title



## DRUG AND ALCOHOL SCREENING ADDENDUM

This Addendum ("Addendum") to the \_\_\_\_\_, 200\_ Master Services Agreement ("Services Agreement") by and between Drugtest, Inc., a Delaware corporation having its principal place of business at 10705 Hammerly, Houston, Texas 77043, and \_\_\_\_\_ ("Company"), a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_, \_\_\_\_\_ is made effective as of this \_\_\_\_ day of \_\_\_\_\_, 200\_.

**1. DRUGTEST, INC. is an independent contractor providing the Company with the administration of drug and alcohol screening programs ("Screening"), mandated and non-mandated substance abuse programs and with the administration of mandated drug intervention programs described in the Registration Form, as may be amended. DRUGTEST, INC.'s drug and alcohol screening program will be administered for Company in accordance with, but not limited to, the following:**

**A. Company will provide DRUGTEST, INC. with a complete list of Company locations.**  
**B. Company agrees to abide by all applicable federal, state and local laws and regulations and all DRUGTEST, INC. policies and rules.**

**C. DRUGTEST, INC. will maintain information regarding the status of the Services on the DRUGTEST, INC. database and, if the Company is in good standing with DRUGTEST, INC., will make such information available to Company in accordance with all applicable laws and regulations and DRUGTEST, INC. policies.**

**D. DRUGTEST, INC. will conduct employee drug and/or alcohol testing and establish selection protocols to include the following types of testing: Pre-enrollment; Reasonable Suspicion; Random; Post-Accident; Return to Duty; Follow up; Owner Mandated**

**E. DRUGTEST, INC. will provide the Company with a list of approved specimen collection centers for collection of biological specimens. DRUGTEST, INC. will review collection center procedures and replace specimen collection centers if deemed necessary by DRUGTEST, INC. and advise Company of any such replacements within 48 hours.**

**F. DRUGTEST, INC. will utilize laboratories certified by the Department of Health and Human Services (DHHS) for the testing of biological specimens when required by Mandated Federal Testing Programs. Testing not mandated by federal regulations will be performed by laboratories certified by either the DHHS, or the College of American Pathologists or by generally accepted technologies.**

**G. DRUGTEST, INC. will provide reports of positive and questionable negative drug test results performed by authorized Medical Review Officers (MRO) contracted or employed by DRUGTEST, INC..**

**H. DRUGTEST, INC. will maintain Company and Employee drug and/or alcohol records.**

**I. DRUGTEST, INC. will provide Federal and Company reporting and Certification (when required) of Company.**

**2. Company is responsible for providing any and all information that DRUGTEST, INC. determines necessary to perform such Services, and is solely responsible for the accuracy and completeness of the information. Company will indemnify and hold DRUGTEST, INC. harmless from any liability, loss or damage resulting from any claim brought by any third party, including but not limited to Company employee-applicants or employees, arising out of any information provided by Company or any Services provided by DRUGTEST, INC..**

[form continued on next page]

[form continued from previous page]

3. If the Services Agreement is terminated for any reason, the Company assumes full responsibility for administration of its corporate and/or federally mandated drug and alcohol testing programs including but not limited to: (i) reporting, (ii) records maintenance; and (iii) ensuring confidentiality and security of any confidential information. DRUGTEST, INC. will provide the Company with any information necessary for this transfer of responsibility. DRUGTEST, INC. may refuse to transfer information relating the Services provided under this Agreement until such time as DRUGTEST, INC. has received payment in full for any outstanding obligations by the Company.

4. Company shall use any information derived from the Screening (“Information”) in accordance with applicable law and for the sole purpose of evaluating a current or prospective employee’s (“Employee”) employment, promotion, reassignment or retention as an employee. Company shall treat any Information concerning an Employee as proprietary and confidential and shall not disclose the Information to any other individual, entity or third party, except as required by applicable law. Company shall not sublicense, sell, redistribute or otherwise make the Information available to any other individual, entity or third party. Company shall not use the Information in violation of any applicable local, state or federal laws or regulations.

**5. This Addendum and any amendment thereto shall be deemed a two-party agreement between the parties and shall be deemed to incorporate and shall be subject to all of the terms and conditions of the Services Agreement.**

IN WITNESS WHEREOF, the parties have executed this Addendum to be effective as of the date set forth above.

\_\_\_\_\_

DRUGTEST, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

--END OF DOCUMENT--



DOCUMENT 00825

**SOCIAL JUSTICE LABOR MANAGEMENT COOPERATION TRUST FUND**

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) contains a provision (Article XI, Section 3) that requires contractors to pay into certain, Port-approved so-called "contract administration funds". The Contractor shall implement and fulfill the requirements of Section 3 in the following manner:

1. In addition to paying established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions, pursuant to the MAPLA Article XI, Section 3, contractors performing work under MAPLA shall pay fifteen cents (\$0.15) per hour worked or paid into the Social Justice Labor Management Cooperation Trust Fund/EBCF (Social Justice Trust Fund) established to manage the MAPLA Social Justice Program.
2. The Contractor should include the payment referenced in Item 1 above and any administration costs associated with complying with the payment, in its bid.
3. Payment to the Social Justice Trust Fund shall be made monthly by the Prime Contractor (for its and all its subcontractors' workforce) and shall cover the hours reported on the Summary of Utilization of Construction Workforce Reports required to be submitted weekly to the Port by the last day of the month for which the payment is being made. Copies of the Summary Workforce Reports shall accompany each monthly payment.
4. The amount of the monthly payment to the Social Justice Trust Fund is the total number of workforce hours worked or paid shown on the Summary Workforce Reports submitted weekly during that month times fifteen cents (\$0.15) per hour.
5. Monthly payment to the Social Justice Trust Fund shall be made within twenty (20) calendar days of the last day of the preceding month. Late payments shall be subject to interest charges of 1% per month on the unpaid balance.
6. Transmittal form must be filed monthly even if no hours have been worked or paid until a final payment statement has been sent.
7. Make checks payable to Social Justice Labor Management Cooperation Trust Fund/EBCF. Mail check, associated Summary Workforce Reports, and transmittal letter to:

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

The transmittal letter (Attachment A to this Document 00825) shall contain the following information:

- a) The name and address of the Contractor
- b) The title and contract number of the Port Project

- c) The period covered by the enclosed payment
- d) The payment amount calculation

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

Jake Sloan	Port of Oakland
Davillier-Sloan	Social Responsibility Division
Labor · Management Consultants	530 Water Street
1630 12 <sup>th</sup> Street	Oakland, CA 94607
Oakland, CA 94607	Attention: Public Works Unit

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

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

END OF DOCUMENT



ATTACHMENT A

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

\_\_\_\_\_, 200\_\_

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

Subject: Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA)  
Social Justice Trust Fund Contribution  
Contract Title and Number: \_\_\_\_\_  
\_\_\_\_\_

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

The payment amount is calculated as follows:

Social Justice Trust Fund Contribution	=	Total Number of Hours Worked or Paid	X	Hourly Contribution (\$0.15)
	=	_____ Hours	X	\$0.15
	=	\$ _____		(Amount Due)

Check if applicable: <input type="checkbox"/> No hours worked or paid this period.	<input type="checkbox"/> This is the final payment under this contract.
---	---

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

Contractor: \_\_\_\_\_

Name and Signature: \_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Signature)  
( \_\_\_\_\_ )  
\_\_\_\_\_  
(Telephone Number)

Enclosures: Payment and Summary Workforce Reports

cc (transmittal letter and Summary Workforce Reports):

Jake Sloan	Port of Oakland
Davillier-Sloan	Social Responsibility Division
Labor · Management Consultants	530 Water Street
1630 12 <sup>th</sup> Street	Oakland, CA 94607
Oakland, CA 94607	Attention: Public Works Unit



DOCUMENT 00826

**MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)  
SUMMARY OF UTILIZATION OF OFF-SITE APPRENTICE WORK FORCE**

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) includes provisions that encourage the recruitment, training, and employment of residents of the Port's Local Impact Area (LIA, defined as the cities of Alameda, Oakland, San Leandro, and Emeryville). MAPLA has particular requirements for contractors to use LIA-resident apprentices, including an off-site credit to encourage their continuous employment. The Port has adopted MAPLA's apprenticeship goals as a means to provide career opportunities for local workers and to develop adequate numbers of competent construction workers in the local workforce.

Article XIII, Section 2 of the MAPLA specifies the following goals for employment of apprentices on each MAPLA-covered project:

1. Apprentices must perform (on a craft-by-craft basis) 20% of all craft hours worked, or more if the craft apprentice requirement is higher than 20%. (Contractors should check the Schedule A or with the State Division of Apprenticeship Standards (DAS) to determine whether the apprentice requirement for a particular craft exceeds 20%. (Examples: Under MAPLA, if workers in one craft performed 1000 hours of work, a minimum 200 hours must be performed by apprentices of that craft. If the DAS requirement is one apprentice out of four workers for that craft, then apprentices must perform 250 hours of that craft's work. If the DAS requirement is one apprentice out of six workers, the minimum requirement remains 200 hours.)
2. All apprentices must be residents of the Port LIA if possible. If good faith efforts to employ LIA apprentices cannot achieve this goal because of lack of availability, then contractors may use Local Business Area (Alameda and Contra Costa counties) resident apprentices.
3. A contractor may receive credit for up to 50% of the LIA-resident apprentice requirement by employing LIA-resident apprentices on non-MAPLA projects during the course of the contractor's work on a MAPLA project. To claim this credit, the contractor must file the form on page 00826-2. (Example: If the contractor was required to have apprentices work 200 hours, but only had LIA-resident apprentices work 100 hours, it could employ LIA-resident apprentices on 100 hours of non-MAPLA work and receive 100 hours credit toward the MAPLA goal. The contractor still must meet the apprentice utilization goal of 20% or more apprentice hours per craft on the MAPLA covered project.)

The report form on page 00826-2 was developed to assist contractors to receive full credit for their off-site use of LIA apprentices. A contractor applying for this credit should submit this report form directly to Davillier-Sloan, Inc. and a copy to the Port of Oakland Social Responsibility Division at the addresses listed on the form. Questions about the off-site apprentice credit may be addressed to:

Jake Sloan  
Davillier-Sloan  
(510) 835-7603 x42  
[jakesloan@aol.com](mailto:jakesloan@aol.com)

DOCUMENT 00826

**MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)  
SUMMARY OF UTILIZATION OF OFF-SITE APPRENTICE WORK FORCE**

PORT PROJECT: \_\_\_\_\_

Check One: Prime Contractor \_\_\_\_\_ Sub \_\_\_\_\_ Week Ending: \_\_\_\_\_

Apprentice Name Home Address Phone Number	Craft	Off-Site Job Address Phone Contact #	Hours worked	Check if	
				Oakland Resident	LIA Resident
1.					
2.					

**NOTE:** This form is to be used for **APPRENTICES ONLY**. Under MAPLA Article XIII, Section 2 (c), a contractor may receive credit for up to half the LIA apprentice goal for using LIA apprentices on non-PLA work ("off-site") during its participation on the project. This credit allows the contractor to count offsite LIA apprentice work for up to half the LIA-resident goal. A contractor must still satisfy the overall apprentice utilization goal on MAPLA projects. Contractors applying for this credit must submit this report on a weekly basis.

1. **Company Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone Number:** \_\_\_\_\_  
**Prepared By and Title:** \_\_\_\_\_

**Mail or Email to:** Davillier-Sloan, Inc.  
1630 12<sup>th</sup> Street  
Oakland, CA. 94607  
[info@davillier-sloan.com](mailto:info@davillier-sloan.com)

**Signature:** \_\_\_\_\_

**Send Copy to:** Social Responsibility Division (Attn: Public Works Unit)  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

LIA: Local Impact Area (Oakland, Alameda, Emeryville and San Leandro)  
LBA: Local Business Area (Alameda County and Contra Costa County)

10/6/2009

END OF DOCUMENT

DOCUMENT 00830



**PORT OF OAKLAND**

Owner Controlled Insurance Program  
OCIP Projects, Including:

**Oakland International Airport Projects**

**Maritime Projects**

**Commercial Real Estate Projects**

**Terminal Expansion & Roadway Interchange Projects**

# Project Insurance Manual

**AON**  
*Aon Risk Services*  
**Construction Services Group**  
*License Number 0363334*

  
*ila*  
*License Number 0487963*

OWNER CONTROLLED INSURANCE PROGRAM

# Insurance Manual

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## **Port of Oakland**

OCIP Projects

530 Water Street

Oakland, CA 94607

Phone (510) 627-1623 Fax (510) 627-1625

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OVERVIEW

Section

1

## Overview

### *Welcome to the Port of Oakland's Owner Controlled Insurance Program (OCIP)*

The Port of Oakland has arranged for a number of its construction projects to be insured under an Owner Controlled Insurance Program (OCIP). An OCIP is a single insurance program that insures the Port of Oakland, Enrolled Construction Managers, Consultants, Contractors and Subcontractors under Contract with the Port of Oakland and other parties designated by the Port of Oakland for Work performed at the Project Site. Certain Contractors and Subcontractors are excluded from this program. These parties are identified in Section 3 of this manual.

### Project Definitions (as used in this Manual)

An **OCIP** is a centrally coordinated insurance program providing certain insurance coverage as generally described in this manual for Work at the Project Site.

The **Work** is operations as fully described in the Contract, performed at or emanating directly from the Project Site. The **Work** also includes the entire completed construction project(s) or the various separately identifiable parts required of the project(s).

The **Project Site** is that certain location(s) generally described in the Project Summary and Project Plans. The **Project Site** also includes areas adjacent to or nearby location(s) where incidental operations are performed, excluding permanent locations of any insured party, other than those of the Port of Oakland.

The term **Contract** refers to a written agreement between the Port of Oakland and Contractor for specific **Work** and also includes any agreement between a Contractor and a Subcontractor of any tier.

The term **Contractor** or **Subcontractor** refers to a person, firm, joint venture, corporation or other party that has entered into a **Contract** with either the Port of Oakland (in the case of a Contractor) or Contractor (in the case of a Subcontractor) to perform **Work** at the **Project Site**.



## OVERVIEW

The term *Consultants, Architects, and Engineers*, as used herein shall mean a person, firm, joint venture, corporation, or other party that has entered into a contract with the Port, or a Contractor, to provide professional services in connection with a Project, who have full-time dedicated staff providing **Work** or **services** at a Project Site, and who are required under the terms of their contract to enroll in the OCIP.

The term *Enrolled* applies to those eligible parties that have submitted all necessary enrollment forms and have been accepted into the OCIP.

The term *Specialty Contractors* applies to those insured parties performing on-site hazardous material/waste remediation activities eligible for all OCIP coverages except Workers' Compensation and Employer's Liability.

**OCIP Coverage** includes Workers' Compensation, Employer's Liability, Commercial General Liability, Excess Liability, Contractor's Pollution Legal Liability, and Builder's Risk insurance.

The Port of Oakland will pay insurance premiums for the OCIP coverage described in this manual. Enrolled Contractors and Subcontractors should notify their respective insurer(s) to delete their coverage provided under the OCIP for on-site activities and the related cost for their respective contracts. **Each bidder is required to exclude from the bid price the normal cost for insurance coverage to be provided by the Port of Oakland OCIP.**

### NOTE:

Insurance coverages provided under the OCIP are subject to terms, conditions, and limits stipulated in the OCIP insurance policies and are specific to work performed after enrollment into the OCIP. Each Contractor's/Subcontractor's respective insurance representative should review this information. Any additional coverage will be at the option and expense of the Contractor/Subcontractor.

## OVERVIEW

# About This Manual

The Project Insurance Manual was prepared by Aon Risk Services, Inc. of Northern California and the Port of Oakland. Aon is the **OCIP Administrator** for this program. The manual is designed to identify, define and assign responsibilities for the administration of the Port of Oakland OCIP.

## What This Manual Does

This Manual:

- Generally describes the structure of the Port of Oakland's OCIP
- Identifies responsibilities of the various parties involved in the project(s)
- Provides a *basic* description of OCIP coverage
- Describes audit and administrative procedures
- Provides answers to basic questions about the OCIP
- Will be updated as necessary

## What this Manual Does NOT Do

This Manual does not:

- Provide coverage interpretations
- Provide complete information about coverages
- Provide answers to specific claims questions

Refer questions concerning the OCIP, its administration or coverages to the appropriate party identified in the Project Directory. The Directory immediately follows this introduction.

### **DISCLAIMER:**

The information in this manual is intended to outline the OCIP. If any conflict exists between this manual and the OCIP insurance policies or Contracts between the Port of Oakland and the Contractor, the policies or Contracts will govern.

## OCIP Project Directory

*The following list includes key insurance personnel involved in the project.*

### OCIP Administration

Port of Oakland - OCIP Administration Office  
Aon Risk and Insurance Services West, Inc.  
JLA Insurance Agency

530 Water Street  
Oakland, CA 94607

(510) 627-1623 (telephone)  
(510) 627-1625 (fax)

**Aon - Insurance Administrator** – Adrienne Massey  
**Aon - Program Manager** – Laurie Whitnack  
**Aon - Program Executive Director** – Bill Buchan

**JLA - OCIP Safety Manager** – Bob Metzger  
**JLA - Principal** – Jonathan Leong

(510) 719-7153 (telephone)  
(510) 627-1626 (fax)

**Port of Oakland - Enterprise Risk Management Department**  
**Risk Manager** - Jane Keegan, CPCU  
**Sr. Risk Mgmt. Analyst** – Sharon Caplan

(510) 627-1535 (telephone)  
(510) 627-1532 (telephone)

## OCIP Insurance Coverage

*This chapter provides a brief description of OCIP Coverage, but is not meant to be a detailed analysis of the insurance provided.*

*Refer to the actual policies for details concerning coverage, exclusions and limitations, and other insurance provisions.*

### Covered Parties

**Covered Parties** are insureds on the OCIP policies and include the Port of Oakland, Construction Managers, Consultants, Architects and Engineers Enrolled with full-time dedicated staff at the Project Site, and Enrolled Contractors and Enrolled Subcontractors. Parties named as additional insureds include other parties that the Port of Oakland is required under Contract to add as additional insureds. These parties are also referred to as insureds. **Eligible Parties** are those persons or entities that are eligible to become Covered Parties under the OCIP, but have not yet done so.

### Excluded Parties

**Excluded Parties** are those parties connected with the Work that is precluded from OCIP coverage. They include (a) vendors, suppliers, fabricators, material dealers, truckers, haulers and hazardous waste haulers, drivers and others who solely transport, pickup, deliver, or carry materials, personnel, parts or equipment or other items or persons to or from the Project Site and (b) Contractors and each of their respective Subcontractors who do not perform any actual labor on the Project Site. The Port of Oakland reserves the right, at its sole discretion, to include or exclude any Contractor or Subcontractor from the OCIP.

**Warranty Work:** Any Enrolled Contractor/Subcontractor(s) who has completed its work at the Project Site and whose insurance as provided by the OCIP has been terminated, who subsequently returns to the site to perform punchlist and/or warranty work shall return only under its own insurance coverages and not under those provided by the OCIP and provide a certificate of insurance evidencing coverage equivalent to Section 4 of this Manual, "Contractor

**OCIP INSURANCE COVERAGE**

Required Coverages” for Excluded Parties.

## Evidence of Coverage

Covered Parties will be issued an individual workers' compensation policy and will receive from the OCIP Administrator a Certificate of Insurance reflecting coverage for Workers' Compensation, Employer's Liability, Commercial General Liability, Excess Liability, Contractor's Pollution Legal Liability, and Builder's Risk insurance for each enrolled project. A *Certificate of Insurance* is a document providing evidence of existing coverage for a particular insurance policy or policies. Other documentation including forms, posting notices, etc., will be furnished to each Covered Party listed above. Complete copies of policies will be furnished to an authorized representative of each Covered Party on request.

## Description of OCIP Coverages

The following sections describe the insurance policies that the Port of Oakland has arranged for this project at its minimum.

### Workers' Compensation and Employer's Liability

Workers' Compensation and Employer's Liability

Each Enrolled Contractor and Subcontractor will be issued a separate workers' compensation policy

<b>Part One</b> - Workers' Compensation:	Statutory Limit
<b>Part Two</b> - Employer's Liability:	<u>Annual Limits Per Insured</u>
Bodily Injury by Accident, each accident	\$ 2,000,000
Bodily Injury by Disease, each employee	\$ 2,000,000
Bodily Injury by Disease, policy limit	\$ 2,000,000

#### *Policy Enhancements*

- Other States Endorsement
- Designated Premises Endorsement
- Waiver of Subrogation Endorsement
- Alternate Employer Endorsement
- Voluntary Compensation Endorsement
- USL&H, Maritime/Jones Act and FELA on "if any" basis

### Commercial General Liability

A single policy will be issued for all Covered Parties. The policy is available for review at the Port's office upon request.

	<u>Limits of Liability</u>
	<u>Shared by All Insureds</u>
General Aggregate	\$ 4,000,000
Products/Completed Operations Aggregate	\$ 4,000,000
Personal/Advertising Injury Limit	\$ 2,000,000
Each Occurrence Limit	\$ 2,000,000

**OCIP INSURANCE COVERAGE**

**GENERAL  
LIABILITY  
CHARGE**

Damage to Premises Rented to You Limit (any one event)	\$100,000
Medical Expense Limit (any one person)	\$10,000

- **Definition of Charge** is the amount the Contractor or Subcontractor is responsible for paying as its contribution for settlement of any insured loss.
- for Contracts \$1,000,000 and over - The charge is up to \$ 10,000 per occurrence caused by Contractor or its Subcontractor of any tier
- for Contracts below \$999,999 - The charge is up to \$ 5,000 per occurrence caused by Contractor or its Subcontractor of any tier

***Policy Enhancements***

- Insurance Services Office (ISO) Occurrence Form 2004
- Broad named insured
- Amended contractual liability coverage to include “other easements”
- 50’ railroad limitation deleted
- Personal Injury/Advertising Injury contractual liability exclusion amended to allow for personal injury arising out of false arrest, detention or imprisonment
- Fellow employee coverage – supervisory personnel only
- Incidental medical malpractice
- “Silent” on subsidence and punitive damages
- Annual reinstatement of aggregates as defined in policies (except Products/Completed Operations)
- Ten (10) Year Products and Completed Operations Extension beyond final acceptance of the project (Single Aggregate)

***Exclusions apply:*** See actual OCIP Policy for details. Exclusions include, but are not limited to Personal Property in the Care, Custody, and Control of the Insured; Pollution; Asbestos; Discrimination & Wrongful Termination; ERISA; Owned, Non-Owned and Hired Automobile Liability.

**Note:**  
See General Liability Charge that may apply.

**OCIP INSURANCE COVERAGE**

**Excess Liability**

	<u>Limits of Liability Shared by All Insureds</u>
Each Occurrence Limit	\$ 300,000,000
Project Term Aggregate Limit	\$ 300,000,000

*Policy Enhancements*

A single policy will be issued for all Covered Parties. The policy is available for review at the Port's office upon request.

- “Following Form” underlying General and Employer’s Liability wording
- “Silent” on Subsidence
- Ten (10) Year Products & Completed Operations Extension beyond final acceptance of the project (Single Aggregate)
- Exclusions apply - See actual OCIP Policy for details. Exclusions include, but are not limited to, Personal Property in the Care, Custody or Control of the Insured; Pollution; Asbestos; Discrimination & Wrongful Termination; ERISA; Architects & Engineers Errors & Omissions; Owned & Non-owned Aircraft, and Automobile Liability; Nuclear Broad Form Liability

**OCIP INSURANCE COVERAGE**

**Contractor's Pollution Legal Liability**

	<u>Limits of Liability</u> <u>Shared by All Insureds</u>
Policy Term Aggregate	\$ 20,000,000
Each Loss Limit	\$ 20,000,000

A single policy will be issued for all Covered Parties. The policy is available for review at the Port's office upon request.

- Limits include coverage for Bodily Injury, Property Damage, Clean Up Costs and Claim Expenses for unintentional environmental damage caused by pollution conditions.
- Coverage for both sudden and gradual occurrences arising from work performed under the Project.
- Ten (10) Year Completed Operations Extension beyond final acceptance of the project (Single Aggregate).
- Coverage extends to Non-Owned Disposal Sites used for these projects, so long as the Non-Owned Disposal Sites meet the following criteria:
  - Properly licensed to accept and dispose of waste and in compliance with applicable Environmental Laws;
  - As of the Inception Date of the Policy 7/14/09, such facility is not listed, not proposed and has never been listed on the Federal National Priorities List (Superfund), State equivalent list, or Local equivalent list;
  - As of the Inception Date of the Policy 7/14/09, such facility is not subject o Federal information requests under Section 104(c), or CERCLA or Section 3007 (a) or RCRA or, State or Local equivalent requests; and
  - As of the Inception Date of the Policy 7/14/09 or date that the waste is accepted from the Named, Insured, whichever is later, the non-owned location, its owners and operators are not in bankruptcy or financial insolvency.
- Exclusions and limitations may apply - See actual OCIP Policy for details
- Coverage under the current Contractors Pollution Legal Liability Program expires 7/14/2014

**POLLUTION  
LIABILITY  
DEDUCTIBLE**

- **Definition of Deductible** is the amount the Contractor or Subcontractor is responsible for paying as its contribution for settlement of any insured loss.
- for Contracts as follows:
  - below \$99,999 - \$10,000 per Loss
  - \$100,000 to \$499,999 \$25,000 per Loss
  - \$500,000 to \$4,999,999 \$50,000 per Loss
  - over \$5,000,000 \$100,000 per Loss up to a maximum of \$500,000
 Policy Aggregate, subject thereafter to \$10,000 per Loss caused by Contractor or its Subcontractor of any tier

**Note:**  
See Pollution Liability Deductible that may apply.



**OCIP INSURANCE COVERAGE**

**Builder's Risk**

Limits of Liability  
Shared by All Insureds  
\$250,000,000\*

Policy Limit  
For Risks of Direct Physical Loss or Damage  
\*Projects are covered for the Actual Contract Value (including increases or decreases in the estimated contract costs) of each individual Insured Project declared but not exceeding \$250,000,000 for each project in any one Occurrence.

A single policy will be issued for all Covered Parties. The policy is available for review at the Port's office upon request.

Sublimits of Liability  
Shared by All Insureds  
\$ 25,000,000  
\$ 10,000,000

Earthquake / Water Damage  
Off-site Storage & Transit\*\*

\*\*Prior to fabricating, transporting, or storing covered materials off-site, the Contractor must request and receive written approval from the Port Risk Management Department or the OCIP Administrator for such off-site coverage.

**B U I L D E R ' S  
R I S K C H A R G E**

- **Definition of Deductible** is the amount the Contractor or Subcontractor is responsible for paying as its contribution for settlement of any insured loss.
- for Contracts \$1,000,000 and over- The deductible is up to \$10,000 per occurrence for damage to work of Contractor or any Subcontractor of any tier including damage to work of other contractors caused by Contractor or its Subcontractor-of any tier
- for Contracts below \$999,999 - The deductible is up to \$5,000 per occurrence for damage to work of Contractor or any Subcontractor of any tier including damage to work of other contractors caused by Contractor or its Subcontractor of any tier's

- Covers damage to materials, equipment and fixtures to be *permanently* incorporated into the work, caused by "Risks of Direct Physical Loss or Damage" subject to normal policy conditions and exclusions. See actual OCIP Policy for details on Exclusions and Limitations that may apply.
- Other sublimits apply for Wood Frame construction, Joint Masonry Construction Expediting Expenses and other coverage. Refer to OCIP policy for details.

**Note:**  
See **Builder's Risk Deductible** that may apply.

Note: Contractors and Subcontractors shall arrange their own insurance for hired, owned or leased equipment/machinery and materials not intended for inclusion in the Work. The OCIP will not cover Contractor or Subcontractor personal property.

**Professional Liability Insurance**

Professional Liability Insurance applies as per Contract; see separate Professional Liability Insurance Manual.

**OCIP Termination or Modification**

The Port of Oakland reserves the right to terminate or modify the OCIP or any portion thereof. If the Port of Oakland exercises this right, Covered Parties will be provided notice as required by the terms of their individual Contracts. At its option, the Port of Oakland may procure alternate coverage or may require Covered Parties to procure and maintain alternate insurance coverage.

**CONTRACTOR-REQUIRED COVERAGE**

**Section**

**4**

## Contractor Maintained Coverage

*Contractors and Subcontractors are required to maintain coverage to protect against losses that occur away from the Site or that are otherwise not covered under the OCIP.*

Contractors and Subcontractors are required to maintain insurance coverage for liability that may arise from operations performed away from the Project Sites, from operations not covered by the OCIP, and/or from operations performed by Excluded Parties. (See Section 3 for definition of Excluded Parties.)

Contractors, which are Eligible Parties (“Eligible Contractors”), are to provide current Certificates of Insurance evidencing Commercial Automobile Liability, Workers’ Compensation/Employer’s Liability, and Commercial General Liability insurance for *off-site activities* as per the insurance specifications in the Contract. (See Section 3 for the definition of Eligible Parties.)

Contractors, which are Excluded Parties (“Excluded Contractors”) must provide current Certificates of Insurance evidencing Commercial Automobile Liability, Workers’ Compensation/Employer’s Liability, Commercial General Liability and Professional Liability (if applicable) insurance for all activities including **both** *on-site* and *off-site* activities as per the insurance specifications in the Contracts. (See Section 3 for the definition of Excluded Parties.)

See Section 8  
for sample Certificate of  
Insurance.

**CONTRACTOR-REQUIRED COVERAGE**

**Certificate of Insurance**

- Prior to mobilization, and within 20 days of renewal, change or replacement of coverage, Contractors and Subcontractors must submit to the OCIP Administrator a Certificate of Insurance evidencing the coverage and limits as specified in this section.
- A 30-day notice of cancellation provision, waiver of subrogation and additional insured status must be shown on the Certificate of Insurance.

Verification of insurance must be submitted to the OCIP Administrator in the form of a Certificate of Insurance on a standard Acord form 25-S, prior to mobilization and within 20 days of any renewal, change or replacement of coverage. A sample of an acceptable Certificate of Insurance is provided in Section 8. Please note requirements for thirty (30) days notice of cancellation, waiver of subrogation and additional insured status.

Contractors are responsible for monitoring their Enrolled Subcontractors' and Excluded Parties' Certificates of Insurance. The Port of Oakland reserves the right to disapprove the use of Contractors or Subcontractors unable to meet the insurance requirements. Certificates of Insurance evidencing compliance must be provided to the Port of Oakland, OCIP Administrator.

The limits of liability shown for the insurance required of the Contractors and Subcontractors are minimum limits only and are not intended to restrict the liability imposed on any Contractor and Subcontractor for work performed under the Contract.

**Contractor Maintained Coverages**

**Workers' Compensation and Employer's Liability**

**Eligible** Contractors must provide Certificates of Insurance evidencing workers' compensation insurance for off-site activities.

**Excluded** Contractors must provide Certificates of Insurance evidencing workers' compensation applicable to the project.

<b>Part One</b> - Workers' Compensation:	Statutory Limit
<b>Part Two</b> - Employer's Liability:	<b>Annual Limits:</b>
Bodily Injury by Accident, each Accident:	\$ 1,000,000
Bodily Injury by Disease, each employee	\$ 1,000,000
Bodily Injury by Disease, policy limit:	\$ 1,000,000

Excluded parties must include U.S. Longshoremen & Harborworkers Act, Maritime/Jones Act, and Federal Employer's Liability Act coverage, if applicable.

Specialty Contractor: Workers' Compensation/Employee Liability coverage is not provided for Hazardous Material/Waste Removal Contractors under the OCIP. Hazardous Material/Waste Removal Contractors must provide Workers' Compensation and Employer's Liability coverage for both on-site and off-site activities.

**CONTRACTOR-REQUIRED COVERAGE**

**Commercial General Liability/Umbrella Liability**

**Eligible** Contractors must provide Certificates of Insurance evidencing commercial general liability insurance for off-site activities.

	<u>Limits of Liability</u>
General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal/Advertising Injury Limit	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

**Excluded** Contractors must provide Certificates of Insurance evidencing commercial general liability insurance applicable to the Project Site(s) and must add the Port of Oakland and other parties, as required by the Port of Oakland, as additional insureds to their policies

Coverage must be on an occurrence form and apply to bodily injury and property damage for operations (including explosion, collapse and underground hazards), independent contractors, contractual liability, and products and completed operations. Limits may be provided by a combination of a primary Commercial General Liability policy and an Excess or Umbrella Liability policy, as long as any Umbrella or Excess Liability policy provides coverage as broad as the underlying insurance. All Subcontractors are required to maintain the same limits per occurrence and aggregate as Contractors.

**Ocean Marine Liability**

All Contractors and Subcontractors must maintain an Ocean Marine Liability policy covering all owned, leased or hired and non-owned watercraft used in any fashion for such operations away from the Project Site and which are not otherwise insured under the OCIP. Such coverage must extend to cover liability for bodily injury (including death) and property damage (including loss of use) with minimum combined limits of **\$10,000,000**. Such insurance shall be maintained in the form of a standard Protection and Indemnity policy which includes coverage for wreck removal, unlimited protection and indemnity, pollution liability and Jones Act exposures.

**Automobile Liability**

**All Contractors** and Subcontractors must provide Certificates of Insurance evidencing automobile liability insurance. The OCIP does not cover automobile liability.

All Contractors and Subcontractors must maintain a Commercial Automobile Liability policy covering all owned, hired and non-owned automobiles, trucks and trailers with coverage limits not less than **\$1,000,000** combined single limit each accident for Bodily Injury and Property Damage and not less than **\$5,000,000** combined single limit each accident for Bodily Injury and Property Damage for any operations performed at the South Field - the "Aviation Operating Area (AOA)" or any active airfields of the Oakland International Airport. Coverage must apply both on and off the Project Sites. All Subcontractors, vendors, suppliers and materialmen are required to maintain the same **limits of coverage**.

**Automobile Liability - related to Hazardous Materials/Waste**

Contractors and Subcontractors whose Work involves removal or treatment of hazardous or regulated materials must provide and maintain a Commercial Automobile Liability policy covering all owned, hired and non-owned automobiles, trucks and trailers with coverage limits not less than **\$10,000,000 Combined Single Limit** each accident for Bodily Injury and Property Damage. Such coverage must specifically schedule the type

## **CONTRACTOR-REQUIRED COVERAGE**

of work as defined in the Contract and must be provided on the terms and conditions as required in the Contract. A Certificate of Insurance evidencing such coverage, if applicable, must be submitted to the OCIP Administrator prior to commencing any such work. Such certificate shall include the amendment of the pollution exclusion of ISO Form CA 00 01 06/92 (or its equivalent) in the following manner:

- A) DELETE SECTION a.(1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO.
- B) DELETE SECTIONS a.(1)b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED"

Such policy must also include the MCS-90 Endorsement. If the Port of Oakland is scheduled as an additional insured, the policy must be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

### **Property Insurance**

Contractors and Subcontractors shall arrange their own insurance for owned or leased equipment/machinery/tools and materials, whether such equipment is located at or away from a Project Site or "in transit." Contractors and Subcontractors are solely responsible for any loss or damage to their personal property (including, without limitation, property or materials created or provided under the Contracts until installed at the Project Site), contractor tools and equipment, scaffolding and temporary structures, whether owned, used, leased or rented. Such personal property is not covered by the OCIP.

### **Aviation & Watercraft Liability**

The operator of watercraft or aircraft of any kind used in connection with the Work or Project Site, must maintain liability insurance naming the Port of Oakland and the respective Contractor and/or Subcontractor as an additional insured with primary and non-contributory wording. In addition, the limit of liability must be satisfactory to the Port of Oakland. Such insurance requirements will be determined by the Port of Oakland as the need arises.

### **Environmental/Pollution Liability - from Disposal Facility**

If the Work involves disposal of hazardous or regulated substances, hazardous or regulated waste, and/or hazardous or regulated materials, the Contractor / Subcontractor shall furnish Certificates of Insurance from the designated disposal facility establishing that the facility owner maintains current Environmental Liability Insurance, in a form acceptable to the Port of Oakland with limits of not less than \$5,000,000 per Loss and \$5,000,000 Annual Aggregate. A Certificate of Insurance evidencing such coverage, if applicable, must be submitted to the OCIP Administrator prior to commencing any such work.

**CONTRACTOR-REQUIRED COVERAGE**

**Note: Waivers Required**

Contractor Workers' Compensation, Commercial General Liability, Automobile Liability Umbrella and/or Excess Liability, Property, Protection and Indemnity, Aviation and Environmental insurers must provide Waivers of Subrogation in favor of the Port of Oakland and other designated parties. Commercial General, Umbrella, Excess Liability, Contractor's Pollution Legal, Business Auto Liability, Protection and Indemnity and Aviation Policies must name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, and employees, consultants and representatives, while acting in the scope of their authority as additional insureds. The policies must also state that coverage is primary and non-contributory.

## **Contractor Responsibilities**

*Throughout the course of the Work, Contractors have reporting responsibilities and must maintain certain records as outlined in this section.*

**T**he Contractor is required to cooperate with the Port of Oakland and its OCIP Administrator in all aspects of OCIP operation and administration. Each Contractor must:

- Incorporate the terms of the Contract Document and OCIP provisions in all subcontract agreements.
- Comply with all of the administrative, safety, insurance, and other requirements outlined in the Contract Documents, the Insurance Manual and/or the OCIP insurance policies.
- Provide to each of its Subcontractors of all tiers a copy of the Insurance Manual, and ensure Subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, and the Contract Documents. The failure of Contractor to provide each of its eligible Subcontractors of any tier with a copy of the same shall not relieve Contractor, or any of its Subcontractors, from any of the obligations contained therein.
- Accurately and fully complete the Insurance Cost Worksheet (Aon Form-1), the Insurance Summary Form (Aon Form-2) and the Enrollment Application (Aon Form 3) located in this Insurance Manual, and submit the same to the OCIP Administrator prior to commencement of the Work.
- Remove the cost of OCIP-provided insurance from your bid to Owner.
- Notify the OCIP Administrator of all subcontracts awarded;
- Maintain and report monthly payroll records;
- Provide all information requested by the OCIP Administrator;
- Comply with insurance, claim and safety procedures;

## **CONTRACTOR-RESPONSIBILITIES**

- Pay contract charges, deductible or retention promptly as required; and
- Notify the OCIP Administrator immediately of any insurance cancellation or non-renewal (Contractor-required insurance).
- Comply, and require all Subcontractors of all tiers to comply with OCIP Administrator's instructions for electronically enrolling in the OCIP when using "AonWrap" and for electronically reporting payroll using "AonWrap."
- Acknowledge, and require all Subcontractors of every tier to acknowledge, in writing, that Owner and the OCIP Administrator are not agents, partners, or guarantors of the insurance companies providing the OCIP Coverages (each such insurer is an "OCIP Insurer"), that neither Owner nor the OCIP Administrator are responsible for any claims or disputes between or among Contractor, its Subcontractors of any tier, and any OCIP Insurer(s), and that neither Owner nor the OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that Contractor or its Subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be Contractor's or its Subcontractors' sole responsibility and expense, and shall not be billed to Owner.
- Provide, within five (5) days of Owner's or the OCIP Administrator's request, all documents or information as requested of Contractor or its Subcontractors of any tier. Such information may include, but may not be limited to, payroll records, certified copies of insurance coverages, declaration pages of coverages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as Owner, the OCIP Administrator, or the OCIP Insurers may request in the administration of the OCIP, or as required by the Insurance Manual.

**Contractor's Representations and Warranties to Owner:** Contractor represents and warrants to Owner, and shall use its best efforts to ensure that each of its Subcontractors of all tiers represent and warrant to Owner that:

- All information they submit to Owner, or to the OCIP Administrator, shall be accurate and complete.

**Safety:** Contractor shall be solely responsible for safety on the project. Contractor shall establish a safety program that, at a minimum, complies with all Federal, state, and local safety standards, and any safety standards established by Owner for the Project.



## CONTRACTOR-RESPONSIBILITIES

### Contractor Bids

See Section 7 for sample forms that can help identify your insurance costs. See Section 2 for information on contacting the OCIP Administrator.

The Port of Oakland provides insurance for all Enrolled Contractors and Subcontractors under the OCIP for Work performed at the Project Site. The section below, “Adjustments for Insurance Costs” describes the procedures for bidding, and how you must account for insurance costs. Section 8 of this manual contains several worksheets that can help you estimate your insurance costs. The OCIP Administrator can also help with your estimate.

### Adjustments for Insurance Costs

Each Contractor/Subcontractor, Consultant/Subconsultant, Architect/Engineer, and all other Eligible Parties are required to *exclude* the cost of insurance in the bid price for the proposed scope of Work (including subcontracted work whether or not the Subcontractor is identified at the time of the bid).

To aid the OCIP Administrator in identifying the insurance costs related to the OCIP, the Eligible Party is also required to submit, within 20 calendar days from the award date, a completed Insurance Cost Worksheet (Aon Form-1), contained in Section 8. A separate form for self-performed work and each identified Subcontractor must be provided under Aon Form-2. The estimated unburdened payroll, associated work hours and projected Contract amount are captured on the Aon Form-1. Should there be full-time dedicated on-site clerical or supervisory staff, the Eligible Party must disclose estimated on-site payrolls and work hours by class code for these staff members as well. This information is also used by the OCIP Administrator to verify the insurance costs. Each Eligible Party will be required to provide copies of the following documents to support its insurance cost calculations:

- Declarations and Rate Pages from each line of coverage for which the Eligible Party may currently have (Workers' Compensation, General Liability and Excess Liability at a minimum)
- 5 Years of Loss Experience (and associated payroll, receipts or rating basis) for each line of coverage in which the Eligible Party retains more than \$5,000 per Occurrence, per Claim or per Loss
- Schedule of Values
- Experience Modification Worksheet

In those instances where the Aon Form-1 and/or Aon Form-2 are not complete or are not specific to the scope of Work, the Eligible Party will be asked to re-complete the forms for their Work, as needed.

Change orders must be priced by the Contractor and its Subcontractors to *exclude* their cost of insurance.

Under the Port of Oakland’s OCIP, the final Contract value and the final payroll breakdown are determined by the OCIP insurance company audit. The audited contract

## CONTRACTOR RESPONSIBILITIES

information will be used to calculate the Covered Party's true insurance costs (in the absence of the OCIP). If the results of this comparison demonstrate that the final payrolls would have produced a significantly different Insurance Credit, an additional Insurance Credit may be withheld from the Covered Party's retention.

### Enrollment

See Section 8 for sample OCIP forms.

Each Contractor must provide details about its Subcontractors to the OCIP Administrator as necessary to enroll them in the OCIP. Each Contractor must provide to the OCIP Administrator before starting work at the Project Site all of the information requested on the Enrollment Application (Aon Form-3) in Section 8. This form must be completed and submitted to the OCIP Administrator within 20 calendar days after award date, and prior to mobilization to obtain coverage under the OCIP.

A separate Enrollment Application (Aon Form-3) is required for each Eligible Subcontractor of any tier which performs Work at the Project Site. A separate Workers' Compensation policy will be issued to each Enrolled Contractor and Subcontractor.

Each Enrolled Contractor or Subcontractor will receive a **Confirmation Letter** which is a letter issued by the OCIP Administrator that confirms acceptance of the applicant into the Port of Oakland OCIP.

#### Note: Enrollment is not automatic

Enrollment into the OCIP is required, but not automatic. Eligible Parties, including all Eligible Contractors and all Eligible Subcontractors MUST complete the enrollment forms and participate in the enrollment process for OCIP coverage to apply. Access to the Project Site will not be permitted until enrollment is complete.

### Safety Guidelines

**Construction Safety Standards** establishing minimum standards or guidelines for Contractor safety programs are provided to all participants during the bidding process.

Each Contractor is required to establish a written safety program and to provide a designated safety representative who is on site when any work is in progress. Minimum standards for contractor programs are outlined in the Port of Oakland's Project Safety Standards.

### Assignment of Return Premiums

The cost of the OCIP insurance coverage is paid by the Port of Oakland. The Port of Oakland will be the sole recipient of any return OCIP premiums or dividends. All Enrolled Contractors and Subcontractors (including Consultants/Subconsultants, Architects and Engineers) must assign, to the Port of Oakland, all adjustments, refunds, premium discounts, dividends, credits or any other monies due from the OCIP insurer(s). Contractors must assure that each Enrolled Subcontractor has executed such an

## CONTRACTOR-RESPONSIBILITIES

assignment. The Enrollment Application (Aon Form-3) supplied in Section 8 must be used for this purpose.

### Payroll Reports

Each Enrolled Contractor and Subcontractor of every tier must submit and certify monthly payroll reports identifying work hours and payroll for all Work performed at the Project Site. Certified payroll records must be maintained by Contractor and be made available upon request. Monthly payroll reports must be submitted prior to the 10<sup>th</sup> of the following month. Use the Payroll Report (Aon Form-4), provided in Section 8. The monthly work hour and payroll reports should include supervisory and clerical personnel on-site and cover all Work performed at or emanating directly from the Project Site. This information will be used to provide the OCIP Insurer with information required for determining the Port of Oakland's premium.

Please note: in the event of "interim demobilization", that is when the Contractor/Subcontractor is not performing work at the Project Site, but is still enrolled in the OCIP, the Contractor/Subcontractor will still be required to file Monthly Payroll Reports indicating zero (-0-) payroll.

### Insurance Company Payroll Audit

Each Enrolled Party (Contractor/Subcontractor, Consultant/Subconsultant, Architect, Engineer) is required to maintain payroll records for each Contract. Such records must allocate the payroll by Workers' Compensation classification(s) and exclude the excess or premium paid for overtime (i.e., only the straight time rate will apply to overtime hours worked). Furthermore, such records must limit the payroll for Executive Officers and Partners/Sole Proprietors to the limitations as stated in the State Manual Rules.

It is important that payrolls be classified properly, as these are reported to the rating bureau for promulgation of future Experience Modifiers for each Contractor and Subcontractor. All Enrolled Parties must make available their books, vouchers, contracts, documents, and records, of any and all kinds, to the auditors of the OCIP insurance carrier(s) or the Port of Oakland's representatives. These records must be made available for the entire policy period, any extension, and during a final audit period as required by the insurance policies.

**Note:** Failure to submit the payroll reports as required may result in the withholding of payments until required documentation is received.

## CONTRACTOR-RESPONSIBILITIES

### Change Order Procedures

Change orders must also be priced exclusive of any insurance costs. The Contractor and Subcontractor must identify and provide estimated on-site payrolls and work hours related to each change order so that the OCIP Administrator may identify the cost of insurance for the coverages that are provided by the Port of Oakland.

### Close Out and Audit Procedures

The Notice of Work Completion (Aon Form-5) must be submitted when a Contractor and/or an associated Subcontractor has completed its Work at the Project Site and no longer has on-site workers. The Aon Form-5 will initiate the final payroll report and audit of payroll and work hours by the OCIP Insurer. The ***OCIP Insurer*** is the insurance company(ies) that provides coverage for the OCIP and is named on a policy or certificate of insurance. A copy of the Notice of Work Completion, (Aon Form-5) with instructions on the proper method for completion may be found in Section 8.

Final payment will not be released by the Port of Oakland until all necessary forms have been submitted to the OCIP Administrator. Any charges or deductibles for which the Contractor or Subcontractor of any tier is responsible will be considered at the time of close-out. Charges/deductibles will *not* be considered if previously reimbursed.

CLAIMS PROCEDURES

Section

6

## Claim Procedures

*This section describes basic procedures for reporting various types of claims: workers' compensation, liability, and damage to the project, and pollution liability.*

### Workers' Compensation Claims

A Claims Kit will be provided to all Covered Parties. It includes details about claim reporting and is intended for use at the job site.

In the event of any worker injury, the main responsibility for any Contractor and/or Subcontractor is first to see that the injured worker receives immediate medical care. The OCIP Safety Manager (who can be reached at 510-719-7153) must be notified immediately of any injury, accident or event.

For every worker injury, an Employer's First Report of Injury Form 5020 or LS-202 (for USL&H) must be completed and submitted to the OCIP Carrier and OCIP Administrator, along with the DWC-1 (Employee's Claim) and a supervisor's Report of Injury form. These forms are contained in the Claims Kit. **The Contractor may report a claim telephonically by calling the Carrier directly at 866-855-4741. If reporting a claim in this manner, the Contractor must request written confirmation that the claim has been reported from the Insurance Company Claim Intake Representative. A copy of this documentation must be provided to the OCIP Administrator, if requested.**

The OCIP Administrator will provide Claims Kits to all Enrolled Contractors and Subcontractors. These kits include appropriate claim forms and postings. Additional kits or claims forms may be obtained from the OCIP Administrator or the insurance carrier's claims coordinator. **Also, included in Section 8-Forms of this manual are the MPN (California Medical Provider Network) instructions. Included in the Claims Kit will be the MPN Notice and packet of information that must be given to each employee to review and then must be signed by the employee for acknowledgement of receipt.**

The OCIP Insurer will arrange with preferred medical provider networks for treatment of all minor or non-life threatening injuries. A list of these providers is provided in the Claims Kit.

## CLAIMS PROCEDURES

Contractors and Subcontractors must designate a representative at the Project Site to take injured employees to the medical center, and to report the claim. This individual is to remain with the injured employee at the center while he/she is being treated. The treating physician should provide a written description stating whether or not the injured employee can return to work, a list of restrictions if any, and the estimated length of time he/she will stay on modified duty. The Port of Oakland supports transitional modified work to keep injured workers gainfully employed during recovery.

The OCIP insurer will arrange with the local 911 emergency ambulance services for response to any serious traumatic life threatening injuries.

**Note:** On March 21, 2000 the Port entered into the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) which contains Alternative Dispute Resolution (ADR) procedures and requirements. All Contractors/Subcontractors and employees working on MAPLA projects which are covered by the OCIP must comply with the Alternative Dispute Resolution (ADR) procedures and requirements set forth in the MAPLA. The ADR procedures and requirements do not apply to non-MAPLA projects. Also, the ADR procedures and requirements do not apply to workers' compensation claims.

## Modified Duty / Return To Work Policy

All Contractors/Subcontractors are to advise their employees of this procedure and their responsibilities for the Modified Duty and Return to Work Policy.

Each Contractor/Subcontractor agrees to modified duty, and will require supervisors to perform the following tasks:

1. Identify modified work tasks.
2. Send all of your work injuries to the designated medical provider.
3. Be familiar with medical provider location and staff.

**Contractors are responsible for notifying the Occupational Safety and Health Administration (CAL-OSHA) when one or more of their employees are seriously injured.**

## Liability Claims

**Report** all liability claims to the OCIP Administrator.

Accidents at or around the Project Site resulting in damage to property of others (other than the Contractor's own work product), or bodily injury or death to a member of the public, must be reported immediately to the OCIP Administrator or the OCIP Insurer's claims coordinator. Complete and deliver the General Liability Loss Notice (Acord Form

## CLAIMS PROCEDURES

in the Claims Kit) to the OCIP Administrator within 24 hours of the incident. This does not constitute the filing of a claim against the Port of Oakland – for those instructions see [www.portofoakland.com](http://www.portofoakland.com).

Do *not* voluntarily admit liability. Each Contractor must cooperate with the Port of Oakland or the OCIP Insurer representatives in the accident investigation.

The Contractor will be assessed a charge for any damages/injuries caused by the Contractor or its Subcontractors to third parties. Refer to Section 3 - OCIP Coverages for amounts that apply.

### Builder's Risk Claims

**Report** all Builder's Risk claims to the OCIP Administrator.

Any damage to your Work or the Work of any other Contractor or Subcontractor must be reported to the OCIP Administrator. In addition, the Property Loss Notice (Acord Form) must be completed and submitted it to the OCIP Administrator.

Contractor will be assessed a charge for damage to Contractor's Work or the Work of any other Contractor caused by Contractor or Subcontractors of any tier. Refer to Section 3 - OCIP Coverages for amounts that apply.

### Automobile Claims

Report all auto claims to your insurance carrier and the OCIP Administrator.

***No coverage is provided for automobile accidents under the OCIP. It is the sole responsibility of each Contractor and Subcontractor to report accidents/claims involving their automobiles to their own auto insurers.***

HOWEVER, all accidents, including vehicular accidents, occurring in or around the job site must be reported to the OCIP Administrator. Accident investigations will focus on liability arising out of the project construction activities that could result in future claims (i.e. due to the conditions of the roads, etc.) Each Contractor and Subcontractor must cooperate in the investigation of all automobile accidents.

### Pollution Claims

The Port of Oakland's OCIP will provide a Contractor's Pollution Legal Liability policy. All known or suspected pollution incidents or claims must be immediately reported to the Port's Project Manager and the OCIP Administrator. Complete and deliver the General Liability Loss Notice (Acord Form) to the OCIP Administrator.

### Professional Liability Claims

See Professional Services Agreement and Professional Liability Insurance Manual (if applicable).

Section  
7

# AonWrap Web Instruction

## Obtain a User ID & Password

Contact your Aon Program Administrator by either phone or email. Have the following information available:

- Name & Contract Information (*Phone, Fax & e.mail address*)
- Company Name
- Contract Number
- Contract with

## How to Access the AonWrap Application

You can access AonWrap by entering <https://www.aonwrap.aon.com> in your Internet Browser. *Be sure to include the www in the address, failure to do so could cause your log on process to fail.*

### How to Login


Once at the AonWrap home page

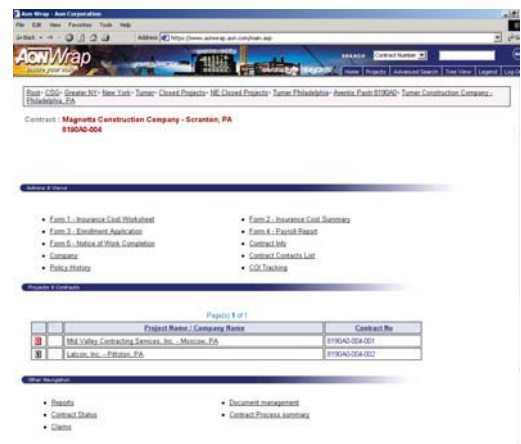
- enter your unique User ID
- enter your Password
- Click on the **Enter** button to gain access to the secure AonWrap application
- Please note that the first time you log on you will be requested to change your password.



## Navigation

1. From the Welcome Page use the 'Browse Project' option in the left-section of the page.
2. Locate your project or contract in one of three available methods:

- Use the **+** options to expand the tree view and select a project to begin working with. (sponsors only)
- Drill down through project levels and contract relationships by clicking on the project or Contractor's name in the **Projects & Contracts** section, located in the middle of the screen.  The icon indicates that there is additional project or subcontract information.
- The Search and Advanced Search options located in the screen header. (*see Search instruction for further details*)





- Use the Location Bar and Project/Contract Description at the top of the screen to determine what information is presented

**Note:** Security features may prevent you from seeing all presented screens.

## How to Submit your Insurance Cost Worksheet on the Web (Aon Form-1)

- Navigate to the contract and select the [Form-1 Insurance Cost Worksheet](#) option.
- Proceed to the WC Classes section of the form. Enter your firms estimated reportable payroll in the [Insurance Premium, WC, WC Classes](#) section of the enrollment form screen.
  - If the desired WC class codes is listed, click in the  on the left column. Use the **Update** button to add the estimated man-hour and payroll information.
  - If the desired WC class code is not present, click the **Add** button. Enter the County, State, WC Class Code, estimated man-hours and payroll.
  - Click on the **OK** button to record your information.
  - Repeat until all Class Codes have been added.
- Provide your Worker's Compensation Claim Retention
- Enter the WC Experience Modifier and Premium Modifier/Discounts that are applicable to your firms Worker's Compensation Insurance Program. *Modification & Addition of information is similar to other parts of the system.*
  - Be sure to enter this information in order
  - You may have the opportunity to select what the rate is **Computed From**. Select the appropriate value. *(st = subtotal, so selecting AZ st1 would mean the discount is applied against the first Arizona subtotal)*
- Enter any monetary adjustments that might apply. *For example, additional insured language may be a fix cost item on your policy. Enter \$150 in this area to indicate the flat charge.*
- Enter your firms estimated reportable payroll in the [Other Premium](#) information. *Modification & Addition of information is similar to other parts of the system.*
  - Be sure to enter information for each line of coverage available in the dropdown box
  - Incorporate your premium totals *Note: the system will not automatically compute the totals for you.*

- Provide your firms Overhead & profit Percentage. 15% is the automatically default.

- Type your name in the space provided and date the form. Your typed signature constitutes an electronic signature

The screenshot displays the 'Form 1 - Insurance Cost Worksheet' web application. Key sections include:

- Form Information:** Fields for Billing Method, Description, Country, State, WC Class, Quantity, and Billing Rate.
- WC Classes Table:** A table with columns for Country, State, WC Class, WC Class Description, Rate, Man Hours, MPE Payroll, and Premium. It lists classes like 'CONSTRUCTION LABORER OR NON-HOST INSTALLATION, REPAIR, OR REMOVAL & OPERATIONS, EXC. MAINTENANCE & S&S' and 'Executive Supervisor'.
- Employee Liability and Other Discounts Table:** A table with columns for Country, State, Ord, Discount, Rate, Factor, Composite From, Adjustment, Ranking, and Label. It lists items like 'Experience Modifier', 'Safety Credit (per 100)', 'Drug-Free Testing (per 100)', and 'Residual Market Load (per 100)'.
- Other Insurance Premium Table:** A table with columns for Coverage, Rate, Based On, Desc, Base Amt, Factor, Claim Retention, Fixed Expense, and Premium. It lists 'Excess & Limits' and 'General Liability'.
- Totals Section:** Fields for Total Insurance Premium, OH & Profit %, Overhead & Profit Amount, Total Insurance Cost, and Rate.
- Signature Block:** Fields for 'Firm signed by' and 'Date', with a note that typing the name constitutes an electronic signature.

9. Once you have completed everything and checked through your work:
  - When your information is ready to be processed, check the **Save and Notify Aon** indicator box.
  - **Save and Submit Later** allows you to save your work and return later to finish.
  - **Delete** your work
  - **Cancel** your work
  - **Totals** will compute all perform all of the math functions. *These are highlighted in light yellow* OR
  - **Print** your work

## How to Enroll on the Web (Aon Form-3)

1. Navigate to the contract and select the [Form-3 Enrollment Application](#) option.
2. Update your [Contractor Information](#) in section A. Modifications made in this will be posted to the database within 24 hours. *(The Federal ID number is required to enroll in the Wrap-up)*
3. Update [Contract Information](#) in section B of the Enrollment Application. *(Required fields include contract number, Estimated Start & Completion dates)*
4. Identify personnel from your company that are responsible for different pieces of information in Section C, [Contacts](#). Select the **Contacts** button. Follow the instructions in the [Update Contact Information](#) section of this pamphlet.
5. Enter your firms estimated reportable payroll in the [Worker's Compensation Information](#) section (D) of the enrollment form screen.
  - If the desired WC class codes is listed, click in the  on the left column. Use the **Update** button to add the estimated man-hour and payroll information.
  - If the desired WC class code is not present, click the **Add** button. Enter the County, State, WC Class Code, estimated man-hours and payroll. *Please note, not all projects will allow the addition of new WC class codes. An error message will be displayed.*
  - Click on the **OK** button to record your information.WC Class Codes can be entered using the numeric code or the [...] button can be used to search for a description.
6. Complete the [Off-Site Workers Compensation Information](#) section (E).
  - Supply your firms Experience Modification information. Click in the  on the left column and use **Modify** button to change an existing entry. Use the **Add** button to create a new line of information. *(Information must be supplied for each state work will be performed in.)*
    - a) *The Bureau File # is also referred to as the Risk ID #. This information can be located on your experience modification worksheets.*
    - b) *If your company has been in business for less than 3 years, enter the following information:  
Bureau File # = New Company ; Experience Modification Factor = 1.00  
Anniversary Rating Date and Effective Date of Modification Factor = First day your company was in business*
  - Enter the information relating to your existing workers' compensation carrier. Supply the carrier's full name of the insurance carrier *(no abbreviations)*, Policy number and Effective & Expiration dates
7. Identify any [Subcontractor Information](#) in section F. If you will not be using subcontractors, leave this section empty. Use the **Add** button to add a subcontractor. Verify your work by ensuring your own self-performed work plus the total Subcontract \$ amounts equal the expected Contract Amount on your contract.
8. The [Enrollment Questions](#) section G may pertain to your work at this project.
  - Check the boxes that describe your labor force and use of Aircraft & Watercraft. Your responses should only pertain to work performed under this contract on this project.
  - Additional project specific questions may be defined in the Optional Questions box. Answer any questions that may appear here.

9. If your firm has off-site storage facilities that are dedicated 100% for the storage of material for the specified project, record this information in the [Off-Site Storage \(100% Dedicated\)](#) section. Use the **Add** button to add a line of information. Use the **OK** button to save work. Add as many lines of information as needed.
10. Type your name in the space provided and date the form. Your typed signature constitutes an electronic signature
11. Once you have completed everything and checked through your work:
  - When your information is ready to be processed, check the **Save and Notify Aon** indicator box.
  - **Save and Submit Later** allows you to save your work and return later to finish.
  - **Cancel** your work OR
  - **Print** your work

## How to Report Payroll (Aon Form-4)

1. Navigate to the contract and Click on the [Form 4 – Payroll Report](#) option located in the [Actions and Views](#) section of the page.
2. The Payroll list screen will display all types of payroll (missing, incomplete and completed) records. *If you are in submitting your payroll information, select the missing payroll record with the appropriate period date.*
3. Click on the **Open** button at the top of the screen to an existing record or **New** button to create a new entry. Modify the payroll period dates if necessary.
4. Select the WC class code by clicking the  in the left most column. Use the **Update** button to begin the modification process. Enter the man-hours and payroll information. If your WC class code is not present use the **Add** button.

Period End Date	Reported Date	Man Hours	Gross Payroll	Reportable Payroll	Status	Action
<input type="radio"/> 05/31/2002	06/05/2002	58.00	\$20,500.00	\$20,500.00	Complete	<input checked="" type="checkbox"/>
<input type="radio"/> 04/30/2002	04/05/2002	0.00	\$0.00	\$0.00	Incomplete	<input type="checkbox"/>
<input type="radio"/> 03/31/2002		0.00	\$0.00	\$0.00	Missing	<input type="checkbox"/>
<input type="radio"/> 02/28/2002		0.00	\$0.00	\$0.00	Missing	<input type="checkbox"/>
<input type="radio"/> 01/31/2002		0.00	\$0.00	\$0.00	Missing	<input type="checkbox"/>
<input type="radio"/> 12/31/2001	01/10/2002	200.00	\$15,000.00	\$15,000.00	Complete	<input checked="" type="checkbox"/>

delinquent ending  
open

*Note a: Some Projects will also require the entry of a purchase order number. This requirement will be displayed in a separate column.*

*Note b: Submit one payroll report per reporting period. Each payroll report can contain only one entry per class code unless a purchase order number is required.*

5. When you are finished click on the **OK** button to add the information.
6. If this project collects optional data it will be defined in the [Optional Fields](#) section. Enter information if specified.
7. Enter your name and date.
8. Once you have completed everything and checked through your work:
  - When your information is ready to be processed, check the **Save and Notify Aon** indicator box.
  - **Save and Submit Later** allows you to save your work and return later to finish.
  - **Cancel** your work OR
  - **Print** your work

## How to Submit a Notice of Work Completion (Aon Form-5)

1. Navigate to the contract and Click on the [Form 5 – Notice of Work Completion](#) option located in the [Actions and Views](#) section of the page.
2. Enter your name and date the form.
3. Request the sponsor or entity you contract with to approve the form. Your company cannot complete the approval.
4. Once you have completed everything and checked through your work:
  - When your information is ready to be processed, check the **Save and Notify Aon** indicator box.
  - **Save and Submit Later** allows you to save your work and return later to finish.
  - **Cancel** your work OR
  - **Print** your work.

## Contract Contact List

1. Click on the [Contract Contact List](#) option located in the [Actions and Views](#) section of the page.
2. Select the ‘Role’ to add, update or modify by clicking on the the left most column.
3. Click the **Update** button to proceed with additions or modifications to the information.
4. Use the dropdown box in the Contact Name column to select an existing entry. Click **OK** to save this name as the contact.
5. If the Name does *not* exist in the available options, use the **New** button to create a new contact. Be sure to provide the
  - Individual’s Name (Prefix, first, middle & last name)
  - Phone & Fax Number (*enter without special characters (, ) or -*)
  - Address Line 1, Address Line 2, City, State and Zipcode
  - Optional fields include a Phone (Work 2), Phone (Cell), Phone (Pager), Phone (Home 1) and Phone (Home 2). (*Do not include special characters in all phone numbers*)
  - To save your work, click on the **OK** button.
6. If the Name exists in the available options but information requires revision, use the **Modify** button to change the contact’s information.
  - Change the information.
  - Select the **OK** button to save your work
7. Repeat the steps above until all desired contacts are identified.
8. Use the **Save** button to save your work.
9. Use the  on the upper right hand corner to close the screen.

Role	Contact Name	Phone Work	Phone Cell	Phone Fax
Primary Bill				
Safety Rep				
Project Contact	Mr. Robert... 0000 123 4567	0000 123 4568	0000 123 4569	
Project Manager	Mr. Robert... 0000 123 4568	0000 123 4569	0000 123 4570	
Site Engineer	Mr. Scott... 0000 987 6543	0000 987 6544	0000 987 6545	
Subcontractor	Mr. Scott... 0000 987 6543	0000 987 6544	0000 987 6545	
Trade Off Admin	Mr. Scott... 0000 987 6543	0000 987 6544	0000 987 6545	
Payroll Clerk	Mr. Scott... 0000 987 6543	0000 987 6544	0000 987 6545	
Safety Rep	Mr. Scott... 0000 987 6543	0000 987 6544	0000 987 6545	
Safety Rep	Mr. Robert... 0000 123 4567	0000 123 4568	0000 123 4569	

## Revise Company Information *(i.e. change address)*

1. Navigate to the contract and Click on the [Company](#) option located in the [Actions and Views](#) section of the page.
2. Modify the Company Information *(federal ID number, company name, address, phone and fax information)* as presented on the screen.
3. Press the **Add** button under the [WC General](#) section. Insert the Country, State, Bureau File # *(also known as the Risk ID Number)* and Anniversary Rating Date *(mm-dd format required)*. Use the **OK** button when entry is complete
4. Use the **Submit** button to forward your changes to the administration staff. Please note that changes recorded in this section of the database will *not* automatically be posted to the database. An action will be created for the administration staff to update your records.
5. After Submission of your changes, return to the main page by closing the screen. Use the  on the upper right hand corner of the screen.

## Update Contract Information

1. Navigate to the contract and Click on the [Contract Info](#) option located in the [Actions and Views](#) section of the page.
2. Review the information in the [Contract](#) Section of the screen *(Bid & Contract Number, Bid Due Date, Contract Award Date, Work Description, Contract Amount, Amount of Self-Performed and estimated & actual contract start and completion dates)*. In the [Change Request](#) section identify any correction or updates to the information. Also include the name of any subcontractors, address, contact name and phone number.
3. Use the **Submit** button to forward your changes to the administration staff. Please note that changes recorded in this section of the database will *not* automatically be posted to the database.
4. After Submission of your changes, return to the main page by closing the screen. Use the  on the upper right hand corner of the screen.



## Complete and/or updated Web Instructions

Complete and/or updated Web Instructions are available on the web page. To locate, click on the [Document Management](#) option in the [Other Navigation](#) section of the screen.

1. Click on the [Reference Material](#) category.
2. Click on the [Web Instructions](#) Document Name to download or view the document.

**Section**

**8**

## Forms

*This section contains the forms needed for reporting claims, reporting payroll and administration of the OCIP.*

This section contains the following forms:

Aon 1	Insurance Cost Worksheet
Aon 2	Insurance Summary
Aon 3	Enrollment Application
Aon 4	Payroll Report
Aon 5	Notice of Work Completion
Aon 6	On-Site Workhours / Incident Report
Claim Forms	Contractor Accident Investigation Form Claim Kits provided with each Enrollment Letter includes insurance company claim reporting instructions & forms
Exhibit 1	MPN Notice - MANDATORY to all employees
Exhibit 2	Sample Certificate of Insurance and required related Endorsements

### Note

For assistance in completing these forms, please contact:

**Port of Oakland - OCIP Administrator**      **(510) 627-1623**



**1. Contractor Information:**

Federal ID No.: \_\_\_\_\_

▼ **Business Information** (*headquarters*)

▼ **Contact Information** (*address questions to..*)

Company Name & dba /  
Contact Name & Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**2. Bid Information:**

Bid Package No.: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

Proposed Contract Price: \_\_\_\_\_

Amount of Self Performed Work: \_\_\_\_\_

Are you a: Contractor  
Subcontractor

If Subcontractor,  
identify under contract with: \_\_\_\_\_

**Workers' Compensation Insurance Information:**

3. State	3. Class Code	4. Description	5. Rate (per \$100 payroll)	6. Work hours	7. Payroll	8. WC Premium (Payroll * Rate / 100)
<b>9. Totals</b>						

10. Your Company's Workers' Compensation Experience Modifier: \_\_\_\_\_

11. Modified Premium (*Total WC Premium multiplied by line 10*): \_\_\_\_\_

12. a) Employers Liability Rate: \_\_\_\_\_ b) Employers Liability Premium: \_\_\_\_\_

13. a) Modification Premium Factors: **b) Rate** **c) Amount**

USL&H / Maritime Surcharge: \_\_\_\_\_

Modifier 2: \_\_\_\_\_

**Total Modification Amount:** \_\_\_\_\_

14. Total Workers' Compensation Premium (*line 11 plus 12 minus 13*): \_\_\_\_\_

15. a) Liability Rate (GL): \_\_\_\_\_ b) Based On: Payroll Receipt Other \_\_\_\_\_ c) Rate factor: Per \$100 Per \$1,000

d) GL Premium Costs: \_\_\_\_\_

16. a) Builder's Risk (BR) / Installation Floater Rate \_\_\_\_\_

b) BR Premium Costs n/a

17. a) Excess/Umbrella Rate: \_\_\_\_\_ b) Based On: Payroll Receipts Other \_\_\_\_\_ c) Rate factor: Per \$100 Per \$1,000

d) Excess/Umbrella Premium Costs \_\_\_\_\_

18. Total of all Insurance Premiums (*total of lines 14, 15, 16 & 17*): \_\_\_\_\_

19. Overhead & Profit on Insurance Prem. %: \_\_\_\_\_ O/H & Profit Amount: \_\_\_\_\_

20. **Total Initial Insurance Cost** (*Total of lines 18 and 19*): \_\_\_\_\_

21. **Initial Insurance Composite Rate** (*line 21 = line 20 divided by total payroll in line 9*): \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Completion of this form is a required part of your contract and must be submitted within 20 calendar days of your contract award date. Complete a separate form for each contractor, known subcontractor(s) and trades not currently awarded to a subcontractor. Duplicate this form as needed.

**INSTRUCTIONS FOR INSURANCE COST WORKSHEET (AON FORM-1)**

Complete a separate form for each contractor, known subcontractor and trade not currently awarded to a subcontractor. Completion of this form is a required part of your contract and must be submitted within 20 calendar days of your contract award date. Duplicate this form as needed.

**1. Contractor Information:**

- Provide your company's Federal Id Number.
- Provide your Business Information including the Company Name, Address, City, State, Zip Code, Telephone and Fax in the column.
- Provide the name of your employee that can answer insurance questions. If this person's Business Address, Telephone and Fax is different enter this information in the column provided.

**2. Bid Information:**

- Provide the Bid Package Number assigned by the Port of Oakland.
- Provide a brief description of the work your firm will perform.
- Identify your proposed contract price.
- Identify the amount your firm will self-perform (*100% if no subcontractors are used; otherwise, your proposed contract price less the amount to be subcontracted out*)
- Check the box that applies to your status on this bid.
- Identify with whom you are contracting with (The Port of Oakland or the name of the contractor or subcontractor)

**Workers Compensation Insurance Information:**

**Description of Worker's Compensation Column Information**

3. **State & Class Code** – provide the state in which the work will be performed and the workers compensation classification codes that are applicable to the scope of your work.
4. **Description** – Provide the workers compensation class code descriptions that applies to the codes.
5. **Rate** – enter rate your firm pays for coverage for each class code. This information can be obtained from your workers compensation policy.
6. **Work hours** – Provide your estimated work hours, by class code, for work that will be performed *on-site*.
7. **Payroll** – Provide your estimated payroll, by class code, for work that will be performed *on-site*.
8. **WC Premium** – For each classification you entered, multiply the Payroll by the Rate and divide by 100.
9. **Totals** – Calculate totals for columns numbered 6., 7. and 8.
10. **Workers Compensation Experience Modifier** - Enter your experience modification factor. This number is located on your workers compensation policy or on the Bureau's rating sheets. If you do not have an experience modifier, use 1.00.
11. **Modified Premium** – Multiply the total on line 9 by your workers compensation experience modifier.
12. **Employers Liability Rate** – a) Enter your Employers Liability Rate located on your workers compensation policy and b) calculate by multiplying the Modified Premium by the rate.
13. **Modification Premium Factors** – Identify the premium modification factors that apply to your workers compensation policy. These factors may include a "Scheduled Credit" or a "Premium Discount". a) Identify the name of the Modifier, b) enter the **Rate**, c) compute the **Amount** by calculating the Modified Premium by the Rate. Total the amount computed in column 13.c). Enter the total in d). This includes any USL&H / Maritime surcharges that would apply.
14. **Total Workers Compensation Premium** – Add the Modified Premium and the Employers Liability Premium (line 11 and 12). Subtract the Premium Modifications identified and totaled in line 13d).

**Other Insurance Items:**

15. **Liability** – a) Enter the General Liability rate, b) identify the bases the rate applies to by checking the *box (if the basis is other, identify in the space provided)*, c) Check whether the rate factor is (\$100 or \$1,000). Compute the General Liability Premium by using the formula (rate bases \* rate / rate factor). Identify and include any associated P&I / Aviation / Pollution Legal Liability charges.
16. **Builder's Risk/Installation Floater** – a) Enter the rate and b) apply to the Proposed Contract Cost identified in the Bid Information Section.
17. **Excess/Umbrella Liability** – a) Enter your Excess or Umbrella Liability rate, b) identify the basis the rate applies to by checking the box (*if the basis is other, identify in the space provided*), c) Check whether the rate factor is (\$100 or \$1,000). Compute the Excess or Umbrella Liability Premium by using the formula (rate basis \* rate / rate factor).

**Total Insurance Premiums:**

18. **Total of all Insurance Premiums** – Add lines 14, 15, 16 and 17.
19. **Overhead & Profit** - a) Identify your percentage of Overhead & Profit included in your pricing structure, b) apply the percentage to Overhead & Profit to the Total of all Insurance Premiums.
20. **Total Initial Insurance Credit** – Add lines 18 and 19.
21. **Initial Insurance Composite Rate** - Divide the Total Initial Insurance Credit (*line 20*) by the Total Payroll (*column 9*). **As the preparer, complete the bottom portion of the form by providing your name, title, date prepared and your signature.**

Please provide copies of the following documents to support your insurance cost calculations:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Schedule of Values                               | <input checked="" type="checkbox"/> General Liability declaration and rate pages  |
| <input checked="" type="checkbox"/> Workers' Compensation declaration and rate pages | <input checked="" type="checkbox"/> Umbrella/Excess Liability declaration and rate pages  |
| <input checked="" type="checkbox"/> Experience Modification worksheet                | <input checked="" type="checkbox"/> 5 years-actual loss experience for each line of coverage in which Contractor retains more than \$5,000 per Occurrence or Loss |





**INSTRUCTIONS FOR INSURANCE SUMMARY (AON FORM-2)**

Make a separate entry on the Aon Form-2 for each contractor, known subcontractor and trade not currently awarded to a subcontractor. Attach an Aon Form-1 to support each line entry. Completion of this form is a required part of your bid and must accompany your bid documents. Duplicate this form as needed:

**General Information**

1. **Name of Contractor** – Enter the name of the Contractor or Subcontractor that is being summarized on the form.
2. **Bid Package No.** – Enter the Bid Package No. that The Port of Oakland assigned to the bid.
3. **Proposed Contract Cost** – Enter the Proposed Contract Cost for the Contractor or Subcontractor being summarized.

**Contractor Specific Information**

4. **Contractor** – Enter the Contractor or Subcontract that is being summarized (*include only self-performed work from the Aon Form-1*)
  - b) Estimated Work hours ( line 9 and column 6.)
  - c) Estimated Payroll ( line 9 and column 7.)
  - d) Initial Insurance Credit ( line 9 and column 8. – taken from line 21 using the Insurance Cost Worksheet to calculate).
5. **Known Subcontractors** – for each Subcontractor summarize their work and the work of lower level tiers. Information will be obtained from either an Insurance Summary Aon Form-2, if lower level tiers were used, or the Aon Form-1.
  - a) Amount of Contract – The Proposed Contract Cost from Bid Information Section (2).
  - b) Estimated Work hours -- the work performed by the subcontractor and all lower level subcontractors. Information from line 9 and column 6.
  - c) Estimated Payroll -- the work performed by the subcontractor and all lower level subcontractors. Information from line 9 and column 7.
  - d) Initial Insurance Credit -- the work performed by the subcontractor and all lower level tiers 9 and column 8. - information obtained from line 21 Insurance Cost Worksheet.
6. **Identified Trades NOT yet assigned to a subcontractor** – for each trade, not yet assigned to a subcontractor, estimate the amount of work and insurance costs on Aon Form-1s.
  - a) Amount of Contract – The Estimated cost to subcontract the work. Information is obtained from the Proposed Contract Cost from Bid Information Section (2).
  - b) Estimated Work hours -- the estimated on-site trade work hours. Information from line 9 and column 6.
  - c) Estimated Payroll -- the estimated on-site trade payroll. Information from line 9 and column 7.
  - d) Initial Insurance Credit -- the computed insurance costs for the trade based on estimated subcontract cost, including Contract Amount, Work hours and Payroll. The OCIP Administrator is available to provide reasonable insurance rates for computing the insurance costs on the Aon Form-1. Information obtained from line 21.
7. **Total Estimates for Contract** – The total amount entered in column a, b, c, and d.
8. **Composite Rate for Contract** – The Total Initial Insurance Credit divided by the Total Estimated Payroll (*line 7d / 7c*).

It is suggested that you examine your current Workers' Compensation and General Liability Policies or contact your Insurance Agent to assist you with completing this form. **\*\*\* NOTICE \*\*\*** Enrollment is not automatic and requires the satisfactory completion of the Aon Form-1, Form-2 and Form-3. In addition, you must submit a Certificate of Insurance providing evidence of your *off-site* coverage. Please refer to the Insurance Manual for coverage requirements.

**1. Contractor Information:** Federal ID No. \_\_\_\_\_

<input type="button" value="▼ Business Information (headquarters)"/>	<input type="button" value="▼ Contact Information (address questions to ...)"/>
Company Name & dba / Contact Name & Title: _____	_____
Address: _____	_____
City, State Zip Code: _____	_____
Telephone: _____	_____
Fax: _____	_____
Entity: Sole Proprietor Corporation Partnership Other: _____	

**2. Provide your current Workers' Compensation Information:**

Anniversary Rating Date:	Experience Modification:	Bureau File Number:

Your WC Insurance Carrier: \_\_\_\_\_  
 Policy #: \_\_\_\_\_ Effective Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**3. Contract Information:**

Contract #: \_\_\_\_\_ Contract Description: \_\_\_\_\_

Location of Work: \_\_\_\_\_ Status on Project: Prime Subcontractor  
 Subcontractor Other \_\_\_\_\_

Contract Award Date: \_\_\_\_\_ If you are a Sub, Identify who your contract is with: \_\_\_\_\_

Provide Payroll by Class Code in the following space provided (*attach a separate sheet if necessary*)

State	Class Code	Description	Work hours	Payroll
<b>Totals</b>				

**Contacts:**

Position	Name & Title	Phone	Fax	e.mail address
Project Mngr:				
Safety Rep:				
Resident Engnr:				
Contract Admin:				
Payroll:				
Claims:				

Start Date: \_\_\_\_\_ Actual Estimated Completion Date: \_\_\_\_\_ Actual Estimated

Contract Amount: \_\_\_\_\_

4. **Subcontract Information:** List any subcontractors that will be working for you on this project (complete the information in the following table). Use additional paper if necessary:

Subcontractor	Address	Subcontract \$	Phone	Contact Person

- 5. Will you have any off-site location(s) 100% dedicated to this project? Yes No If yes, please contact the OCIP Administrator to obtain pre-approval. Please provide address and purpose of this off-site location:
- 6. If you are a subsidiary and/or division of another company, complete an ERM-14 Form. If you are a participant as a joint venture partner, you must also complete an ERM-14 form.
- 7. Please check if: a) Any Aircraft b) Any Watercraft c) Any Waterborne Activities  
If a) or b) are checked, please list on separate page watercraft / aircraft to be used, its respective ID numbers, and attach the most recent seaworthy surveys. If c) is checked, please identify and describe activities on a separate page.
- 8. Is your firm signatory to the Port's Project Labor Agreement (PLA) with the Unions? Yes No
- 9. Does your firm provide or intend to provide Design Professional Services? Yes No
- 10. Will your firm be providing pollution remediation work? Yes No If yes, please identify scope of work and provide contract value associated with this work. \_\_\_\_\_
- 11. Will your firm be performing services at the South Field or within the Aviation Operations Area (AOA) of the Oakland International Airport? Yes No If YES, will you be required to drive any company owned or employee owned vehicle on the AOA? Yes No

**WARRANTY**

Workers' Compensation, General Liability, Excess Liability and Contractor's Pollution Legal Liability coverages, as stated in the Contract Documents, are provided by the Port of Oakland. The undersigned agrees and warrants:

- 12. It is the Contractor's responsibility to notify its own insurance carrier to exclude from its regular insurance all Work to be performed at the Project Site under this Contract
- 13. The statements in this insurance application are true to the best of my knowledge.
- 14. Contractor certifies that the insurance costs, including any administration/overhead costs, have been excluded from the bid and contract.
- 15. Contractor agrees to be solely responsible for the cost of the premiums for non-OCIP insurance specified in the contract.
- 16. Contractor acknowledges that the Port of Oakland is not an agent, partner or guarantor of the insurance companies providing coverage under the OCIP, and that the Port is not responsible for any claims or disputes between or among Contractor, its Subcontractors, and any OCIP insurance companies.
- 17. The costs of premiums for the coverage provided by the OCIP shall be paid by the Port of Oakland. The Port of Oakland will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retrospective rating adjustments, return premiums, audits or otherwise. Each Contractor and each of its Subcontractors shall execute any instruments of assignment as may be necessary to permit the Port of Oakland to receive such adjustments, unless otherwise provided in the Contract Documents.

Date: \_\_\_\_\_ Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Signature: \_\_\_\_\_ (please print)

**INSTRUCTION FOR ENROLLMENT APPLICATION (AON FORM-3)**

This form must be completed and submitted by each successful Contractor and Subcontractor of any tier within 20 calendar days after contract award and prior to Site mobilization **for each contract awarded**. The Contractor and Subcontractor will submit the completed form to Aon Risk Services. Upon receipt of this form, Aon will issue, to the Contractor or Subcontractor, a Certificate of Insurance evidencing coverage in the Controlled Insurance Program. The completed Certificate of Insurance and workers compensation insurance policy will be mailed to the Enrolled party.

1. **Contractor Information** – Supply the Federal ID Number, Legal Company Name (include the doing business as, dba if applicable), mailing address and phone numbers. Identify the individual that will answer questions and be responsible for your OCIP Worker's Compensation policy. Also identify the legal structure of your company by check one of the boxes. If you choose Other, write the structure in the space provided
2. **Provide your current Workers' Compensation Information** –
  - a) Enter information concerning your Worker's Compensation Experience Modifier in the table. Refer to your copy of the Bureau's Rating Calculation or contract or agent.
  - i) The Anniversary Rating Date is the effective date of your unique Experience Modifier.
  - ii) The Experience Modification Factor is calculated by the Bureau based on your loss experience and payroll.
  - iii) The Bureau File Number is your identification number with the Bureau. It may also be referred to as a Risk Identification Number.
  - b) Enter information concerning your current Worker's Compensation Policy. This information is available on the Declaration or Information page.
3. **Contract Information** –
  - a) Provide the contract number that was assigned by the Port of Oakland or the party you contract with.
  - b) Provide a brief description of your work under this contract number.
  - c) Identify the location of your. This could be an area, phase, sub-project description that ABD & Company uses to group several contract together. (East Parking Garage, Phase II, Broken-Hill Project are examples)
  - d) Identify your status by checking on of the boxes provided. If you select other, identify what type of a provided you are.
  - e) Identify the effective date of your contract.
  - f) If you are a Subcontractor, identify with whom you contract with.
  - g) Contacts – communication is key to a successful OCIP. Identify the key contacts for each function listed and provide the information requested. If a single individual handles multiple job duties, be sure to list them those functions that apply.
  - h) Provide the Start Date and the Completion Date. Identify if these are the actual dates or have been estimated.
  - i) Provide the amount of you contract. If you have a time and materials contract, provide a reasonable estimate of your anticipated activity
4. **Subcontract Information** - List subcontractors that will perform work on-site during the term of your Contract. Enrollment is *NOT* automatic. If you add or change subcontracting firms during the course of your contract, be sure to notify the OCIP Administrator.
5. Indicate if you have off-site location(s), including warehouses, that are dedicated to this project by checking the appropriate box. If the answer is yes, provide the purpose of the off-site location and its address. If additional room is need, attach a separate sheet. Be sure to include the Address, City, State and Zip Code.
6. ERM-14 forms are available in this Section.
7. Check the appropriate box if you will be using aircraft or watercraft. If so, please attached copies of the most recent watercraft/aircraft surveys. If you will be performing waterborne activities, please identify and describe activities.
8. Indicate if your company is signatory to the Port's Project Labor Agreement with the Unions.
9. Indicate if your company is intending to or will provide Design Professional Services under this contract.
10. Indicate if your company is intending to or will provide Pollution Remediation work under this contract. If the answer is yes, provide the type of services to be performed and the associated contract value.
11. Indicate if your company is intending or will provide services at the South Field or within the Aviation Operations Area (AOA) of the Oakland International Airport. If the answer is YES, please review Automobile Liability insurance requirement and provide proof on Certificate of Insurance.

**Read the Warranty statements completely. Sign the Aon Form-3 and return to the OCIP Administrator using the information supplied at the bottom of the form. This form has been designed to fit in a standard window envelope for your convenience.**

**Mail to:**           **Port of Oakland**  
                          **Attn: OCIP Administrator**  
                          **530 Water Street**  
                          **Oakland, CA 94607**

**Phone: 510-627-1623**  
                          **Fax: 510-627-1625**

*Delay in providing this report may result in payments being withheld.*

1. Period Beginning: \_\_\_\_\_ Period Ending: \_\_\_\_\_ Year: \_\_\_\_\_
2. Contractor: \_\_\_\_\_
3. Under Contract to: \_\_\_\_\_
4. Contract #: \_\_\_\_\_

5. State	6. Workers' Compensation Class Code	7. Work Description <small>(Circle as Appropriate)</small>	8. Workhours		9. # of Employees	10. Reportable Payroll *		11. Total Gross Wages less Benefits
			Reg	O/T		Straight Time (Regular)	Overtime	
		Journeyman						
		Apprentice						
		Journeyman						
		Apprentice						
		Journeyman						
		Apprentice						
		Journeyman						
		Apprentice						
		Journeyman						
		Apprentice						
		Journeyman						
		Apprentice						
<b>TOTALS:</b>								

\*Do not include premium (excess) overtime wages, use straight time wage rates only.  CHECK IF THIS IS THE FINAL PAYROLL REPORT

I CERTIFY THAT THE DATA SHOWN ABOVE IS CORRECT.

12 Signed \_\_\_\_\_ Title: \_\_\_\_\_  
 \_\_\_\_\_ Date: \_\_\_\_\_  
*( must be signed by an Officer of the Company)*

Mail to: Port of Oakland - OCIP Administrator  
 530 Water Street  
 Oakland, CA 94607  
 Fax to: Port of Oakland - OCIP Administrator  
 Fax: (510) 627-1625  
 Phone: (510) 627-1623

**INSTRUCTION FOR ON-SITE PAYROLL REPORT (AON FORM-4)**

This form must be completed each month by the Contractor and every Subcontractor of any tier performing work at the Project Site for each Contract awarded. The Contractor/Subcontractor must attach the completed report to their monthly pay request in order to receive interim payment. Contractors will be responsible for the submission of this form by their Subcontractors. Aon Risk Services can forward a supply of these forms to your company.

**COMPLETION INSTRUCTIONS**

1. **Reporting Period** - Fill in the month ending date for which this report is supplying payroll information
2. **Name of Contractor/Subcontractor** - Your firm's name
3. **Your Contract with** - The Contractor if you are a subcontractor; your subcontractor if you are sub-Subcontractor
4. **Contract Number** - Contract number of the Work you are performing
5. **State** - Identify the State in which the work occurred.
6. **Workers Compensation Classification Code** - Use the Classification codes approved on the Aon Verified Insurance Credit Worksheet.
7. **Work Description** - Provide a brief description of the work. Refer to your Workers' Compensation policy. Circle the worker category that applies.
8. **Work hours** - List work hours for each class code. Separate regular/straight time from overtime hours.
9. **# of Employees** - List the number of employees for each class code.
10. **Payroll** - List payroll for each class code for *on-site* work. Separate regular payroll and overtime payroll.  
**NOTE:** List only straight time / unburdened payroll (overtime as straight time). List one cumulative monthly figure for all employees who fall under each class code.
11. **Total Gross Wages less Benefits** - Identify Total Gross Wages paid for each class code. Do not include benefits.
12. **Signature** - Please have appropriate officer of the company sign and date the completed form.



<b>AON</b> Form-5	<b>NOTICE OF WORK COMPLETION</b>	<b>Port of Oakland</b> Page 1 of 1																								
<p>1. Contractor Name: _____</p> <p>2. Contract #: _____</p> <p>3. Description of Work Performed: _____</p> <p>4. Date this Contract Completed &amp; Contract Amount: _____</p> <p>5. Date Work Completed: _____</p> <p>6. The following Subcontractors have completed their Work at the Site: (Add attachment if more space is needed)</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr style="background-color: #cccccc;"> <th style="width: 33%;">NAME</th> <th style="width: 15%;">CONTRACT #</th> <th style="width: 30%;">CONTRACT COMPLETED &amp; CONTRACT AMOUNT</th> <th style="width: 22%;">WORK COMPLETED</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>7. Location of your payroll audit records:</p> <p>Address: _____</p> <p>_____</p> <p>Contact/Phone #: _____</p> <p>_____</p> <p>The undersigned acknowledges request for termination of coverage under the OCIP as of the date indicated above for the specified Contract. Should the undersigned return to the work Site, the undersigned will be working under his own insurance program and must provide the Sponsor with a Certificate of Insurance showing his own coverage as outlined in our contract.</p> <p>8. Signed by: _____</p> <p style="margin-left: 200px;">Title</p> <p style="margin-left: 500px;">Date</p> <p>9. Approved by: _____</p> <p style="margin-left: 200px;">Construction Manager</p> <p style="margin-left: 500px;">Date</p>			NAME	CONTRACT #	CONTRACT COMPLETED & CONTRACT AMOUNT	WORK COMPLETED																				
NAME	CONTRACT #	CONTRACT COMPLETED & CONTRACT AMOUNT	WORK COMPLETED																							

Mail to: Port of Oakland - OCIP Administrator  
530 Water Street  
Oakland, CA 94607

Fax to: Port of Oakland - OCIP Administrator  
Fax: (510) 627-1625  
Phone: (510) 627-1623

**INSTRUCTION FOR NOTICE OF WORK COMPLETION (AON FORM-5)**

This form will be completed and returned to the OCIP Administrator by the contractor or subcontractor whenever work is completed for each Contract. The Contractor will request the receive the final payment after all Contractor and Subcontractor information is complete.

COMPLETION INSTRUCTIONS

1. Contractor Name: If you are a Subcontractor, the name of the Contractor. If you are a Sub-Subcontractor, the name of the Subcontractor.
2. Contract #: The Contract or Specification number(s) relating to the Work at the Project Site.
3. Description of Work Performed: Type of work performed under your contract.
4. Date Contract Completed: Fill in appropriate date.
5. Date Total Work Completed: Fill in appropriate date.
6. Subcontractor of all tiers included in the work: Names Subcontractors of all tiers associated with the close-out.
7. Final Audits Payroll Records: List name of terminating Contractor and applicable Subcontractors.
8. Signature: The Signature of the Contractor Closing-out
9. Approved by: The Signature of The Port of Oakland or the Construction Manager.

<b>AON</b> Form-6	<b>ON-SITE WORK HOURS/INCIDENT REPORT</b>	<b>Port of Oakland</b> Page 1 of 1		
1. Contractor Name: _____ 2. Under Contract to: _____ 3. Contract #: _____ 4. Period Beginning: _____ Period Ending: _____ Year: _____				
<b>Information Description</b>	<b>This Month</b>	<b>Totals Year-To-Date</b>	<b>Totals Project-To- Date</b>	<b>Comments</b>
5. Total Hours Worked				
6. Number of First Aid Cases				
7. Number of OSHA Recordable Cases				
8. Number of Lost Work Day Cases				
9. Number of Lost Work Days				
10. Number of Restricted Work Days				
* Attach a copy of you OSHA 200 Log or complete items 6 through 8. If none, please state so.				
I VERIFY THAT THE DATA SHOWN ABOVE IS CORRECT.				
11. Signed: _____ Title: _____ ( <i>must be signed by an Officer of the Company</i> ) Date: _____				

Mail to: Port of Oakland - OCIP Administrator  
530 Water Street  
Oakland, CA 94607

Fax to: Port of Oakland - OCIP Administrator  
Fax: (510) 627-1625  
Phone: (510) 627-1623

## OCIP CONSTRUCTION PROJECT

### ACCIDENT/INCIDENT INVESTIGATION FORM\*

#### PERSONAL INFORMATION

1. Name of Injured \_\_\_\_\_ Date of Hire \_\_\_/\_\_\_/\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_  
 Prime Contractor \_\_\_\_\_ Subcontractor \_\_\_\_\_  
 Address \_\_\_\_\_  
 Job Title \_\_\_\_\_ SS# \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Rate of Pay \$ \_\_\_\_\_  
 HR/MNTHLY \_\_\_\_\_ Telephone # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

2. Injury Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ am/pm Work Shift Start: \_\_\_:\_\_\_ am/pm

3. Medical Care? Y/N \_\_\_\_\_  
 Treating Hospital/Clinic/Physician? \_\_\_\_\_  
 Has employee returned to work? (Y/N, restricted duty, date & time) \_\_\_\_\_

3. Accident Location: (Specific Site Location with reference points): \_\_\_\_\_

4. Type of Injury: \_\_\_\_\_  

Body Part(s)	Signs/Symptoms
--------------	----------------

5. Word Being Done: \_\_\_\_\_

Type of Work	Equipment, tools, material in use
--------------	-----------------------------------

6. Employee trained for work? Yes\_\_ No\_\_ When? \_\_\_\_\_  
Date Trainer: Name/Title

7. Employee authorized for work? Yes\_\_ No\_\_ If yes, \_\_\_\_\_  
Authorizing Person: Name/Title

#### ACCIDENT DESCRIPTION

8. Accident Description: (who, when, where, how, why) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Result of Site Investigation: (area coned off, new procedures) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Result of Tool/Equipment Investigation: (defective, wrong tool) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. Primary Accident Cause(s) & Contributing Factors: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**WITNESS(ES)**

- 12. Name & job position: \_\_\_\_\_  
 Relation to injured party: \_\_\_\_\_  
 Description of incidents leading to injury/illness: (one on one interview) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**RECOMMENDATIONS**

- 13. Job covered by: a. Job Hazard Analysis? \_\_\_\_\_  
 Bulletin, Document, Manual, Instruct.  
 b. Safety rule/regulation: \_\_\_\_\_  
 Handbook, Bulletin (Citation)

14. Is the procedure/rule/regulation adequate? Yes\_\_ No

15. If no, recommended change(s): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

16. Recommendation to prevent similar accidents: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17. Investigator(s): \_\_\_\_\_  
 Date: \_\_\_\_\_

18. Reviewed by: \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_/\_\_/\_\_      \_\_/\_\_/\_\_      \_\_/\_\_/\_\_

19. Project management review & analysis: (suggestions for prevention of reoccurrence) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

20. New procedures/training/controls implemented? Date \_\_/\_\_/\_\_ List changes \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Additional information and/or comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_

**Mail to:** Port of Oakland - OCIP Administrator  
 530 Water Street  
 Oakland, CA 94607

**Fax to:** Port of Oakland - OCIP Administrator  
 Fax: (510) 627-1625  
 Phone: (510) 627-1623

**\*\*\* MANDATORY \*\*\*****PROVIDE THIS LETTER TO ALL NEW AND EXISTING EMPLOYEES****CALIFORNIA MEDICAL PROVIDER NETWORK (MPN)  
ACE INSURANCE PACKET OVERVIEW**

California's Workers' Compensation legislation allows employers to create a Medical Provider Network (MPN) to which they may direct injured employees for medical treatment.

**As an employer or subcontractor, please follow the California MPN employee notification items:****1. Employee MPN Notification Letter**

Provide this letter to all new or existing employees. This letter was approved by the Division of Workers' Compensation and it must be provided in both English and Spanish. This will notify employees of the MPN regulations which include information mandated by the state on; pre-designation, access standards, changing physicians, transfer of care, obtaining referrals to specialists and the second and third procedure options.

**2. Employee Predesignation**

This form should be provided to all employees who request a predesignation form. This is required and allows an employee to predesignate his/her regular physician to be the primary treating physician for a workers' compensation claim; the letter must be signed by both the employee and his/her treating physician or physician assistant or there must be other evidence that the physician will provide treatment in the event of a work related injury. This must be returned to the employee's employer in order for the predesignation to be valid.

**3. Employee MPN Confirmation**

The employee should sign this form. This will confirm the employee has received notification on the ACE MPN. This must be returned to the employer. ACE insurance may require this letter when a loss is reported, should they need to validate the MPN notification letter was provided to the employee.

**4. Employer Medical Direction**

In the event of a work site injury, the employer should direct the injured employee to a MPN provider for medical treatment. A Panel Card directory should be posted at every work site which will show the nearest medical provider. Employers will need to validate that their current Panel Card directory list only the certified MPN providers. Employers can validate a provider's inclusion in the MPN via the ACE insurance website:

<http://www.esis.com/ProviderSelectState.asp>

An employer can also call the Claims Team or ACE Account Manager to location an MPN provider geographically convenient to an employer's location:

**Team Leader:**

Bill Martin 510-790-4658

[William.Martin@esis.com](mailto:William.Martin@esis.com)

**Claims Examiner:**

Alma Montalvo 510-790-4679

[Alma.Montalvo@esis.com](mailto:Alma.Montalvo@esis.com)

**Account Manager:**

Todd Mershon 213-833-3148

Cell: 951-202-0867

[Todd.Mershon@esis.com](mailto:Todd.Mershon@esis.com)

Exhibit 1 - Sample ACORD form from Contractor

<b>ACORD®</b> <b>CERTIFICATE OF LIABILITY INSURANCE</b> DATE (MM/DD/YY)					
PRODUCER Broker Name Broker Address	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
<b>COMPANIES AFFORDING COVERAGE</b>					
INSURED  Contractor Name Contractor Address City/State/Zip code	COMPANY A Insurance Carrier Name - AM Best Rated A-X or higher COMPANY B Insurance Carrier Name - AM Best Rated A-X or higher COMPANY C Insurance Carrier Name - AM Best Rated A-X or higher COMPANY D				
<b>COVERAGES</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENTS WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID					
Co Ltr	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT <input checked="" type="checkbox"/> GENERAL AGGREGATE PER PROJECT				GENERAL AGGREGATE     \$2,000,000 PRODUCTS-COMP/OP AGG     \$2,000,000 PERSONAL & ADV INJURY     \$2,000,000 EACH OCCURRENCE     \$1,000,000 FIRE DAMAGE (Any one Fire)     \$100,000 MED EXP (Any one Person)     \$5,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	\$5,000,000 Limit required for any operations performed at the South Field, the "Aviation Operations Area" of the Oakland International Airport, including any work performed under the Airport Roadway Project.			COMBINED SINGLE LIMIT     \$1,000,000  BODILY INJURY (Per Person) BODILY INJURY (Per Accident)  PROPERTY DAMAGE
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	For GENERAL LIABILITY and AUTO LIABILITY, The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, and employees, consultants and representatives, while acting in their scope of their authority are added as Additional Insured per endorsements equivalent to ISO Form 2010 (11/85). FOR ALL POLICIES, Coverage is primary and non-contributory. Waiver of Subrogation applies for all policies per Endorsement # ___ attached.			AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EACH ACCIDENT AGGREGATE EACH OCCURRENCE AGGREGATE
	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE AGGREGATE
<b>B</b>	<input type="checkbox"/> WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE <input type="checkbox"/> INCL OFFICERS ARE:				<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT     \$ 1,000,000 DISEASE - POLICY LIMIT     \$ 1,000,000 DISEASE - EACH EMPLOYEE     \$ 1,000,000
	<input type="checkbox"/> OTHER				
	DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS For Eligible Parties - General Liability and Workers' Compensation applies for all off-site operations For Excluded Parties - All coverage applies for all operations occurring both on and off the Project Site.				
<b>CERTIFICATE HOLDER</b>  Port of Oakland Attn: Risk Management / OCIP Administration 530 Water Street Oakland, CA 94607			<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE EXPIRATION DATE THEREOF, THE ISSURING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.  AUTHORIZED REPRESENTATIVE     209250000		
ACORD 25-S (3/93)			©ACORD CORPORATION 1993		

POLICY NUMBER: XXXXXXXXXXXXX  
CONTRACTOR NAME

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

### SCHEDULE

**Name of Person or Organization:**

**The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, and employees, consultants and representatives, while acting in the scope of their authority**

(If no entry appears above, information required to complete this endorsement will be shown in the declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

**RE: Port of Oakland - [PROJECT NAME AND CONTRACT #]**

**PRIMARY INSURANCE:** This insurance will be primary for the additional insured but only with respect to liability arising out of your work for that additional insured by or for you.

<b>NOTE: This policy to include a WAIVER OF SUBROGATION.</b>
--



**COMMERCIAL GENERAL  
LIABILITY**

CG 20 33 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
  2. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 33 07 04

© ISO Properties, Inc., 2004

POLICY NUMBER:

**COMMERCIAL GENERAL  
LIABILITY**  
CG 20 37 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

© ISO Properties, Inc., 2004

POLICY NUMBER      XXXXXXXXX  
CONTRACTOR NAME

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- TRUCKERS COVERAGE FORM
- BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective	
Named Insured	Countersigned by

(Authorized Representative)

SCHEDULE

Who is an insured is changed to includes as an "insured" the named insured listed below.

Insurance Company:

Additional Insured:   **The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, and employees, consultants and representatives, while acting in the scope of their authority**

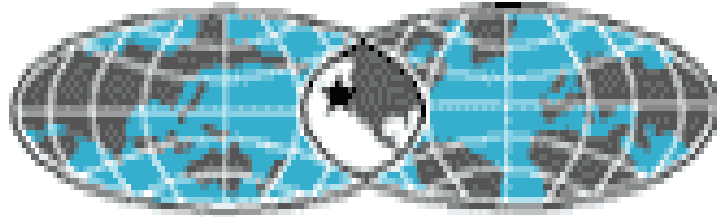
Address:

Description of operations/vehicle   **As respects to all operations performed for or on behalf of the**  
Additional Insured

**NOTE:      Policy needs to reflect that THIS COVERAGE IS PRIMARY AND NON-CONTRIBUTORY and that a WAIVER OF SUBROGATION applies**



DOCUMENT 00831



# **PORT OF OAKLAND**



*Owner Controlled Insurance Program*

## **CONSTRUCTION SAFETY STANDARDS MANUAL**

**NOVEMBER 1999**

00831-1

# PORT CONSTRUCTION SAFETY STANDARDS

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  - C. PRE-CONSTRUCTION EXPOSURE ANALYSIS

# PORT OF OAKLAND

## CONSTRUCTION SAFETY AND HEALTH POLICY

The Port of Oakland is committed to providing a safe, healthful and secure work environment for all persons directly involved in our construction activities. We are also committed to providing protection to the public from the hazards associated with on-site and off-site construction activities.

It is the intent of Port Management to require the Contractor to foster, and promote the mission of an **injury free workplace**. This calls for the elimination of unsafe acts, unsafe conditions, and the elimination of near miss incidents, which can be accomplished through:

- Teamwork between the Port, the Program Manager, the Construction Manager, the Contractors & all Subcontractors.
- Personal commitment to the success of this project.
- Ownership of the work product by the workers.

Pursuant to this goal, all workers on this project are empowered as follows:

1. To conduct their work in a safe manner.
2. To stop work immediately in order to correct any unsafe condition.
3. To take corrective action so that work may proceed in a safe manner.

All contractors and subcontractor tiers are required to implement measures to create a universal awareness which promotes safe practices at the work site, and strives towards the achievement of **Zero Incidents**.

Each Contractor that performs work on this project shall prepare and submit, for review and comment, their own project-specific Injury & Illness Prevention and Safety Plan. This plan shall be tailored to the specific contract work to be performed on the project by their work force and their subcontractor's work force. The Safety Plan shall be in conformance with the PORT contract documents and the requirements and standards of all applicable governing regulatory agencies.

This Project will operate under what is termed an Owner Controlled Insurance Program (OCIP). The OCIP will result in a single insurance policy written for the duration of the project providing Workers' Compensation & Employers Liability, Commercial General Liability, Excess Liability and Builder's Risk insurance coverage to all enrolled contractors. The Owner, Contractors, all Subcontractors, the OCIP Insurance Carrier(s), and Aon Risk Services will team-up to ensure that strong safety measures are incorporated by all workers into each work task.

Safety and loss prevention must be an integral part of each job. Full participation, cooperation and support is necessary and required to ensure the safety and health of all persons and property involved in the project.



# CONSTRUCTION SAFETY STANDARDS MANUAL

**All construction activities will be conducted in accordance with each contractor's Health & Safety Plan and the Construction Injury & Illness Prevention Manual, and must fully comply with all applicable OSHA and ANSI standards, and any manufacturers' recommended guidelines.**

Those contractors whose safety practices and guidelines exceed current OSHA, ANSI, manufacturers and Port Construction safety guidelines may abide by their more stringent internal requirements.

**This Manual is not all-inclusive - other elements may be added, or may be conveyed individually to contractors to whom they may expressly apply. There are other essential elements which the contractor, by nature of the specific type of work being performed, must integrate within their own safety program.**

The communication of the Safety Program elements will be achieved through the new employee orientation, weekly tool box contractor trade safety meetings, pre-construction contractor trade safety management meetings, and through the completion and weekly use of the Job Hazard Analysis policy and procedures.

Site safety signs, posters, barricades, danger tape, and employee/contractor safety incentive programs will also be present in order to enhance safety awareness and safety communications.

A safety suggestion box will also be placed on-site so employees may anonymously submit suggestions for site safety issue improvements. The safety suggestions will be addressed in the monthly safety coordination meetings with action items listed within the meeting notes.

## DEFINITIONS (as used in this Manual)

**Contractor or Subcontractor** refers to a person, firm, joint venture, corporation or other party that has entered into a *Contract* with either the Port of Oakland (in the case of a Contractor) or Contractor (in the case of a Subcontractor) to perform *Work* at the *Project Site*.

**Work** is operations as fully described in the *Contract*, performed at or emanating directly from the *Project Site*. This term also includes the entire completed construction project or various separately identifiable parts required of the Project.

**Contract** refers to a written agreement between the Port of Oakland and Contractor for specific *Work* and also includes any agreement between a *Contractor* and a *Subcontractor* of any tier.

**Project Site or Work Site** is that certain location(s) generally described in the Project Summary and Project Plans. It also includes areas adjacent to or nearby the above location where incidental operations are performed, excluding permanent locations of any insured party, other than those of the Port of Oakland.

**Pre-Task Safety Planning Meeting** is a meeting identifying and documenting those tasks required to perform construction activities in a safe manner.

**Competent Safety Representative or Person** is that individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to the employees. This individual designated by the *Contractor* or *Subcontractor* with authority to take prompt corrective measures to eliminate such unsafe hazards or working conditions.

**Construction Management Team** consists of those individuals hired by *Contract* or employed to manage or oversee the Contractor's construction activities.

## ACCOUNTABILITY & RESPONSIBILITIES

It is imperative that site management and job foremen exercise positive leadership in orienting and motivating their employees toward performing their jobs effectively, efficiently, and with a high regard for safety.

### A. PORT OF OAKLAND

The Port Construction Management Team's role in achieving construction safety and health objectives includes oversight management responsibility for site safety. This responsibility does not supersede, override or take precedence over that of Contractors and individual workers, who are ultimately responsible for safety and health of their personnel and protection of property.

The key function of the Port's Construction Management Team, as it relates to construction safety and health, is to assure contractor compliance with the safety and health standards required by law through monitoring and oversight of contractors' activities. In addition, the Port's Construction Management Team administers and enforces the conditions of the Contract pertaining to safety.

### B. CONTRACTOR

The Contractor will have the overall responsibility for insuring that all contractors and their employees incorporate safety and health standards into all design and construction phases of the Project, and that this attitude is reflected in all agreements and contracts, and by all contractors,

subcontractors, supervision and employees, vendors, visitors and security guards, and anyone else connected with this Program.

The Contractor will also:

1. Keep the Port Construction Managers informed on events, project statistics and progress pertaining to safety issues.
2. Monitor development of their Safety Manual and confirm that the following items are adequately addressed: Occupational Safety, Employee Orientation & Training, Security, Potential Hazards, Accident Investigations, Documentation for Site Audits, Equipment Inspections, Disciplinary Programs, and Emergency Contingency Plans.
3. Confirm contractors safety education and orientation requirements are met.
4. Assure weekly safety briefings for Construction Staff personnel are conducted.
5. Conduct weekly on-site safety audits, records and compliance reviews at the site.
6. Review the results of the audits for compliance, recommendations made for correction and prevention of recurrence, and follow-up measures taken to ensure compliance.
7. Monitor and document compliance by contractors of mandatory safety and health laws, regulations, standards and codes.
8. Monitor records of all accidents experienced by contractors in assigned Project Area of responsibility.
9. In conjunction with engineering and scheduling personnel, develop and implement specific safety and health procedures for effective work practices.
10. Provide a Safety Representative/Coordinator as identified in Section 01343 of the Project Manual (Bid Specifications).
11. The Contractor's Safety Program should consist of:
  - a) Establishing a firm and positive accident prevention policy that includes the supplying of tangible items like hard hats, good ladders, first aid materials, and safety devices on equipment.
  - b) Insure that capable, responsible supervisors make regular inspections of all excavations, forms, scaffolds, stairs, ladders, structures, machinery, and equipment at frequent intervals; take immediate corrective measures to eliminate hazards directly under control of the employer, or report violations of Safety Orders and safe practices to the responsible employer.
  - c) Assurance that the site foremen assume their share of the responsibility for accidents, and require a written report from them on each. Require that each report suggests a feasible means of avoiding future accidents of a similar nature.
  - d) Monthly, or more frequent, meetings of all foremen should be held under direction of the superintendent for a discussion of safety problems and accidents that have occurred. Have something specific ready for discussion, such as safety regulations, or any changes in equipment and methods that are to be adopted for safety reasons.
  - e) Display safety posters and warning signs. A sign indicating how many consecutive accident-free days have passed is often worthwhile.
  - f) Consider the advisability of posting a list of all foremen who have kept their crews accident free for a certain period of time.
  - g) Consider the advisability of establishing various forms of safety competition, including suitable rewards or recognition to individuals and crews with good records.
  - h) Require foremen to give individual safety instructions and orders, as needed, to new workers and those found to be working in an unsafe manner.
  - i) Assure the job site foremen call short "toolbox" or "tail-gate" safety meetings with their crews about once a week on the job, to emphasize some particular safety problem that needs special attention.
  - j) Keep track of your safety record and keep everyone posted as to progress. A graph or chart, indicating gains or losses, is good for this purpose.
  - k) Encourage safety suggestions from all workers and, if the suggestion cannot be followed promptly, explain why to the worker.
  - l) Consider the advisability of giving each worker a copy of certain important safety rules that they are expected to follow.

- m) Arrange for frequent and regular field safety inspections.

C. ALL CONTRACTORS SHALL:

1. As a condition of their contract, assume responsibility for the safety/health of their employees & subcontractors employees, and other persons on the Work Site.
2. Assign a **Competent Safety Representative/Coordinator** (as defined in Section 2 of this Manual and pursuant to Section 01343 of the Project Manual (Bid Specifications)) for each Contract whose duties include the protection of persons and property and the administration of the Contractor's safety program.
3. Investigate accidents and near miss incidents to determine root cause and develop/implement corrective actions to prevent reoccurrence. Accident investigation reports are to be completed and turned into the Port's Project Manager within 12 hours of the occurrence.
4. Comply with all applicable OSHA laws, regulations, ordinances, conditions of contract, rules or orders of any public authority having jurisdiction relating to safety of persons or property.
5. Ensure that all employees, subcontractors and their employees, are briefed on the Port's Construction Safety Standards. Contractors shall, in accordance with law, adopt procedures providing that any employee who carelessly or callously disregards these rules or other applicable safety and health regulations shall be subject to disciplinary action or discharge.
6. Have their safety representative participate in the weekly safety walk-through meetings and pre-construction coordination meetings.
7. Ensure that:
  - a) Prior to the performance of any work, each employee involved in the construction knows and understands each of the safety and security rules which apply to the job site in which he/she is performing for the Project.
  - b) **Personal protective equipment (inclusive of mandatory ANSI approved hard hat and eye protection with appropriate foot wear) shall be used on site at all times, worn properly, and maintained in proper condition.** Appropriate footwear includes general construction shoes with ankle high support, no tennis shoes and/or leather soled shoes on site.
  - c) Employees shall not engage in practical jokes and/or horseplay.
  - d) An employee is not to undertake any work which he or she are not properly qualified or equipped to do. In this regard, each employee shall be required to attend safety toolbox meetings weekly and sign an attendance sheet.
  - e) All site personnel shall be made aware that the use of intoxicating or unlawful substances during working hours is forbidden and any violation will result in immediate dismissal. Employees reporting for work while under the influence of intoxicating or unlawful substances will not be allowed to assume their duties.
  - f) Each contractor is to provide training and documentation to site management that their employees have been provided with information and training on the Hazard Communication Standard. In addition, each contractor is responsible for making provisions to provide copies of Material Safety Data Sheets (MSDS's), and provide information on measures that need to be taken for personnel protection to all affected employees and workers within the vicinity of the hazardous substance.
  - g) Contractors are responsible for maintenance of clean working areas and debris removal.
  - h) Each employee must always know where he or she is in relation to work in progress, and avoid hazardous situations around equipment or construction in progress. Employees must advise supervisory personnel of their work location. They should not work alone in an isolated area until arrangements have been made for periodic contact with another employee or supervision.
8. All OCIP enrolled contractors will participate in the light duty - early return to work program and identify in writing, the site modified duty tasks within their realm of work. If an incident occurs which restricts a persons ability to perform their normal duties, the Contractor will work with the medical provider and the OCIP Team to return that individual to modified work when at all possible.

#### D. AON RISK SERVICES

Aon Risk Services will provide a full time/part time professional construction safety consultant to the project to provide site safety program administration and exposure control oversight. The safety professional will report directly to the Port Project Management Team and work hand in hand with the Port's Safety Administrator and the Contractor's and Subcontractor's safety representatives.

The Aon safety professional does not assume the responsibility for the development, implementation, design, or ongoing activities involved with the site safety management program.

Services provided to the construction site through the safety professional include:

1. Development of the site safety manual listing the minimum requirements for the project safety management plan.
2. Review the Contractors written safety plan to assure compliance with applicable codes and the Port safety plan.
3. Development of the Port contract language assigning the accountability and responsibility for the safety program implementation and monitoring to the Contractor.
4. Development of a site risk assessment report to Port and the Contractor so as to pre-plan safety and assure the upcoming construction activities are planned/designed with safety of the workers and liability prevention in mind.
5. Attendance and participation in the pre-construction safety planning meetings with the Contractor and subs to assure safety is designed into all phases of construction.
6. Assistance and participation in the development and implementation of the site orientation for all employees who work and/or visit the site.
7. Attendance and participation in the weekly contractors safety meetings.
8. Site presence. Physical site surveys and observations of the construction work at hand to assure regulatory agency and OCIP safety guidelines program compliance.
9. Assist and participate in the Contractors and sub contractors accident investigations to assure the root cause of the incident is determined and corrective measures are taken to prevent re-occurrence.
10. Technical expertise to the Port, the Contractor and all Subcontractors in regards to construction safety management. Standards and manufacturers' guidelines interpretation.
11. Serve as a training resource to the Port, the Contractor and their Subcontractors' employees.
12. Organize and trend the sites loss history on a monthly basis to provide Port & the Contractor with the necessary statistics to monitor goals, compare with like construction projects, and measure program performance.
13. Provide the Port and the Contractor with weekly written reports outlining any contractor safety program deficiencies and unsafe acts and conditions noted and abated during the physical site tours.
14. Update the Port's written Construction Safety Standards Manual as needed.
15. Assist the Contractor in the development of suggested light duty work and prompt the use of the light duty - early return to work program.
16. Supervise and direct the safety services provided through the insurance carrier so as to provide the Project with a focused and consistent approach to safety management.

## E. INSURANCE CARRIER

The Insurance Carrier will provide bi-monthly site safety service visits to the construction site. The Insurance Carrier's safety/loss control representative will report directly to Aon as their subcontractor and will provide written reports on the unsafe acts and conditions noted during the physical survey of the construction activities.

The observations and recommendations as a result of the site safety survey visit will be discussed with the appropriate Port, contractors and their safety representatives in a closing conference prior to departing the site.

Additional services provided through the carrier which may be called upon include:

1. Accident investigation visits to identify unsafe acts and/or conditions.
2. Quarterly written reports summarizing safety consultants claims and loss prevention activities.
3. Attendance/participation at the pre-construction & weekly safety toolbox meetings.
4. Technical review and interpretation of standards/regulations.
5. Attendance/participation in training sessions for the competent safety people.
6. Claims and near miss trending.
7. Provide monthly status reports to Management listing Safety Compliance Records of project status for contractors, subcontractors, and other project participants and/or statistical comparisons of contractors to national averages and to each other and/or claims cost and loss ratio comparisons of contractors.

# CODE OF SAFE PRACTICES

## A. GENERAL

### **PURPOSE**

The purpose of this Section is to assist all contractors and subcontractors in establishing basic safety and health rules for this OCIP Project. Strict enforcement of and compliance with California & Federal OSHA Safety and Health rules and manufacturers guidelines will aid in keeping personnel injuries, occupational illnesses, and equipment and property damage to a minimum.

### **APPLICABILITY**

The rules listed below apply to all onsite contractors, subcontractors and vendors, including employees with supervisory and non-supervisory assignments. The General Safety and Health rules shall be used by the Contractor and their sub-contractors to promote accident prevention through indoctrination, safety and health training and on-the-job application.

All contractors' and subcontractors' employees shall receive new hire and project jobsite orientation to better understand the Port's Construction Safety Standards and other applicable Port-specific safety requirements.

### **INDIVIDUAL CRAFT SAFETY AND HEALTH RULES**

As a minimum requirement, superintendents, foremen and all employees must learn and abide by the General Rules plus the Safety and Health Rules which are applicable to their particular trade or occupation. These rules should be incorporated into pre-work indoctrination.

Individual Trade Safety and Health rules apply not only to supervisors and to the workers, but also to helpers, assistants, apprentices and to anyone else who might be in the work area. Supervisors shall ensure that new workers or visitors are made aware of and abide by the safety and health rules that are in effect.

## JOBSITE SAFETY AND HEALTH RULES

### 1. SITE SPECIFIC HEALTH & SAFETY RULES

- a) All persons shall follow these safe practices rules, render every possible aid to enhance the safety of the construction operations at hand, and report all unsafe conditions or acts to the foreman, superintendent, safety coordinator or owners representatives.
- b) Foremen shall insist on employees observing and obeying every rule, regulation, and order as is necessary to ensure the safe conduct of the work, and shall take such action as is necessary to obtain compliance with the program safety policy.
- c) All employees shall be given frequent accident prevention instructions consistent with upcoming construction activities and exposures to loss. Instructions shall be given at least weekly, documented and copied to the Contractors Safety Coordinator.
- d) Anyone known to be under the influence of drugs or intoxicating substances which impair the employee's ability to safely perform the assigned duties shall not be allowed on the job site while in that condition.
- e) Horseplay, scuffling, and other acts which tend to have an adverse influence on the safety or well-being of the employees shall be prohibited.
- f) Work shall be well planned and supervised to prevent injuries in the handling of materials and in working together with equipment. All contractor supervisors shall participate in Pre-Task Safety Planning Meetings (as defined in Section 2 of this Manual) which will be held two weeks prior to the contractors presence on-site. The construction phase exposure analysis guide in the Appendix will serve as a baseline to pre-plan work activities with safety in mind.
- g) No one shall knowingly be permitted or required to work while the employee's ability or alertness is so impaired by fatigue, illness, or other causes that it might unnecessarily expose the employee or others to injury.
- h) Employees shall not enter manholes, underground vaults, chambers, tanks, silos, or other similar places that receive little ventilation, unless it has been determined that it is safe to enter under a Confined Space Entry Program.
- i) Employees shall be instructed to ensure that all guards and other protective devices are in proper places and adjusted, and shall report deficiencies promptly to the foreman or superintendent.
- j) Crowding or pushing when boarding or leaving any vehicle or other conveyance shall be prohibited.
- k) Workers shall not handle or tamper with any electrical equipment, machinery, or air or water lines in a manner not within the scope of their duties, unless they have received instructions from their foreman.
- l) All injuries shall be reported promptly to the foreman or superintendent so that arrangements can be made for medical or first aid treatment.
- m) When lifting heavy objects, mechanical means should be used, otherwise, buddy-up with a partner and share the load. When manually lifting, the large muscles of the leg instead of the smaller muscles of the back shall be used.
- n) Appropriate footwear for the construction site includes construction grade boots/shoes with ankle supports. Steel toe shoe use is recommended.
- o) Materials, tools, or other objects shall not be thrown from buildings or structures.
- p) "Red Danger Taped areas" or areas enclosed with barricades and/or snow fencing are considered danger zones and shall be respected as such. Admittance to or passage through such areas is prohibited without permission except to those employees working within the barricaded area.
- q) When work requires barricades or floor opening covers to be temporarily removed, keep area secured until the work is finished and then re-install the barricade or floor covering immediately.
- r) Firearms and explosives are prohibited within the project areas, or on equipment and other facilities.



- s) Do not touch or guide moving cables or running wires with any part of your body. Keep your hands and fingers away from blocks and sheaves. Stand clear of all cables, wires and lines which are under strain.
- t) Do not try to place speed above safety. An efficient, safe worker is better than a speedy, careless one.
- u) Throwing or dropping materials from one area or floor level to another or the ground below is prohibited unless every precaution is taken to eliminate the possibility of damaging equipment or injuring persons. Precautions to include Red Danger Tape or Snow Fencing with supervision about the Danger area.
- v) Be alert for and heed all warning signs at all times.

## 2. HOUSEKEEPING

- a) Clean-Up. Keep your work area clean and safe at all times. Always keep yourself, the equipment you operate or are using and your place of work as clean as practicable. All contractors are responsible for clean “**broom swept**” areas. Dust control is the responsibility of all contractors. **Poor housekeeping practices may result in costly chargebacks prompted through site management. The Port’s Construction Management Team has Zero tolerance for poor housekeeping practices.**
- b) Employee Facilities. Cooperate in keeping change rooms, toilets, first aid and drinking facilities in clean, sanitary condition.
- c) Good Housekeeping. Good housekeeping will reduce confusion on the project and will result in a safer, more efficient operation.
- d) Nails & Exposed Re-bar. Protruding nails, re-bar, screws or other metal in form lumber, boards, etc., must be immediately removed, bent over or capped to prevent puncture injuries.
- e) Oily Rags and Wastes. Oily rags, waste or other combustible debris shall be kept in metal container provided for that purpose.
- f) Removal of Debris/Garbage. When cleaning up, do not throw or drop materials from elevated levels to lower levels unless the area below is properly barricaded and adequate warnings are posted.
- g) Slipping Hazards. Clean up or eliminate slipping hazards such as grease, oil, water, ice, snow or other liquids on walkways, ladders, stairways, scaffolds or other access ways or working areas.
- h) Trash and Debris. Deposit trash, refuse, debris, lunch papers and other waste in the proper refuse containers.
- i) Tripping Hazards. Help keep the work area, especially roadways, access ways, aisles, stairways, scaffolds and ladders, clear of obstructions which may cause tripping or other accident hazards.

### 3. PERSONAL PROTECTIVE EQUIPMENT

**This site requires 100% ANSI Z89.1-1969 & ANSI Z89.2-1970 approved hard hat wear at all times. Hearing protection and ANSI Z87.1-1968 approved safety eye glass wear is required in construction work areas where hearing and eye exposures exist.**

- a. PPE Policy. All contractors shall provide and use the protective equipment prescribed by the Port's Construction Safety Standards Manual, regulatory authorities such as Cal-OSHA, and the Contractors rules and regulations to control or eliminate any hazard or other exposure to illness or injury. Any employee who willfully refuses to use the prescribed protective equipment designed to protect him or her or willfully damages such equipment shall be subject to disciplinary action which may lead to his or her immediate termination.
- b. Ear Plugs or Muffs. Appropriate hearing protection shall be worn in work areas where noise levels exceed established local, state or federal standards.
- c. Goggles, Safety Glasses, Face Shield, and Helmets. Approved welding helmets and appropriate protective eye wear is required on-site by all contractors during machinery activities which require appropriate protection.

Eye and face protection must meet ANSI Z87.1-1968 requirements and must be worn at all times. Employees with corrective lenses shall wear goggles or spectacles as required, and equipment must be labeled to indicate ANSI testing.

- d. Hard Hats. All construction areas will be considered "hard hat areas" during active work periods. All employees and visitors must wear company approved hard hats (bill forward) during work hours while inside construction areas.

Head protection must meet ANSI Z89.1-1969 & Z89.2-1970 testing requirements for impact, penetration and electrical exposure.

- e. Respirators. Approved respirators will be used when excessive dusts, mists, fumes, gases or other atmospheric impurities are determined to be harmful to health. Contractors are responsible to provide a written respiratory protection program to the Project Manager if respirators are on site. The respirator program should be in accordance with Cal-OSHA and MSHA regulations.
- f. Safety Harnesses, Lifelines & Lanyards. Full Body Safety harnesses and approved lanyards will be used by **all employees** (including steel workers) working from unguarded surfaces where falls from 6 feet or more to a different level present a hazard. Each employee will also wear a safety harness with a safety lanyard secured to a separate lifeline while working from swing scaffolds, boatswain chairs or other suspended work platforms where a falling hazard is present.

Safety harnesses, lifelines and lanyards will be subject to actual loading or load testing and shall be secured to a point above the employee to an anchor capable of supporting 5,400 lb. Safety lanyards shall be a maximum length to limit a fall to no more than 6 feet and have a nominal breaking strength of 5,400 lb.

Safety belts shall be used for positioning only. Full body harnesses will be used for fall arrest. (Refer to "Fall Protection" - Item 4)

- g. Footwear. All employees working in construction areas should wear stout working boots. In areas such as tunnels where there is danger of falling rocks, timbers or other objects, hard toe safety boots or shoes shall be worn.

- h. Dress Code. Employees working in construction areas are required to wear clothing for the appropriate season. Shirts shall have a minimum of 4" sleeves. Tank tops and sleeveless shirts are not allowed. Pants should be long enough to cover the top of appropriate foot wear. Winter clothing should be sufficient to protect against cold related injuries, i.e., hypothermia and frostbite.

#### 4. FALL PREVENTION

All contractors have the duty to provide fall protection for all workers potentially exposed to a fall situation. Full body harnesses are the only acceptable means of personal protective equipment fall arrest equipment permitted on this site, the use of safety body belts is not acceptable for fall protection.

All workers on the this Project are required to be protected from the hazard of falls whenever work is being completed at heights of six feet (6') or greater measured from the work platform to the bottom of the sole of foot. The six-foot rule, at minimum, applies to the following conditions:

- When working from ladders
- Hoist areas
- Formwork and reinforcing steel
- Ramps, runways, and other walkways
- Overhand bricklaying and related work
- Steel Erection
- Masonry Work
- Unprotected sides and edges
- Holes
- Excavations
- Dangerous equipment
- Precast concrete erection
- Scaffolding Work
- Wall openings

*The practice of utilizing a safety zone at an unprotected LEADING EDGE is not recognized as a method of fall protection.*

#### **Personal Fall Arrest Systems**

Personal fall arrest systems are designed to control the fall of a worker and minimize the injury once a worker has fallen. Fall arrest systems consist of the following components:

- Full body harness (body wear)
- Shock absorbing lanyard (connecting device)
- Tie off point (anchorage point)
- Training

#### **Specific Requirements:**

- Retractable lanyards are preferred for this project
- All contractors must provide safety harness when Personal protective Equipment (PPE) fall protection is required.
- All lanyards must be equipped with locking snap hooks.
- Only shock absorbing lanyards will be used for fall protection unless the fall protection system is a retractable type lanyard where no other lanyard is needed.
- Lanyards will be removed from service when evidence of wear is detected or if the lanyard has had a load applied.
- The anchorage (tie off point) must be capable of withstanding a minimum 5,400 lb. tensile strength *per* worker tied off.
- Anchorage, tie off, must generally be above the worker's head.

- Anchorage must be high enough that the worker will not strike any lower level should a fall occur.

### **Training**

Contractors and subcontractors of any tier shall provide as a minimum, and conducted by a competent person, the following training. Documentation of training must be forwarded to the Contractors safety office. Training must include, at a minimum:

1. The nature of the fall hazards in the work area;
2. The correct procedure for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
3. The use and operations of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;
4. The role of each worker in the safety monitoring system when this system is used;
5. The limitations on the use of mechanical equipment during the performance of roofing work on low-sloped roofs;
6. The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection; and
7. The role of workers in fall protection plans.

### **Safety Harnesses and Lifelines**

Each contractor and subcontractor of any tier shall be responsible for providing and requiring the use of safety harnesses, lifelines and lanyards when workers are exposed to a fall of 6 feet or greater. *Safety harness is the only acceptable means of personal fall arrest system permitted on this site, the use of safety body belts is not acceptable for fall protection.*

Specific plans for rescue of workers shall be developed and rehearsed prior to initiating work requiring the use of fall protection safety harnesses. Rescue plans and the basic work plan shall be submitted to the Project Superintendent and Contractor's Project Safety Manager for review and comment. Concerns expressed by the Contractor, Project Superintendent, the Site Safety Coordinator, or any other reviewing authority shall be addressed fully prior to exposing any worker to the elevated work area.

Any safety harness, lifeline or lanyard actually subjected to in-service loading shall be immediately removed from service and shall not be used again for worker safeguarding. All safety harnesses, lifelines and lanyards shall meet or exceed OSHA standards. Safety harness lanyards shall be a minimum of 1/2 inch nylon, or equivalent, with a maximum length to arrest a fall in no greater than 6 feet. The rope shall have a nominal breaking strength of 5,400 lb..

Lifelines shall be secured above the point of operation to an anchorage or structural member capable of supporting a minimum dead weight of 5,400 pounds.

### **Safety Nets**

Safety nets will comply with CAL OSHA 1671 requirements. Safety plan for use of nets must be submitted and reviewed by Contractor safety prior to use.

Safety nets shall be provided by the subcontractor or tiered subcontractor when work places are more than 25 feet above the ground or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines or safety harnesses are impractical. When safety net protection is required, operations shall not be undertaken until the net is in place and has been tested.

Safety nets shall extend 8 feet beyond the edge of the work surfaces where workers are exposed and shall be installed as close under the work surface as practical. In no case shall the safety net be more than 25 feet below the work surface. Nets shall be hung with sufficient clearance to prevent the user's contact with surfaces or structures below. Clearances shall be determined by impact load testing.

The mesh size of the nets shall not exceed 6 inches by 6 inches. All nets shall meet accepted standards of 17,500 foot pounds minimum impact resistance, as determined and certified by the manufacturer, and shall bear a label of proof test. Edge ropes shall have a minimum breaking strength of 5,000 pounds. Forged steel safety hooks or shackles shall be used to fasten the net to its supports. Connections between net panels shall develop the full strength of the net.

## 5. TOOLS

All tools shall be maintained, whether furnished by your employer or employee, in a safe condition. When power tools are designed for guards; they shall be equipped when in use. All hand held power tools shall be equipped with a constant pressure switch that will shut off the power when pressure is released.

- a. Damaged or Defective Tools. Do not use broken, defective, burned or mushroomed tools. report defective tools to your supervisor and turn tool in for replacement.
- b. Hard Facing. Do not strike two hardened steel surfaces together; i.e. two hammers or a hammer and hardened steel shafts bearings, etc.
- c. Power Tools. Only assigned, qualified operators will operate power, explosive actuated or air driven tools. Electric power tools shall either be of the approved double insulated type or grounded in accordance with applicable regulations.
- d. Proper Tool. Always use the proper tool and equipment for any task you may be assigned to do.
- e. Storage. Keep tools in their proper storage place when not in use. Do not leave tools where they might present a tripping hazard, fall on somebody or be stolen. Do not carry sharp edged tools in your pockets.
- f. Air Powered Tools. Pneumatic power tools shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally dislodged. Safety clips or retainers shall be securely installed and maintained on pneumatic impact tools to prevent attachments from being accidentally expelled. Compressed air shall not be used for cleaning purposes unless the pressure is less than 30 psi and then only with effective chip guarding.



6. ELECTRICAL

- a. Danger Signs and Tags. Locate and mark buried utilities before drilling or excavating. Be alert to and strictly obey all warning and danger signs around electrical apparatus. Do not close a switch that has a danger tag on it signed by or placed there by someone else.

Before work is begun your employer shall ascertain whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool, or machine into physical or electrical contact therewith. Employees shall be advised of the hazards and warning signs shall be posted and maintained.

- b. Electrical Hazards. Do not use extension cords or any power tools or equipment when the cords are frayed, worn out or the wires are bare. report such hazards to your foreman or turn the equipment in for repair. Do not run electric cords through water puddles or concealed spaces nor stand in water when operating electrical devices. Do not place cords where vehicular traffic may damage the insulation.

Maintain at least a 20 foot clearance from overhead power lines. Contact the utility company for information regarding minimum clearance from high voltage power lines.

No contractor shall permit an employee to work in such proximity to any part of an electric power circuit that he may contact the same in the course of his/her work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding it by effective insulation or other means. Temporary power lines, switch boxes receptacle boxes, metal cabinets, and enclosures around equipment shall be plainly marked to indicate the maximum operating voltage.

Plugs and receptacles shall not be interchangeable between circuits with different voltage and current ratings.

- c. Grounded. Do not use electric power tools or equipment that is not properly grounded. Use only three wire grounded receptacles and extension cords. All Portable generators and lights which supply power to exterior equipment shall be grounded in accordance with the manufactures and Cal OSHA regulations. Use Ground Fault Circuit Interrupters (GFCI's) for outdoor electrical equipment. All 120-volt single-phase 15 and 20 amp outlets used by employees shall have ground fault circuit interrupters.

Assured equipment grounding programs will be used to serve GFCI distribution boxes.

- d. Qualification. Only qualified electricians are permitted to install, repair or remove electrical wiring or equipment. Obtain permits, licenses, or right of entry as required through local or state authorities.

All electrical wire apparatus and equipment shall be of a type listed by the Underwriter's Laboratories, Inc. or Factory Mutual Laboratories for the specific application.

All installation shall comply with the National Electrical Safety Code, National Electrical Code. Live parts of wiring or equipment shall be effectively guarded to protect all persons or objects from harmful contact.

- e. Temporary Lighting. report all unguarded or broken light bulbs. Do not hang lights by their cords unless the light was designed to be suspended in that manner.

Temporary lighting shall be equipped with guards to prevent contact with heavy-duty electric cords. Their cords shall not suspend them, unless so designed for that purpose. Temporary lighting to conform to local agency requirements.

- f. Welding. Switching equipment for shutting down the welding machine shall be provided on or near the welding machine.

The noncurrent carrying metal parts of electrical driven welding machines shall be grounded. The equipment shall be shut down when the leads are unattended. Cables with splices or repaired insulation within 10 feet of the holder shall not be used.

Welding supply cables shall not be placed in proximity to power supplies or other high tension wires. Welding leads shall not be permitted to contact metal parts supporting suspended scaffolds. Circuits from welding machines used for other than welding tools shall be grounded

## 7. EQUIPMENT

Only authorized persons shall operate machinery or equipment. A list of anticipated site equipment with the names of trained and authorized workers shall be provided to Contractors Safety Coordinator prior to work activities.

- a. Contractors will ensure that all mobile equipment such as trucks, cars, cranes, fork-lifts, manlifts, JLG's etc., be maintained and in good operating condition prior to entry onto the Project.
  - i. Equipment and vehicles shall be so constructed as to prevent material being transported from falling off the equipment onto runways & roadways. It shall be the Contractor's responsibility to remove the material from roadways should it fall from their equipment.
  - ii. Contractors shall be responsible for removing material (mud & waste concrete) tracked onto existing roadways.
  - iii. When mobile equipment is not in use, it shall be positioned where it will not obstruct roadways, electrical lines, emergency exits, firefighting equipment and temporary ways. All equipment not in use shall be secured or positioned to prevent movement or operations. Mobile cranes shall not be parked with the boom suspended over roadways, vehicles, electrical or mechanical equipment or buildings. If loads are left suspended, barricades are to be placed around the area under the load.
  - iv. Employees within manlifts/JLG's are required to wear full body safety harnesses and tie off to the railing via safety lanyards.
  - v. Workers shall not be permitted to work or pass under a suspended load unless the load is effectively blocked.
  - vi. All mobile and tower crane operations will adhere to the requirements set forth by Cal OSHA and this manuals Crane section.
  - vii. The work platform for a scissors lift and JLG/manbasket shall be entered and exited at ground level only.
  - viii. The basket of a scissors lift and/or JLG/manbasket shall not be used as a material hoist.
  - ix. The manufacturers guidelines shall serve as the required safety practices in conjunction with the safe operation of equipment.
- b. Elevated Loads. Be alert to avoid swinging suspended loads over workers. Keep yourself and your fellow workers in the clear at all times.
- c. Hoists and Elevators. Ride only on authorized personnel hoists or elevators. Do not ride on a material hoist, forks, et.
- d. Jumping. Jumping on or off equipment or vehicles, either moving or stationary, is prohibited. When climbing on or off machinery, face the unit and use secure hand and foot holds to prevent slips or falls. Look before you step down.
- e. Mechanical Guards. No machine shall be operated until all guards are in place. Guards are not to be removed except when necessary to make repairs and are to be replaced before equipment is again put into operation.
- f. Operating Machinery. Only authorized and properly trained, licensed, and supervised personnel are permitted to operate equipment, vehicles, valves, electrical switches and other similar machinery.

Loose or frayed clothing, or long hair, dangling ties, finger rings, etc., shall not be worn around moving machinery or other sources of entanglement.

Machinery shall not be serviced, repaired or adjusted while in operation, nor shall oiling of moving parts be attempted, except on equipment that is designed or fitted with safeguards to protect the person performing the work.

- g. Seat Belts. If vehicle or equipment is equipped with seat belts, the operator and the passengers shall use them.
- h. Transportation. Ride only in vehicles designated for transporting personnel. Do not ride on running boards, fenders or other projections and do not extend legs, feet, arms, hands or other body parts over the edge of the truck bed.
- f. Fall Protection. Full body safety harnesses and lanyards tied off to the cage will be required whenever workers are elevated in manbaskets/JLG's.

## 8. LADDERS

This project does not allow the use of conductive ladders (i.e., steel and aluminum).

- a. Ascending and Descending. Face the ladder and use both hands when going up and down ladders. Materials and tools should be lowered or raised by a rope or other mechanical means.
- b. Good Condition. Select the right ladder for the job. Do not use a ladder with missing or defective rungs, split side rails or other weaknesses.
- c. Painting. Do not paint wood ladders as this may cover up defects.
- d. Placing and Securing.
  - i. The ladder should be placed so that it extends at least 3 feet beyond the top landing.
  - ii. Make sure the base of the ladder is tied off or otherwise secured to prevent slipping or falling.
  - iii. Base of ladder should be set out at least one-fourth of the ladder height measured from bottom to point of bearing.
- e. Work Safely. When working from ladder, do not overreach or work beyond the second rung from the top. A frame ladders shall not be utilized to enter and egress trench areas.
- f. Job Made Ladders. Job Made ladders shall comply with Cal OSHA requirements.

9. MATERIAL HANDLING

- a. Access. When storing materials remember to leave adequate access ways. Do not block aisles or exits.
- b. Heavy Loads. Do not attempt to lift heavy loads without assistance. Learn how to lift properly by bending your knees and keeping your feet together. Avoid strain by lifting with your legs and arms, not your back.
- c. Life Lines. When working on material stored in silos, hoppers, tanks or from open floor areas, employees must wear a full body safety harness and lanyard attached to an approved support point.
- d. Non-compatible Materials. Avoid stacking non-compatible materials in the same pile.
- e. Cumulative Trauma Injury Prevention. When at all possible, employees who experience repetitive stress type tasks, which involve an extended duration (< 4 hr.) of force, frequency of tasks, vibration, and abnormal body postures should be rotated to other tasks with dis-similar muscle movements so as to minimize the possibility of Repetitive Stress Injury (RSI) claims.

## 10. EXCAVATION & TRENCHING

Before a contractor or subcontractor conducts excavation or trenching operations on site, a work permit shall be made available at the Contractor's office. Items to check are:

- Permit for excavation activities
- Excavations and Trenching
- Name Competent Person
- Submit Excavation Plan

### **Excavation/Trenching Plan**

The excavation/trenching plan provides an overall scope to the excavation/trenching activities. This must be completed before any work begins, by the competent person, and reviewed with Contractor site management.

Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after each rain storm or other hazards increasing occurrence. These inspections are only required when worker exposure can be reasonable anticipated.

Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed workers shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

An "Excavation Checklist" is an inspection to be completed by the competent person on a periodic basis. Periodic is an uncommitted term, but since each project varies in schedule of excavation activities, the frequency will also vary. The project safety team needs to determine what is sufficient for defining periodic. This inspection form covers general requirements and adequacy of protective measures for excavation activities.

The Daily Excavation/Trenching Log is the documentation required to comply with state and federal regulations. Copies of this should be forwarded to Contractor Safety Coordinator along with a weekly safety inspection forms.

The Soils Analysis Checklist must be completed when the soil type(s) have been determined. A separate analysis must be performed if the excavation/trench is stretched over a distance where soil type changes.

Key points for excavations/trenching regulations:

- Surface encumbrances shall be safe guarded.
- Underground utilities.
- Access, egress.
- Vehicular traffic.
- Falling loads.
- Warning systems/mobile equipment.
- Hazardous atmospheres. Less than 19.5% oxygen. Emergency rescue.
- Water accumulations.
- Stability of adjacent structures.

- Loose rock, soil.
- Inspections.
- Fall protection.

Requirements for protective systems:

Shoring or sloping system required, except:

- Stable rock.
- Less than 5 feet and no indications of cave-in by the competent person.

Sloping, benching systems.

- Allowable configurations and slopes.
- Determination of slopes and configurations using OSHA appendices A and B.
- Designs using other tabulated data.
- Designs by a registered professional engineer.

Support systems, shield systems and other protective systems.

- Timber.
- Manufactured protective systems.
- Self made using tabulated data. (Approved by a Professional Engineer (PE)).
- Designs by a registered professional engineer.
- Materials and equipment free from damage or defects.
- Installation and removal of support systems.
- Workers not allowed to work on face of slope above others.
- Shield systems.
- Never subject shields to excessive loads.
- Never allow workers in shields when being installed, removed or moved vertically.

Sloping and Benching

- Definitions: Actual slope, distress, maximum allowable slope, short term exposure.
- Requirements: Soil classification per OSHA Appendix A.

Sloping and Benching

- Definitions: Actual slope, distress, maximum allowable slope, short term exposure.
- Requirements: Soil classification per OSHA Appendix A.
- Maximum allowable slope
- Actual slope
- Configurations

Stable Rock	Vertical	90 degrees	20 ft. maximum
Type A	3/4:1	53 degrees	20 ft. maximum
Type A	1/2:1	63 degrees	12 ft. maximum (short term)
Type B	1:1	45 degrees	20 ft. maximum
Type C	1 1/2:1	34 degrees	20 ft. maximum



## 11. CONCRETE & MASONRY

All concrete and masonry work will be conducted in a safe manner, consistent with the general and specific rules listed below within this Section 3 - Code of Safe Practices.

Site specific policies and procedures include the following:

- Appropriate personal protective equipment such as hard-hats, protective eye wear with side shields, gloves, boots, in-line respirators, et, will be required by all site personnel and delivery contractors/vendors when the exposure warrants such use.
- Job Hazard Analysis forms will be completed prior to all major pours identifying proposed equipment set-up area, employee safe access and egress, lighting, truck staging area, wash off areas, and pertinent pre-planning for safety issues, etc.
- All concrete pumpers will operate with the outriggers fully extended. Dunnage (wood pads 1/3 larger that outrigger pad base) will be provided under the outriggers in all cases.
- All impalement exposures such as reinforcement re-bar shall be capped prior to conducting work within or around the exposure.
- Fall protection requirements consistent with [Section #3, Subsection 4] of this manual shall be adhered to at all times. Positioning belts are not considered adequate fall protection unless utilized in conjunction with full body harnesses and lanyards attached to an approved anchorage point.
- All concrete and re-bar material handling activities shall comply with Section #3, Subsections #12 & #13 of this manual.

All concrete and masonry construction activities should adhere to California OSHA regulations as listed below:

- a) Concrete mixers equipped with 1-yard, or larger, loading skips shall be provided with a device to clear the skip of material. Skip clearing shall not be done by a worker standing under or near a raised skip while striking it with a hand-held implement.
- b) On concrete mixers of 1 year capacity, or larger, guardrails of pipe or similar material shall be provided on each side of the dangerous area under the raised skip.
- c) Handles on bull floats shall be constructed of nonmetallic and non-conductive material.
- d) Concrete troweling machines--of the powered, rotating-blade type--that are guided manually shall be equipped with a control or switch that will automatically shut off the power whenever the operator's hands are removed from the equipment handles.
- e) Mortar, Plaster or Fireproofing Mixers.
  - (1) Grid guards on mortar, plaster or fireproofing mixers of 1 yard capacity of smaller shall have a grid opening not to exceed 4 inches square with a minimum clearance of 5 inches from the top of the grid guard to the top of the mixing paddles.
  - (2) All mortar, laster or fireproofing mixers of 1 yard capacity or smaller ordered or purchased after the effective date of this regulation shall be equipped with grid guards with an opening not to exceed 4 inches square with a minimum clearance of 5 inches from the top of the grid guard to the top of the mixing paddles.
- f) Tremies. Sections of tremies and similar concrete conveyances shall be secured with wire rope in addition to the regular couplings or connections.

## 12. CRANES

- a. Critical Lift Guidelines. This procedure provides guidance for control of lifts with cranes which are considered to be "critical" lifts and not repetitive lifts. Lifts that fall into this category are those lifts which:
- i. Exceed 75% of the crane's rated capacity for the crane configuration.
  - ii. Require two cranes to make the lift.
  - iii. Are located such that the load or the crane boom could fall onto electric power lines, transformers, pipelines, or vessels or reactors containing flammable, explosive, or hazardous gases or liquids, etc.
  - iv. Utilize poles and derricks that have been erected for a specific lift.

Crane configuration as used in this procedure refers to variable parts of the crane such as boom length, boom angle, counterweight, outriggers extended and set, tracks extended or retracted, and various attachments (jib, headache ball, load block, lifting devices, etc.). All these items affect the gross capacity of the crane and shall be taken into consideration prior to lift.

A "Crane Lift" Permit will be completed by all Contractors prior to making any "critical lift". After the permit has been completed by the supervisor, Aon and District Safety personnel will review the lift permit with the contractors safety representative in the order listed on the permit. A copy of the permit will be placed in the cab of the lift-crane and the original will be filed in the contractors Project Managers office.

If, in completing the permit, it is determined the lift equals or exceeds 95% of the crane configuration capacity for the greatest radius the load will achieve during pick, swing or set, the lift will not be made. If, changing the crane configuration within the manufacturing specifications, a greater gross capacity may be gained, the change shall be made. If not, a larger capacity crane shall be ordered and used.

- b. Other Hazards. For any electrical or other hazard(s) involved or associated with the operations, the appropriate hazard permit(s) will also be completed prior to the lift.
- c. Operation of Any Crane.

The Contractor shall:

- i. Ensure that only crane operators who have experience and are qualified with a particular piece of equipment be assigned to perform lifting operations.
- ii. Survey the specific area where the crane will be operating, making certain that all interfering conditions and factors are pointed out to the operator, and that appropriate preventive action is taken prior to the start of operation.
- iii. Provide adequate job instruction to the operator.
- iv. Specifically instruct the operator that if any Portion of the machine does not function properly, the machine is to be stopped, the Supervisor is to be contacted, and further instructions will be delivered.
- v. Instruct the operator that he/she must be able to see the boom tip at all times. Be certain to keep height of rig below the limits established by the
- vi. Ensure proper operating and mechanical condition of the machine.
- vii. Exercise extremely good judgment about being present, and directly contributing to the handling of extremely heavy or difficult lifts.
- viii. Have the swing radius of the counterweight barricaded with red Danger tape.
- ix. Keep two pairs of orange gloves or vests on the crane to be used by flagmen to distinguish themselves from other personnel.
- x. Outriggers will be fully extended on all lifts and appropriate blocking (4X4' blocks - size 1/3 larger than the pads) will be required when safety management deems necessary.

The Crane Operator and/or Oilman shall also:

- i. Survey the specific area in which the crane will be working making certain that all interfering conditions and factors are noted and that appropriate preventative action is planned and implemented before starting operation.
- ii. Give adequate job instructions to all personnel concerned (especially the riggers).
- iii. Assign a flagman (or more if required) who is knowledgeable about rigging practices, crane capacity and operating procedures to provide all signals to the crane operator.
- iv. Fully instruct the flagman as to the planned use of the crane. In all cases involving assignment of one flagman or multiple flagmen, ensure that each understands his/her responsibilities.
- v. Whenever there is any question that the weight of a load to be handled or that the handling requirements of a particular load might overload the crane, the foreman shall have the weight of the load confirmed (by contacting the vendor directly or by some other means).

The flagman must be present at all times whenever:

- i. The crane is to be working within a boom's length of an electric power line(s).
- ii. The operator cannot clearly see the hook or load at times or when the rig is being backed up.

The flagman shall also:

- i. Position himself/herself in full view of the operator and, if using hand signals be close enough for the signals to be seen clearly. His/her position shall allow a full view of the load and equipment at all times, yet be such that there is no danger of being injured.
- ii. Be fully qualified by experience, knowledgeable in the operation, and able to coordinate actions with the crane operator by signals.
- iii. Be responsible for keeping all authorized personnel beyond the crane's operating radius.
- iv. Direct the load, ensuring that it never passes over other personnel.
- v. Stay in constant communication with the crane operator by either using approved hand signals, radio, sound-powered phones, or equivalent means of communication.

Cranes - Crawlers, Truck and Wheel Mounted. Contractor shall ensure and provide certification information as required by OSHA for all cranes prior to site entry. Certification information shall verify that a thorough, annual inspection of the equipment has been made by a competent person. Equipment owners are required by OSHA to maintain a record of the dates and results of inspections for each hosting machine and piece of equipment.

Operators - Cranes shall be operated by designated operators licensed by an approving agency, trainees under the direct supervision of the designated operator, Inspectors certified for crane inspection, and test and maintenance personnel when necessary. No one other than the crane operator shall be in or on the crane when in operation. Exceptions are oilers whose duties may require their presence.

Prior to lifting loads over workers, the operator shall sound his/her horn and warn others of overhead loads.

### 13. RIGGING

- a. General. This procedure provides guidance for the protection of personnel engaged in rigging operations.
- b. Wire Rope. Reels of wire rope must not be dropped from a car or truck. To keep the wire rope clean and dry during storage, it should be coated with a protective material (LEPRO) to seal out air and moisture. Whether in storage or in use, all wire rope should be kept well lubricated. Wire rope will not be stored where it might be exposed to acid fumes or other corrosive agents.

All rigging material will be required to be visually inspected for damage and excessive wear prior to each lift, and, if found defective, removed from site.

To avoid kinks, the reel of wire rope must be mounted on jacks or a turntable to allow it to revolve as rope is pulled off. During installation, the rope should be made to turn the same direction off the reel as onto the drum to avoid reverse bends. During the break in period, the new rope should be run without a load. The first load should be gradually increased to set the wire.

Wire rope will be discarded when found to contain: Six randomly distributed broken wires in one rope lay, three broken wires in one strand of one rope lay, or when the rope shows signs of excessive wear, kinks, corrosion, or other defects. Wire ropes with splices will not have less than three tucks. "U" bolt wire rope clips will be applied so that the "U" section is in contact with the "dead end" of the rope.

- c. Slings. All slings and their fittings and fastenings shall be inspected prior to use, and as necessary during use, by a competent person for evidence of overloading, excessive wear, or other damage.

Defective slings shall immediately be removed from service and destroyed.

Proper storage shall be provided for slings, etc.

Protection shall be provided between the sling and any sharp, unyielding surfaces.

- d. Drums and Sheaves. The size of drums and sheaves will vary according to the size and flexibility of the cable. The sheaves will be of the proper size and flexibility of the cable.

The sheaves will be of the proper size so as not to pinch the cable. The grooves of drums and sheaves should be kept smooth, free of burrs or defects. Sheaves, drums, and rollers should be properly aligned. Misalignment causes excessive wear to the cable and, over a period of time, may wear off an entire flange of sheaves. Overwinding and cross-winding should be avoided; either will abrade and distort the rope.

Check the groove diameter of all sheaves with a "groove gauge". Using wire rope in an oversized sheaves causes the rope to become flattened or distorted; using undersized grooves will pinch and tear the strands of wire. Check the sheaves and blocks for worn bearings. Allowing the sheaves to wobble on the pins will cause the wire rope to rub and wear the sides of the sheaves' throat.

- e. Rigging Operations. When temporary rigging such as wire rope lashing, come-along, chain falls, etc., are used for support during all erection sequences for machines, piping, platforms, walkways, and steel members such rigging shall not be removed until all leveling and alignment is complete and the item is secured in its permanent location.

Rigging equipment will be inspected before each use, and as necessary during its use, to ensure that it is sound. All rigging equipment including, but not limited to, slings (wire and nylon), chain-falls, come-along, spreaders, lifting beams, etc., shall be inspected on a quarterly basis. Records will be maintained and copied to the Safety Coordinator. The inspection shall be performed by a competent person and the rigging equipment color coded in accordance with the Ground Fault Protection suggested color code for the quarter.

**Defective rigging equipment will be removed from service immediately and repaired or destroyed.**

Rigging equipment, including shackles and hooks, will not be loaded in excess of its manufacturer's recommended safe working load. Special custom designed grabs, hooks, clamps, etc., shall be marked to indicate safe working loads and shall be proof-tested prior to use to 125 percent of their rated loads.

Job or shop hooks formed from bolts, rods, re-bar, etc., will not be used. No "Christmas Treeing" shall be allowed on the Project.

## 14. SCAFFOLDS

- a. Avoid Overloading. Do not overload a scaffold. A safety factor of 4 shall be used for support loads. Footing and or anchorage shall be sound, rigid and capable of carrying the maximum intended load without settling or displacement.
- b. Guardrails. Do not work on scaffolds without adequate guard rails and toeboards. Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 6 feet above the ground or floor. Scaffolds 4 feet to 6 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed.

Guardrails shall be 2x4 inches wood stud or steel tubing, approximately 42 inches high, with a 1x6 inch or metal tubing midrail. The top rail must be capable of supporting a 200 lb. load (vertical & horizontal) and the midrail must be capable of withstanding a 150 lb. load (vertical & horizontal) without failure. supports shall not be spaced more than 8 feet apart. Toeboards shall be a minimum of 4 inches high.

- c. Inspection. Inspect the scaffold before you use it to be sure it is safe and without defects. Do not work on slippery or snow-covered scaffolding until it is cleared or sanded. No scaffolding shall be moved, erected, dismantled or altered except under the supervision of competent persons.
- d. Makeshift Scaffolds. Makeshift scaffolds are not permitted. Scaffolds shall be constructed in a safe manner using approved scaffold planking or other material. Make certain the scaffold is placed on a firm footing. All load carrying timber members of scaffold framing shall be a minimum of 1500 fiber construction grade lumber. All scaffolding shall be "Scaffolding Grade."

Scaffolding planks shall extend over their end supports not less than 6 inches or more than 12 inches. All planking shall overlap a minimum of 12 inches or be secured from movement.

A minimum of 2 planks shall be placed together to provide use. Single plank operations are forbidden. Planks must be at least 12 inches wide and free of defects.

- e. Rolling Scaffolds. Dismount scaffold when it is to be moved. Be sure to lock the wheels before remounting. Also remove or secure tools and materials before moving scaffold. Outriggers shall be used on all sides of the scaffolding when working from scaffolds which exceed the 3 to 1 height/width ratio.
- f. Access. An access ladder or equivalent safe access shall be provided. Employees are not to climb up the side of the scaffold unless the scaffold structure is designed for ladder use.

## 15. STEEL ERECTION

All steel erection work will be conducted in a safe manner, consistent with the general and specific rules listed within the Code of Safe Practices, as relating to tools/equipment use and safe practices.

All steel erection construction activities should adhere to CAL OSHA Article 29 regulations as listed below:

- a) During the final placing of solid web structural members, the load shall not be released from the hoisting line until the members are secured with not less than two bolts, or the equivalent at each connection to keep members from rolling and to sustain anticipated loads. Bolts shall be drawn up wrench tight.
- b) Open web steel joists shall not be placed on any structural steel framework unless such framework is safely bolted or welded.
- c) In steel framing where bar joists are utilized and columns are not framed in at least two directions with structural steel members, a bar joist shall be field-bolted at columns to provide lateral stability during construction.
- d) Where longspan joists or trusses, 40 feet or longer, are used rows of bridging shall be installed to provide lateral stability during construction prior to slacking of hoisting line.
- e) No load shall be placed on open web steel joists until these requirements are met.
- f) Permanent Flooring--Skeleton Steel Construction in Tiered Buildings.
- g) The permanent floors shall be installed as the erection of structural members progresses, and there shall be not more than eight stories between the erection floor and the uppermost permanent floor, except where the structural integrity is maintained as a result of the design.
- h) At no time shall there be more than four floors or 48 feet of unfinished bolting or welding above the foundation or uppermost permanently secured floor.
- i) Where skeleton steel is being erected, a tightly planked and substantial floor shall be maintained within two stories or 30 feet, whichever is less, below and directly under that Portion of each tier of beams on which any work is being performed. EXCEPTION: When gathering and stacking temporary floor planks on a lower floor in preparation for transferring planks for use on an upper floor.
- j) When gathering and stacking temporary floor planks, the planks shall be removed successively, working toward the last panel of the temporary floor so that the work is always done from the planked floor.
- k) When gathering and stacking temporary floor planks from the last panel, the employees assigned to such work shall be protected by full body safety harnesses with safety lines attached to a catenary line or other substantial anchorage.
- l) All steel workers, including connectors, shall adhere to the 100% - 6 foot fall protection program.
- m) Pendant lines, catenary lines and other lines used to secure workers shall be capable of supporting a minimum weight of 5400 pounds.
- n) If the procedure specified in (1) above is impractical, perimeter safety nets shall be installed at a distance of no more than 25 feet below the work surface and extend at least 8 feet beyond the perimeter of the building or structure. Nets shall meet the requirements set forth in accordance with [Sections 1671 and 1672] of Cal-OSHA Article as stated above.

## 16. ROOFING

All roofing work will be conducted in a safe manner, consistent with the general and specific rules listed within the Code of Safe Practices, as relating to tools/equipment use and safe practices.

Site specific policies and procedures include the following:

- No knotted hand lines shall be used.
- Roofers tending kettles or carrying buckets of hot tar shall wear gloves that fit snugly at the wrists and long sleeved shirts fastened at the wrists.
- At no time while handling or exposed to injury from hot tar, should a roofer work without a shirt or appropriate footwear.
- Appropriate Portable fire extinguishers shall be kept at or near the kettle, attached, if practicable, to the tongue of the kettle, away from the danger zone.
- Kettle covers should be equipped with a handle that projects at least 14 inches away from the surface of the cover or lid.
- Kettle covers shall be closed and latched when in transit and the kettle should be slop-proof when cover is closed.
- When parked, means shall be provided to prevent inadvertent movement of the kettle.
- Ladders should be used with great caution, and roof gutters should not be depended upon for support.
- Safe access and egress to the work area shall be provided with fall protection measures consistent with [Section 3, Subsection 4] of this manual.
- Workers handling buckets of hot tar should not carry anything that will interfere with the safety of **this operation**.



## 17. FIRE PREVENTION AND HAZARDOUS CHEMICALS

Material Safety Data Sheets (MSDS) must be provided to Project Management one week prior to any hazardous substance being brought on site. Project Management will review the MSDS and comment on storage practices/location and practices surrounding use.

- a. Cleaning Agents. Explosive liquids will not be used as cleaning agents. Use only approved cleaning fluids.
- b. Combustible Materials. Gasoline and similar combustible liquids Will be stored in secure "approved" containers and in an area free from burning hazards.

Extreme caution must be used when handling or working around corrosive liquids. In low concentrations, these chemicals can be simply washed from skin or clothing. Higher concentrations can burn skin and dissolve some fabrics. Corrosives splashed in the eye should be considered a potentially serious injury and the injured person examined by the physician as soon as possible after initial first aid.

- (1) Check the label of any chemical product before using.
  - (2) Protective equipment **must be worn** when transferring or working with liquid corrosives.
    - Chemical splash-proof goggles with a face shield
    - Rubber high-gauntlet gloves
    - Rubber boots
    - An approved respirator for the chemical being handled, if required. NOTE: Respirator use is carefully regulated by the Port.
  - (3) Seek first aid or medical treatment for exposure.
  - (4) Avoid breathing dust, gases, or vapors.
  - (5) Locate the nearest safety deluge shower and eye wash fountain to your work area before handling corrosive solutions or solids. A garden hose can be used in an emergency in remote locations.
  - (6) Do not mix household chlorine bleach (sodium hypochlorite) with other cleaners. Mixing with other acidic cleaners (e.g. toilet cleaners) may generate dangerous chlorine gas.
  - (7) Refer to MSDS for information on chemicals.
  - (8) When diluting acid with water always add the concentrated acid to the water slowly. Do not add water to acid for strength adjustments.
  - (9) Lead-acid batteries (car, truck, and auxiliary power supplies) must be handled with care. The electrolyte is sulfuric acid (H<sub>2</sub>SO<sub>4</sub>). Avoid contact on clothing, skin or in eyes. In the case of exposure, flush with clean water for 15 minutes and seek medical attention.
- c. Combustible Materials. Keep all heat sources away from combustible liquids, gases or other flammable materials. When not in use, store combustible materials in a well ventilated, cool place.
  - d. Fire Extinguisher. A Portable fire extinguisher, rated not less than 2A, shall be provided for each 3,000 square feet of floor area. Travel distance from any point of the protected area to the nearest fire extinguisher shall not exceed 75 feet.

Do not remove or tamper with fire extinguisher installed on equipment or vehicles or in other locations unless authorized to do so or in case of fire. Portable approved fire extinguishers will be required on site and within the areas involving of all welding, cutting, soldering and roofing operations.

- e. Fire Fighting Equipment. Fire fighting equipment must be kept free from obstacles, equipment, materials and debris that could delay emergency use of such equipment. Familiarize yourself with the location and use of the project's fire fighting equipment.

- f. Smoking and Fires. Smoking is prohibited within the structures. Extinguish all matches, cigarettes, cigars and pipe tobacco before discarding. Do not smoke while fueling equipment or while in close proximity to refueling areas. Never leave open fires unattended.
- g. Storage. Storage of flammable substances on equipment or vehicle is prohibited unless such unit has adequate storage area designed for such use.
- h. Hot Work & Cutting Permits. All welding, barbecues, hot work, cutting, and ignition producing construction activities will be required to undergo a "Hot Work/Cutting Permit" system.

**NOTE: The Port of Oakland does not expect any employee to put their physical well-being in danger by trying to extinguish a fire. If there is any threat to your personal safety, leave the area and wait for the Fire Department to arrive.**

18.        **CONFINED SPACE**

Each contractor is responsible for evaluating all potential confined spaces and developing an entry permit program based upon the Cal-OSHA standards.

A written confined space program should be within the Contractor's or sub-contractors safety manual and be consistent with CAL-OSHA regulations. A detailed plan of work and exposure mitigation shall be submitted to Contractor one week prior to actual confined space entry operations.

The Contractor's Safety representative will actively review and approve the confined space entry permit procedures.

## 19. SITE VEHICLE OPERATIONS

The OCIP Insurance Program does not provide coverage for contractor nor vendor owned and operated vehicles.

Personal passenger vehicles shall remain off the construction site and within designated parking areas. Personal passenger trucks will be allowed to transport material to the work site, however, parking of the vehicle on the construction site is prohibited unless approved through the Project Superintendent.

Site speed limits will be posted and enforced.

Employees are not allowed to ride within vehicles on site unless an adequate number of seat belts are provided in relation to the number of riders. Employees are not allowed to ride in the back of truck beds at any time.

Vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.

Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two headlights and two taillights in operable condition.

All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

Vehicles with cabs shall have windshields and powered windshield wipers. Cracked or broken windshields shall be replaced promptly. Where fogging or frosting of windshields is prevalent, operable defogging or defrosting equipment shall be required.

Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.

Vehicles on construction sites, not covered by the provisions of 1596 (g) or applicable provisions of the State of California Motor Vehicle Code shall have installed seat belts and anchorage's meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards).

The employer shall require the use of seat belts.

Vehicles excluded from provisions of 1591 and the State of California Motor Vehicle Code shall be equipped with fenders or, if vehicle is not designed for fenders, mud flaps.

Vehicles not covered under other sections shall be checked at the beginning of each shift to assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake); emergency stopping system (brakes); tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects shall be corrected before the vehicle is placed in service. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.

Where vehicles are operated, temporary covers for conduits, trenches and manholes and their supports, when located in roadways and vehicular aisles, shall be designed to carry at least 2 times the maximum intended vehicular live load and they shall be designed and installed as to prevent accidental displacement.

## 20. TRAFFIC CONTROL & FLAGGERS

Where a hazard exists to employees because of traffic or haulage conditions at work sites that encroach upon public streets or highways, a system of traffic controls in conformance with the "Manual of Traffic Controls for Construction and Maintenance Work Zones—1996."

Additional means of traffic control, such as continuous patrol, detours, barricades, or other techniques for the safety of employees may be employed. Criteria for position, location and use of traffic control devices described in the "Manual" should be utilized as a guide for the correct placement of safety devices.

Employees (on foot) exposed to the hazard of vehicular traffic shall wear orange, strong yellow-green, or fluorescent versions of these colored warning garments such as vests, jackets, or shirts. During rainy weather, employees exposed to the hazard of vehicular traffic may wear orange, strong yellow-green, or yellow rainwear.

During hours of darkness, warning garments shall be reflective. The reflective material shall be visible at a minimum of 1,000 feet. The reflective clothing, or the reflective material added to the clothing, shall have a minimum of one horizontal stripe around the torso. White outer garments with reflective material that meets the above requirements may be worn during hours of darkness in lieu of colored vests, jackets and/or shirts.

Flaggers shall be utilized at locations on a construction site where barricades and warning signs cannot control the moving traffic.

When flaggers are required, they shall be placed in relation to the equipment or operation so as to give effective warning.

Placement of warning signs shall be according to the "Manual of Traffic Controls for Construction and Maintenance Work Zones--1996", published by the State Department of Transportation.

Flaggers shall wear orange, strong yellow-green, or fluorescent versions of these colored warning garments such as vests, jackets, or shirts. Rainwear, when worn, shall be orange, strong yellow-green, or yellow.

During the hours of darkness, flaggers' stations shall be illuminated such that the flagger will be clearly visible to approaching traffic and flaggers shall be outfitted with reflectorized garments. The reflective material shall be visible at a minimum distance of 1,000 feet. The reflective clothing, or the reflective material added to the clothing, shall have a minimum of one horizontal stripe around the torso. White outer garments with reflective material that meets the above requirements may be worn during hours of darkness in lieu of colored vests, jackets and/or shirts.

Flaggers shall be trained in the proper fundamentals of flagging moving traffic before being assigned as flaggers.

# AVIATION CODE OF SAFE PRACTICES FOR AIRPORTS

**The Airport emergency telephone number is 911.**

## SECURITY

Anybody (Port employees, contractors, or the public) working in areas inside security checkpoints or in the Aircraft Operating Area (AOA) must pass security clearance, receive training, and wear an appropriate badge visible at all times. Security clearance is controlled by the Airport Badge Office. Contractors will obtain approval for such clearance by the Port's Department of Engineering.

Anyone with security clearance has the right and obligation to question individuals in restricted areas who do not display the proper badge. It is the responsibility of all badged parties, particularly Port employees, to help maintain Airport Security. Immediately report suspicious persons, activities, or circumstances to Airport Operations.

Security gates and doors must be completely closed and secure. Wait for automatic gate closure systems to close and ensure that no unauthorized vehicles or individuals have entered.

Refer to Security requirements as provided in the Contract specifications.

## DRIVING AND GENERAL SAFETY

Airport driving rules can be found in "Airport Vehicle Safety Rules" which governs vehicle operation in the Aircraft Operating Area (AOA). Anyone driving an unescorted vehicle on AOA must pass a written test. Clearance to drive is displayed on the security badge. In general, the following rules apply:

1. Aircraft always have the right of way.
2. Port vehicles will activate flashers when driving on the AOA. All vehicles must have identifying signs on both sides (magnetic signs are OK). Properly equipped Port vehicles can escort vehicles not so equipped. Escorted vehicles must remain close to the escort at all times.
3. The speed limit is 15 mph; less, if conditions warrant.
4. Work that could obstruct or endanger air traffic must be lighted and flagged in accordance with FAA Advisory Circular 70/7460-1F.
5. Maintain radio communication with the control tower when driving on or near active runways and taxiways. Obey any tower instructions.
6. Where vision is restricted, a guide-person is required.
7. Do not park or drive under any portion of an aircraft or lading bridge.
8. Maintain the following clearances behind running jet engines:
  - 747, 757, 767, DC-10, DM-11: 400 feet
  - All others: 200 feet
9. All hot work (welding, torch, cutting, etc.) must first be cleared with Airport Operations and the Port's Department of Engineering and a fire watch must be posted.

**NOTE: The following information was provided by the U.S. Department of Transportation's Federal Aviation Administration for safe practices while performing operations on the Airport facilities of the Port of Oakland.**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Advisory Circular

**Subject:** OPERATIONAL SAFETY ON AIRPORTS  
DURING CONSTRUCTION

**Date:** 1/17/03

**AC No:** 150/5370-2E

**Initiated by:** AAS-300

**Change:**

## 1. THE PURPOSE OF THIS ADVISORY CIRCULAR (AC).

Aviation safety is the primary consideration at airports, especially during construction. This AC sets forth guidelines for operational safety on airports during construction. It contains major changes to the following areas: "Runway Safety Area," paragraph 3-2; "Taxiway Safety Areas/Object-Free Areas," paragraph 3-3; "Overview," paragraph 3-4; "Marking Guidelines for Temporary Threshold," paragraph 3-5; and "Hazard Marking and Lighting," paragraph 3-9.

## 2. WHAT THIS AC CANCELS.

This AC cancels AC 150/5370-2D, *Operational Safety on Airports During Construction*, dated May 31, 2002.

## 3. READING MATERIAL RELATED TO THIS AC.

Appendix 1 contains a list of reading materials on airport construction, design, and potential safety hazards during construction, as well as instructions for ordering these documents. Many of them, including this AC, are available on the Federal Aviation Administration (FAA) Web site.

## 4. WHO THIS AC AFFECTS.

This AC assists airport operators in complying with 14 Code of Federal Regulations (CFR), part 139, Certification and Operation: Land Airports Serving Certain Air Carriers, and with the requirements of airport construction projects receiving funds under the Airport Improvement Program or from the Passenger Facility Charge Program. While the FAA does not require noncertificated airports without grant agreements to adhere to these guidelines, we recommend that they do so as it will help these airports maintain a desirable level of operational safety during construction.

## 5. ADDITIONAL BACKGROUND INFORMATION.

Appendix 2 contains definitions of terms used in this AC. Appendix 3 provides airport operators with boilerplate format and language for developing a safety plan for an airport construction project. Appendix 4 is a sample Notice to Airmen form.

## 6. HAZARD LIGHTING IMPLEMENTATION TIME LINE.

Supplemental hazard lighting must be red in color by October 1, 2004. See paragraph 3-9 for more information.

DAVID L. BENNETT

Director, Office of Airport Safety and Standards



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## CHAPTER 1. GENERAL SAFETY REQUIREMENTS AND RESPONSIBILITIES

### 1-1. OVERVIEW.

Hazardous practices and marginal conditions created by construction activities can decrease or jeopardize operational safety on airports. To minimize disruption of normal aircraft operations and to avoid situations that compromise the airport's operational safety, the airport operator must carefully plan, schedule, and coordinate construction activities. While the guidance in this AC is primarily used for construction operations, some of the methods and procedures described may also enhance day-to-day maintenance operations.

### 1-2. WHO IS RESPONSIBLE FOR SAFETY DURING CONSTRUCTION.

An airport operator has overall responsibility for construction activities on an airport. This includes the predesign, design, preconstruction, construction, and inspection phases. Additional information on these responsibilities can be found throughout this AC.

#### a. Airport operator's responsibilities—

- (1) Develop internally or approve a construction safety plan developed by an outside consultant/contractor that complies with the safety guidelines in Chapter 2, "Safety Plans," and Appendix 3, "Airport Construction Safety Planning Guide," of this AC.
- (2) Require contractors to submit plans indicating how they intend to comply with the safety requirements of the project.
- (3) Convene a meeting with the construction contractor, consultant, airport employees, and, if appropriate, tenant sponsor to review and discuss project safety before beginning construction activity.
- (4) Ensure contact information is accurate for each representative/point of contact identified in the safety plan.
- (5) Hold weekly or, if necessary, daily safety meetings to coordinate activities.
- (6) Notify users, especially aircraft rescue and fire fighting (ARFF) personnel, of construction activity and conditions that may adversely affect the operational safety of the airport via Notices to Airmen (NOTAMs) or other methods, as appropriate. Convene a meeting for review and discussion if necessary.
- (7) Ensure that construction personnel know of any applicable airport procedures and of changes to those procedures that may affect their work.

(8) Ensure that construction contractors and subcontractors undergo training required by the safety plan.

(9) Develop and/or coordinate a construction vehicle plan with airport tenants, the airport traffic control tower (ATCT), and construction contractors. Include the vehicle plan in the safety plan. See Chapter 2, section 2, of this AC for additional information.

(10) Ensure tenants and contractors comply with standards and procedures for vehicle lighting, marking, access, operation, and communication.

(11) At certificated airports, ensure that each tenant's construction safety plan is consistent with 14 CFR part 139, Certification and Operations: Land Airports Serving Certain Air Carriers.

(12) Conduct frequent inspections to ensure construction contractors and tenants comply with the safety plan and that altered construction activities do not create potential safety hazards.

(13) Resolve safety deficiencies immediately.

(14) Ensure construction access complies with the security requirements of 49 CFR part 1542, Airport Security.

(15) Notify appropriate parties when conditions exist that invoke provisions of the safety plan (e.g., implementation of low-visibility operations).

#### b. Construction contractor's responsibilities—

- (1) Submit plans to the airport operator on how to comply with the safety requirements of the project.
- (2) Have available a copy of the project safety plan.
- (3) Comply with the safety plan associated with the construction project and ensure that construction personnel are familiar with safety procedures and regulations on the airport.
- (4) Provide a point of contact who will coordinate an immediate response to correct any construction-related activity that may adversely affect the operational safety of the airport.
- (5) Provide a safety officer/construction inspector familiar with airport safety to monitor construction activities.
- (6) Restrict movement of construction vehicles to construction areas by flagging and barricading, erecting temporary fencing, or providing escorts, as appropriate.

(7) Ensure that no construction employees, employees of subcontractors or suppliers, or other persons enter any part of the air operations areas (AOAs) from the construction site unless authorized.

**c. Tenant's responsibilities if planning construction activities on leased property—**

(1) Develop a safety plan, and submit it to the airport operator for approval prior to issuance of a Notice to Proceed.

(2) Provide a point of contact who will coordinate an immediate response to correct any

construction-related activity that may adversely affect the operational safety of the airport.

(3) Ensure that no tenant or construction employees, employees of subcontractors or suppliers, or any other persons enter any part of the AOA from the construction site unless authorized.

(4) Restrict movement of construction vehicles to construction areas by flagging and barricading or erecting temporary fencing.

## CHAPTER 2. SAFETY PLANS

### Section 1. Basic Safety Plan Considerations

#### 2-1. OVERVIEW.

Airport operators should coordinate safety issues with the air carriers, FAA Airway Facilities, and other airport tenants before the design phase of the project. The airport operator should identify project safety concerns, requirements, and impacts before making arrangements with contractors and other personnel to perform work on an airport. These safety concerns will serve as the foundation for the construction safety plan and help maintain a high level of aviation safety during the project.

The airport operator should determine the level of complexity of the safety plan that is necessary for each construction project and its phases. The safety plan may be detailed in the specifications included in the invitation for bids, or the invitation for bid may specify that the contractor develop the safety plan and the airport operator approve it. In the latter case, the invitation for bid should contain sufficient information to allow the contractor to develop and determine the costs associated with the safety plan. In either case, safety plan costs should be incorporated into the total cost of the project. The airport operator has final approval authority and responsibility for all safety plans.

Coordination will vary from formal predesign conferences to informal contacts throughout the duration of the construction project.

Details of a specified safety plan, or requirements for a contractor-developed safety plan, should be discussed at the predesign and preconstruction conferences and should include the following, as appropriate:

- a. Actions necessary before starting construction, including defining and assigning responsibilities.
- b. Basic responsibilities and procedures for disseminating instructions about airport procedures to the contractor's personnel.
- c. Means of separating construction areas from aeronautical-use areas.
- d. Navigational aid (NAVAID) requirements and weather.
- e. Marking and lighting plan illustrations.
- f. Methods of coordinating significant changes in airport operations with all the appropriate parties.

#### 2-2. SAFETY PLAN CHECKLIST.

To the extent applicable, the safety plan should address the following:

- a. Scope of work to be performed, including proposed duration of work.
- b. Runway and taxiway marking and lighting.
- c. Procedures for protecting all runway and taxiway safety areas, obstacle-free zones (OFZs), object-free areas (OFAs), and threshold citing criteria outlined in AC 150/5300-13, *Airport Design*, and as described in this AC. This includes limitations on equipment height and stockpiled material.
- d. Areas and operations affected by the construction activity, including possible safety problems.
- e. NAVAIDs that could be affected, especially critical area boundaries.
- f. Methods of separating vehicle and pedestrian construction traffic from the airport movement areas. This may include fencing off construction areas to keep equipment operators in restricted areas in which they are authorized to operate. Fencing, or some other form of restrictive barrier, is an operational necessity in some cases.
- g. Procedures and equipment, such as barricades (identify type), to delineate closed construction areas from the airport operational areas, as necessary.
- h. Limitations on construction.
- i. Required compliance of contractor personnel with all airport safety and security measures.
- j. Location of stockpiled construction materials, construction site parking, and access and haul roads.
- k. Radio communications.
- l. Vehicle identification.
- m. Trenches and excavations and cover requirements.

- n. Procedures for notifying ARFF personnel if water lines or fire hydrants must be deactivated or if emergency access routes must be rerouted or blocked.
- o. Emergency notification procedures for medical and police response.
- p. Use of temporary visual aids.
- q. Wildlife management.
- r. Foreign object debris (FOD) control provisions.
- s. Hazardous materials (HAZMAT) management.
- t. NOTAM issuance.
- u. Inspection requirements.
- v. Procedures for locating and protecting existing underground utilities, cables, wires, pipelines, and other underground facilities in excavation areas.

- w. Procedures for contacting responsible representatives/points of contact for all involved parties. This should include off-duty contact information so an immediate response may be coordinated to correct any construction-related activity that could adversely affect the operational safety of the airport. Particular care should be taken to ensure that appropriate Airways Facilities personnel are identified in the event that an unanticipated utility outage or cable cut occurs that impacts FAA NAVAIDS.
- x. Vehicle operator training.
- y. Penalty provisions for noncompliance with airport rules and regulations and the safety plan (e.g., if a vehicle is involved in a runway incursion).
- z. Any special conditions that affect the operation of the airport and will require a portion of the safety plan to be activated (e.g., low-visibility operations, snow removal).

## Section 2. Safety and Security Measures

### 2-3. OVERVIEW.

Airport operators are responsible for closely monitoring tenant and construction contractor activity during the construction project to ensure continual compliance with all safety and security requirements. Airports subject to 49 CFR part 1542, Airport Security, must meet standards for access control, movement of ground vehicles, and identification of construction contractor and tenant personnel. In addition, airport operators should use safety program standards, as described in Chapter 3 of this AC, to develop specific safety measures to which tenants and construction contractors must adhere throughout the duration of construction activities.

General safety provisions are contained in AC 150/5370-10, *Standards for Specifying Construction of Airports*, paragraphs 40-05, "Maintenance of Traffic"; 70-08, "Barricades, Warning Signs, and Hazard Markings"; and 80-04, "Limitation of Operations." At any time during construction, aircraft operations, weather, security, or local airport rules may dictate more stringent safety measures. The airport operator should ensure that both general and specific safety requirements are coordinated with airport tenants and ATCT personnel. The airport operator should also include these parties in the coordination of all bid documents, construction plans, and specifications for on-airport construction projects.

### 2-4. VEHICLE OPERATION AND MARKING AND PEDESTRIAN CONTROL.

Vehicle and pedestrian access routes for airport construction projects must be controlled to prevent inadvertent or unauthorized entry of persons, vehicles, or animals onto the AOA. This includes aircraft movement and nonmovement areas. The airport operator should develop and coordinate a construction vehicle plan with airport tenants, contractors, and the ATCT. The safety plan or invitation for bid should include specific vehicle and pedestrian requirements.

The vehicle plan should contain the following items:

- a. Airport operator's rules and regulations for vehicle marking, lighting, and operation.
- b. Requirements for marking and identifying vehicles in accordance with AC 150/5210-5, *Painting, Marking, and Lighting of Vehicles Used on an Airport*.
- c. Description of proper vehicle operations on movement and nonmovement areas under normal, lost communications, and emergency conditions.
- d. Penalties for noncompliance with driving rules and regulations.
- e. Training requirements for vehicle drivers to ensure compliance with the airport operator's vehicle rules and regulations.
- f. Provisions for radio communication training for construction contractor personnel engaged in construction activities around aircraft movement areas. Some drivers,

such as construction drivers under escort, may not require this training.

**g.** Escort procedures for construction vehicles requiring access to aircraft movement areas. A vehicle in the movement area must have a working aviation-band, two-way radio unless it is under escort. Vehicles can be in closed areas without a radio if the closed area is properly marked and lighted to prevent incursions and a NOTAM regarding the closure is issued.

**h.** Monitoring procedures to ensure that vehicle drivers are in compliance with the construction vehicle plan.

**i.** Procedures for, if appropriate, personnel to control access through gates and fencing or across aircraft movement areas.

#### **2-5. CONSTRUCTION EMPLOYEE PARKING AREAS.**

Designate in advance vehicle parking areas for contractor employees to prevent any unauthorized entry of persons or vehicles onto the airport movement area. These areas should provide reasonable contractor employee access to the job site.

#### **2-6. CONSTRUCTION VEHICLE EQUIPMENT PARKING.**

Construction employees must park and service all construction vehicles in an area designated by the airport operator outside the runway safety areas and OFZs and never on a closed taxiway or runway. Employees should also park construction vehicles outside the OFA when not in use by construction personnel (e.g., overnight, on weekends, or during other periods when construction is not active). Parking areas must not obstruct the clear line of sight by the ATCT to any taxiways or runways under air traffic control nor obstruct any runway visual aids, signs, or navigational aids. The FAA must also study those areas to determine effects on 14 CFR part 77, *Objects Affecting Navigable Airspace*, surfaces (see paragraph 2-13 for further information).

#### **2-7. RADIO COMMUNICATION TRAINING.**

The airport operator must ensure that tenant and construction contractor personnel engaged in activities involving unescorted operation on aircraft movement

areas observe the proper procedures for communications, including using appropriate radio frequencies at airports with and without ATCTs. Training of contractors on proper communication procedures is essential for maintaining airport operational safety. When operating vehicles on or near open runways or taxiways, construction personnel must understand the critical importance of maintaining radio contact with airport operations, ATCT, or the Common Traffic Advisory Frequency, which may include UNICOM, MULTICOM, or one of the FAA Flight Service Stations (FSS), as directed by airport management.

Vehicular traffic crossing active movement areas must be controlled either by two-way radio with the ATCT, escort, flagman, signal light, or other means appropriate for the particular airport. Vehicle drivers must confirm by personal observation that no aircraft is approaching their position when given clearance to cross a runway. In addition, it is the responsibility of the escort vehicle driver to verify the movement/position of all escorted vehicles at any given time.

Even though radio communication is maintained, escort vehicle drivers must also familiarize themselves with ATCT light gun signals in the event of radio failure (see the FAA safety placard "Ground Vehicle Guide to Airport Signs and Markings"). This safety placard may be ordered through the Runway Safety Program Web site at <http://www.faaersp.org> or obtained from the Regional Airports Division Office.

#### **2-8. FENCING AND GATES.**

Airport operators and contractors must take care to maintain a high level of safety and security during construction when access points are created in the security fencing to permit the passage of construction vehicles or personnel. Temporary gates should be equipped so they can be securely closed and locked to prevent access by animals and people (especially minors). Procedures should be in place to ensure that only authorized persons and vehicles have access to the AOA and to prohibit "piggybacking" behind another person or vehicle. The Department of Transportation (DOT) document DOT/FAA/AR-00/52, *Recommended Security Guidelines for Airport Planning and Construction*, provides more specific information on fencing. A copy of this document can be obtained from the Airport Consultants Council, Airports Council International, or American Association of Airport Executives.

### **Section 3. Notification of Construction Activities**

#### **2-9. GENERAL.**

In order to maintain the desired levels of operational safety on airports during construction activities, the safety

plan should contain the notification actions described below.

**2-10. ENSURING PROMPT NOTIFICATIONS.**

The airport operator should establish and follow procedures for the immediate notification of airport users and the FAA of any conditions adversely affecting the operational safety of an airport.

**2-11. NOTICES TO AIRMEN (NOTAMS).**

The airport operator must provide information on closed or hazardous conditions on airport movement areas to the FSS so it can issue a NOTAM. The airport operator must coordinate the issuance, maintenance, and cancellation of NOTAMS about airport conditions resulting from construction activities with tenants and the local air traffic facility (control tower, approach control, or air traffic control center. Refer to AC 150/5200-28, *Notices to Airmen (NOTAMs) for Airport Operators*, and Appendix 4 in this AC for a sample NOTAM form. Only the FAA may issue or cancel NOTAMS on shutdown or irregular operation of FAA-owned facilities. Only the airport operator or an authorized representative may issue or cancel NOTAMS on airport conditions. (The airport owner/operator is the only entity that can close or open a runway.) The airport operator must file and maintain this list of authorized representatives with the FSS. Any person having reason to believe that a NOTAM is missing, incomplete, or inaccurate must notify the airport operator.

**2-12. AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) NOTIFICATION.**

The safety plan must provide procedures for notifying ARFF personnel, mutual aid providers, and other emergency services if construction requires shutting off or otherwise disrupting any water line or fire hydrant on the airport or adjoining areas and if contractors work with hazardous material on the airfield. Notification procedures must also be developed for notifying ARFF and all other emergency personnel when the work performed will close or affect any emergency routes. Likewise, the procedures must address appropriate notifications when services are restored.

**2-13. NOTIFICATION TO THE FAA.**

For certain airport projects, 14 CFR part 77 requires notification to the FAA. In addition to applications made for Federally funded construction, 14 CFR part 157, Notice of Construction, Alteration, Activation, and

Deactivation of Airports, requires that the airport operator notify the FAA in writing whenever a non-Federally funded project involves the construction of a new airport; the construction, realigning, altering, activating, or abandoning of a runway, landing strip, or associated taxiway; or the deactivation or abandoning of an entire airport. Notification involves submitting FAA Form 7480-1, Notice of Landing Area Proposal, to the nearest FAA Regional Airports Division Office or Airports District Office.

Also, any person proposing any kind of construction or alteration of objects that affect navigable airspace, as defined in 14 CFR part 77 must notify the FAA. This includes construction equipment and proposed parking areas for this equipment (i.e., cranes, graders, etc.). FAA Form 7460-1, Notice of Proposed Construction or Alteration, can be used for this purpose and submitted to the FAA Regional Airports Division Office or Airports District Office. (See AC 70/7460-2, *Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace*.)

If construction operations require a shutdown of an airport owned NAVAID from service for more than 24 hours or in excess of 4 hours daily on consecutive days, we recommend a 45-day minimum notice prior to facility shutdown. Coordinate work for a FAA owned NAVAID shutdown with the local FAA Airways Facilities Office. In addition, procedures that address unanticipated utility outages and cable cuts that could impact FAA NAVAIDs must be addressed.

**2-14. WORK SCHEDULING AND ACCOMPLISHMENT.**

Airport operators—or tenants having construction on their leased properties—should use predesign, prebid, and preconstruction conferences to introduce the subject of airport operational safety during construction (see AC 150/5300-9, *Predesign, Prebid, and Preconstruction Conferences for Airport Grant Projects*). The airport operator, tenants, and construction contractors should integrate operational safety requirements into their planning and work schedules as early as practical. Operational safety should be a standing agenda item for discussion during progress meetings throughout the project. The contractor and airport operator should carry out onsite inspections throughout the project and immediately remedy any deficiencies, whether caused by negligence, oversight, or project scope change.



## CHAPTER 3. SAFETY STANDARDS AND GUIDELINES

### Section 1. Runway and Taxiway Safety Areas, Obstacle-Free Zones, and Object-Free Areas

#### 3-1. OVERVIEW.

Airport operators must use these safety guidelines when preparing plans and specifications for construction activities in areas that may interfere with aircraft operations. The safety plan should recognize and address these standards for each airport construction project. However, the safety plan must reflect the specific needs of a particular project, and for this reason, these safety guidelines should not be incorporated verbatim into project specifications. For additional guidance on meeting safety and security requirements, refer to the planning guide template included in Appendix 3 of this AC.

#### 3-2. RUNWAY SAFETY AREA (RSA)/ OBSTACLE-FREE ZONE (OFZ).

A runway safety area is the defined surface surrounding the runway prepared or suitable for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway (see AC 150/5300-13, *Airport Design*). Construction activities within the standard RSA are subject to the following conditions:

##### a. Runway edges.

(1) No construction may occur closer than 200 feet (60m) from the runway centerline unless the runway is closed or restricted to aircraft operations, requiring an RSA that is equal to the RSA width available during construction, or 400 feet, whichever is less (see AC 150/5300-13, Tables 3-1 through 3-3).

(2) Personnel, material, and/or equipment must not penetrate the OFZ, as defined in AC 150/5300-13.

(3) The airport operator must coordinate the construction activity in the RSA as permitted above with the ATCT and the FAA Regional Airports Division Office or appropriate Airports District Office and issue a local NOTAM.

##### b. Runway ends.

(1) An RSA must be maintained of such dimensions that it extends beyond the end of the runway a distance equal to that which existed before construction activity, unless the runway is closed or restricted to aircraft operations for which the reduced RSA is adequate (see AC 150/5300-13). The temporary use of declared distances and/or partial runway closures may help provide the necessary RSA.

In addition, all personnel, materials, and/or equipment must remain clear of the applicable threshold siting surfaces, as defined in Appendix 2, "Threshold Siting Requirements," of AC 150/5300-13.<sup>1</sup> Consult with the appropriate FAA Regional Airports Division Office or Airports District Office to determine the appropriate approach surface required.

(2) Personnel, material, and/or equipment must not penetrate the OFZ, as defined in AC 150/5300-13.

(3) The safety plan must provide procedures for ensuring adequate distance for blast protection, if required by operational considerations.

(4) The airport operator must coordinate construction activity in this portion of the RSA with the ATCT and the FAA Regional Airports Division Office or appropriate Airports District Office and issue a local NOTAM.

##### c. Excavations.

(1) Construction contractors must prominently mark open trenches and excavations at the construction site with red or orange flags, as approved by the airport operator, and light them with red lights during hours of restricted visibility or darkness.

(2) Open trenches or excavations are not permitted within 200 feet (60m) of the runway centerline and at least the existing RSA distance from the runway threshold while the runway is open. If the runway must be opened before excavations are backfilled, cover the excavations appropriately. Coverings for open trenches or excavations must be of sufficient strength to support the weight of the heaviest aircraft operating on the runway.

#### 3-3. TAXIWAY SAFETY AREAS/OBJECT-FREE AREAS.

a. Unrestricted construction activity is permissible adjacent to taxiways when the taxiway is restricted to aircraft such that the available taxiway safety area is equal

<sup>1</sup>If a full safety area cannot be obtained through declared distances and partial closures, or other methods such as alternate runway use, construction activity may operate in the RSA as long as conditions cited in paragraph 3-1b(2) thru (4) are met. In addition, various surfaces outlined in AC 150/5300-13 and Terminal Instrument Procedures (TERPS) must be protected through an aeronautical study.

to at least ½ of the widest wingspan of the aircraft expected to use the taxiway and the available taxiway object-free area is equal to at least .7 times the widest wingspan plus 10 feet. (See AC 150/5300-13 for guidance on taxiway safety and object-free areas.)

Construction activity may be accomplished closer to a taxiway, subject to the following restrictions:

- (1) The activity is first coordinated with the airport operator.
- (2) Appropriate NOTAMs are issued.
- (3) Marking and lighting meeting the provisions of paragraph 3-9 are implemented.
- (4) Adequate clearance is maintained between equipment and materials and any part of an aircraft. If such clearance can only be maintained if an aircraft does not have full use of the entire taxiway width (with its

main landing gear at the edge of the pavement), then it will be necessary to move personnel and equipment for each passing aircraft. In these situations, flag persons will be used to direct construction equipment, and wing walkers may be necessary to guide aircraft. Wing walkers should be airline/aviation personnel rather than construction workers.

b. Construction contractors must prominently mark open trenches and excavations at the construction site, as approved by the airport operator, and light them with red lights during hours of restricted visibility or darkness

c. Excavations and open trenches may be permitted up to the edge of a structural taxiway and apron pavement provided the dropoff is marked and lighted per paragraph 3-9, "Hazard Marking and Lighting."

## Section 2. Temporary Runway Thresholds

### 3-4. OVERVIEW.

Construction activity in a runway approach area may result in the need to partially close a runway or displace the existing runway threshold. In either case, locate the threshold in accordance with Appendix 2 of AC 150/5300-13, *Airport Design*. Objects that do not penetrate these surfaces may still be obstructions to air navigation and may affect standard instrument approach procedures. Coordinate these objects with the FAA's Regional Airports Office or appropriate Airports District Office, as necessary. Refer to the current edition of AC 150/5300-13 for guidance on threshold siting requirements. The partial runway closure, the displacement of the runway threshold, as well as closures of the complete runway and other portions of the movement area also requires coordination with appropriate ATCT personnel and airport users.

**Caution regarding partial runway closures:** When filing a NOTAM for a partial runway closure, clearly state to FSS personnel that the portion of pavement located prior to the threshold is not available for landing and departing traffic. In this case, the threshold has been moved for both landing and takeoff purposes (this is different than a displaced threshold).

Example NOTAM: "North 1,000 feet of Runway 18/36 is closed; 7,000 feet remain available on Runway 18 and Runway 36 for arrivals and departures." There may be situations where the portion of closed runway is available for taxiing only. If so, the NOTAM must reflect this condition.

**Caution regarding displaced thresholds:** Implementation of a displaced threshold affects runway length available for aircraft landing over the displacement. Depending on the reason for the displacement (to provide obstruction clearance or RSA),

such a displacement may also require an adjustment in the landing distance available and accelerate-stop distance available in the opposite direction. If project scope includes personnel, equipment, excavation, etc. within the RSA of any usable runway end, we do not recommend a displaced threshold unless arrivals and departures toward the construction activity are prohibited. Instead, implement a partial closure.

### 3-5. MARKING GUIDELINES FOR TEMPORARY THRESHOLD.

Ensure that markings for temporary displaced thresholds are clearly visible to pilots approaching the airport to land. When construction personnel and equipment are located close to any threshold, a temporary visual NAVAID, such as runway end identifier lights (REIL), may be required (even on unlighted runways) to define the new beginning of the runway clearly. A visual vertical guidance device, such as a visual approach slope indicator (VASI), pulse light approach slope indicator (PLASI), or precision approach path indicator (PAPI), may be necessary to assure landing clearance over personnel, vehicles, equipment, and/or above-grade stockpiled materials. If such devices are installed, ensure an appropriate descriptive NOTAM is issued to inform pilots of these conditions. The current edition of AC 150/5340-1, *Standards for Airport Markings*, describes standard marking colors and layouts. In addition, we recommend that a temporary runway threshold be marked using the following guidelines:

a. Airport markings must be clearly visible to pilots; not misleading, confusing, or deceptive; secured in place to prevent movement by prop wash, jet blast, wing vortices, or other wind currents; and constructed of

materials that would minimize damage to an aircraft in the event of inadvertent contact.

(1) Pavement markings for temporary closed portions of the runway should consist of yellow chevrons to identify pavement areas that are unsuitable for takeoff/landing (see AC 150/5340-1). If unable to paint the markings on the pavement, construct them from any of the following materials: double-layered painted snow fence, colored plastic, painted sheets of plywood, or similar materials. They must be properly configured and secured to prevent movement by prop wash, jet blast, or other wind currents.

(2) It may be necessary to remove or cover runway markings, such as runway designation markings and aiming point markings, depending on the length of construction and type of activity at the airport.

(3) When threshold markings are needed to identify the temporary beginning of the runway that is available for landing, use a white threshold bar of the dimensions specified in AC 150/5340-1.

(4) If temporary outboard elevated or flush threshold bars are used, locate them outside of the runway pavement surface, one on each side of the runway. They should be at least 10 feet (3m) in width and extend outboard from each side of the runway so they are clearly visible to landing and departing aircraft. These threshold bars are white. If the white threshold bars are not discernable on grass or snow, apply a black background with appropriate material over the ground to ensure the markings are clearly visible.

(5) A temporary threshold may also be marked with the use of retroreflective, elevated markers. One side of such markers is green to denote the approach end of the runway; the side that is seen by pilots on rollout is red. See AC 150/5345-39, *FAA Specification L-853, Runway and Taxiway Retroreflective Markers*.

(6) At 14 CFR part 139 certificated airports, temporary elevated threshold markers must be mounted with a frangible fitting (see 14 CFR part 139.309). However, at noncertificated airports, the temporary elevated threshold markings may either be mounted with a frangible fitting or be flexible. See AC 150/5345-39.

b. The application rate of the paint to mark a short-term temporary runway threshold may deviate from the standard (see Item P-620, "Runway and Taxiway Painting," in AC 150/5370-10, *Standards for Specifying Construction of Airports*), but the dimensions must meet the existing standards, unless coordinated with the appropriate offices.

c. When a runway is partially closed, the distance remaining signs for aircraft landing in the opposite direction should be covered or removed during the construction.

### 3-6. LIGHTING GUIDELINES FOR TEMPORARY THRESHOLD.

A temporary runway threshold must be lighted if the runway is lighted and it is the intended threshold for night landings or instrument meteorological conditions. We recommend that temporary threshold lights and related visual NAVAIDs be installed outboard of the edges of the full-strength pavement with bases at grade level or as low as possible, but not to exceed 3 inches (7.6cm) above ground. When any portion of a base is above grade, place properly compacted fill around the base to minimize the rate of gradient change so aircraft can, in an emergency, cross at normal landing or takeoff speeds without incurring significant damage (see AC 150/5370-10). We recommend that the following be observed when using temporary runway threshold lighting:

a. Maintain threshold and edge lighting color and spacing standards as described in AC 150/5340-24, *Runway and Taxiway Edge Lighting System*. Battery-powered, solar, or portable lights that meet the criteria in AC 150/5345-50, *Specification for Portable Runway Lights*, may be used. These systems are intended primarily for visual flight rules (VFR) aircraft operation but may be used for instrument flight rules (IFR) aircraft operations, upon individual approval from the Flight Standards Division of the applicable FAA Regional Office.

b. When the runway has been partially closed, disconnect edge and threshold lights with associated isolation transformers on that part of the runway at and behind the threshold (i.e., the portion of the runway that is closed). Alternately, cover the light fixture in such a way as to prevent light leakage. Avoid removing the lamp from energized fixtures because an excessive number of isolation transformers with open secondaries may damage the regulators and/or increase the current above its normal value.

c. Secure, identify, and place any temporary exposed wiring in conduit to prevent electrocution and fire ignition sources.

d. Reconfigure yellow lenses (caution zone), as necessary. If the runway has centerline lights, reconfigure the red lenses, as necessary, or place the centerline lights out of service.

e. Relocate the visual glide slope indicator (VGSI), such as VASI and PAPI; other airport lights, such as REIL; and approach lights to identify the temporary threshold. Another option is to disable the VGSI or any equipment that would give misleading indications to pilots as to the new threshold location. Installation of temporary visual aids may be necessary to provide adequate guidance to pilots on approach to the affected runway. If the FAA owns and operates the VGSI,

coordinate its installation or disabling with the local Airway Facilities Systems Management Office.

f. Issue a NOTAM to inform pilots of temporary lighting conditions.

### Section 3. Other Construction Marking and Lighting Activities

#### 3-7. OVERVIEW.

Ensure that construction areas, including closed runways, are clearly and visibly separated from movement areas and that hazards, facilities, cables, and power lines are identified prominently for construction contractors. Throughout the duration of the construction project, verify that these areas remain clearly marked and visible at all times and that marking and lighting aids remain in place and operational. Routine inspections must be made of temporary construction lighting, especially battery-powered lighting since weather conditions can limit battery life.

#### 3-8. CLOSED RUNWAY AND TAXIWAY MARKING AND LIGHTING.

Closed runway markings consist of a yellow "X" in compliance with the standards of AC 150/5340-1, *Standards for Airport Markings*. A very effective and preferable visual aid to depict temporary closure is the lighted "X" signal placed on or near the runway designation numbers. This device is much more discernible to approaching aircraft than the other materials described. If the lighted "X" is not available, construct the marking of any of the following materials: double-layered painted snow fence, colored plastic, painted sheets of plywood, or similar materials. They must be properly configured and secured to prevent movement by prop wash, jet blast, or other wind currents. In addition, the airport operator may install barricades, traffic cones, activate stop bars, or other acceptable visual devices at major entrances to the runways to prevent aircraft from entering a closed portion of runway. The placement of even a single reflective barricade with a "do not enter" sign on a taxiway centerline can prevent an aircraft from continuing onto a closed runway. If the taxiway must remain open for aircraft crossings, barricades or markings, as described above or in paragraph 3-9, should be placed on the runway.

##### a. Permanently closed runways.

For runways and taxiways that have been permanently closed, disconnect the lighting circuits. For runways, obliterate the threshold marking, runway designation marking, and touchdown zone markings, and place "X's" at each end and at 1,000-foot (300-m) intervals. For taxiways, place an "X" at the entrance of the closed taxiway.

##### b. Temporarily closed runway and taxiways.

For runways that have been temporarily closed, place an "X" at the each end of the runway. With taxiways, place an "X" at the entrance of the closed taxiway.

##### c. Temporarily closed airport.

When the airport is closed temporarily, mark the runways as closed and turn off the airport beacon.

##### d. Permanently closed airports

When the airport is closed permanently, mark the runways as permanently closed, disconnect the airport beacon, and place an "X" in the segmented circle or at a central location if no segmented circle exists.

#### 3-9. HAZARD MARKING AND LIGHTING.

Provide prominent, comprehensible warning indicators for any area affected by construction that is normally accessible to aircraft, personnel, or vehicles. Using appropriate hazard marking and lighting may prevent damage, injury, traffic delays, and/or facility closures. Hazard marking and lighting must restrict access and make specific hazards obvious to pilots, vehicle drivers, and other personnel. Barricades, traffic cones (weighted or sturdily attached to the surface), or flashers are acceptable methods used to identify and define the limits of construction and hazardous areas on airports.

Provide temporary hazard marking and lighting to prevent aircraft from taxiing onto a closed runway for takeoff and to identify open manholes, small areas under repair, stockpiled material, and waste areas. Also consider less obvious construction-related hazards and include markings to identify FAA, airport, and National Weather Service facilities cables and power lines; instrument landing system (ILS) critical areas; airport surfaces, such as RSA, OFA, and OFZ; and other sensitive areas to make it easier for contractor personnel to avoid these areas.

The construction specifications must include a provision requiring the contractor to have a person on call 24 hours a day for emergency maintenance of airport hazard lighting and barricades. The contractor must file the contact person's information with the airport.

##### a. Nonmovement areas.

Indicate construction locations on nonmovement areas in which no part of an aircraft may enter by using barricades that are marked with diagonal, alternating orange and white stripes. Barricades may be supplemented with alternating

orange and white flags at least 20 by 20 inches (50 by 50 cm) square and made and installed so they are always in an extended position, properly oriented, and securely fastened to eliminate jet engine ingestion. Such barricades may be many different shapes and made from various materials, including railroad ties, sawhorses, jersey barriers, or barrels. During reduced visibility or night hours, supplement the barricades with red lights, either flashing or steady-burning, which should meet the luminance requirements of the State Highway Department (yellow lights are not acceptable after October 1, 2004). The intensity of the lights and spacing for barricade flags and lights must adequately and without ambiguity delineate the hazardous area.

**b. Movement areas.**

Use orange traffic cones; red lights, either flashing or steady-burning, which should meet the luminance requirements of the State Highway Department (yellow lights are not acceptable after October 1, 2004); collapsible barricades marked with diagonal, alternating orange and white stripes; and/or signs to separate all construction/maintenance areas from the movement area. All barricades, temporary markers, and other objects placed and left in safety areas associated with any open runway, taxiway, or taxilane must be as low as possible to the ground; of low mass; easily collapsible upon contact with an aircraft or any of its components; and weighted or sturdily attached to the surface to prevent displacement from prop wash, jet blast, wing vortex, or other surface wind currents. If affixed to the surface, they must be frangible at grade level or as low as possible, but not to exceed 3 inches (7.6cm) above the ground. Do not use nonfrangible hazard markings, such as concrete barriers and/or metal-drum-type barricades, in aircraft movement areas. Do not use railroad ties on runways.

Use highly reflective barriers with flashing or steady-burning red lights to barricade taxiways leading to closed runways. Evaluate all operating factors when determining how to mark temporary closures that can last from 10 to 15 minutes to a much longer period of time. However, we strongly recommend that, even for closures of relatively short duration, major taxiway/runway intersections be identified with barricades spaced no greater than 20 feet (6m) apart. Mark the barricades with a flashing or steady-burning red light. At a minimum, use a single barricade placed on the taxiway centerline.

**3-10. CONSTRUCTION NEAR NAVIGATIONAL AIDS (NAVAIDS).**

Construction activities, materials/equipment storage, and vehicle parking near electronic NAVAIDS require special consideration since they may interfere with signals essential to air navigation. Evaluate the effect of construction activity and the required distance and direction from the NAVAID for each construction project. Pay particular attention to stockpiling material, as well as

to movement and parking of equipment that may interfere with line of sight from the ATCT or with electronic emissions. Interference from construction may require NAVAID shutdown or adjustment of instrument approach minimums for IFR. This condition requires that a NOTAM be filed. Construction activities and materials/equipment storage near a NAVAID may also obstruct access to the equipment and instruments for maintenance. Before commencing construction activity, parking vehicles, or storing construction equipment and materials near a NAVAID, consult with the nearest FAA Airway Facilities Office.

**3-11. CONSTRUCTION SITE ACCESS AND HAUL ROADS.**

Determine the construction contractor's access to the construction sites and haul roads. Do not permit the construction contractor to use any access or haul roads other than those approved. Construction contractors must submit specific proposed routes associated with construction activities to the airport operator for evaluation and approval as part of the safety plan before beginning construction activities. These proposed routes must also provide specifications to prevent inadvertent entry to movement areas. Pay special attention to ensure that ARFF right of way on access and haul roads is not impeded at any time and that construction traffic on haul roads does not interfere with NAVAIDS or approach surfaces of operational runways.

**3-12. CONSTRUCTION MATERIAL STOCKPILING.**

Stockpiled materials and equipment storage are not permitted within the RSA and OFZ of an operational runway. The airport operator must ensure that stockpiled materials and equipment adjacent to these areas are prominently marked and lighted during hours of restricted visibility or darkness. This includes determining and verifying that materials are stored at an approved location to prevent foreign object damage and attraction of wildlife.

**3-13. OTHER LIMITATIONS ON CONSTRUCTION.**

Contractors may not use open-flame welding or torches unless adequate fire safety precautions are provided and the airport operator has approved their use. Under no circumstances should flare pots be used within the AOA at any time. The use of electrical blasting caps must not be permitted on or within 1,000 feet (300m) of the airport property (see AC 150/5370-10, *Standards for Specifying Construction of Airports*).

### 3-14. FOREIGN OBJECT DEBRIS (FOD) MANAGEMENT.

Waste and loose materials, commonly referred to as FOD, are capable of causing damage to aircraft landing gears, propellers, and jet engines. Construction contractors must

not leave or place FOD on or near active aircraft movement areas. Materials tracked onto these areas must be continuously removed during the construction project. We also recommend that airport operators and construction contractors carefully control and continuously remove waste or loose materials that might attract wildlife.

## Section 4. Safety Hazards and Impacts

### 3-15. OVERVIEW.

The situations identified below are potentially hazardous conditions that may occur during airport construction projects. Safety area encroachments, unauthorized and improper ground vehicle operations, and unmarked or uncovered holes and trenches near aircraft operating surfaces pose the most prevalent threats to airport operational safety during airport construction projects. Airport operators and contractors should consider the following when performing inspections of construction activity:

- a. Excavation adjacent to runways, taxiways, and aprons.
- b. Mounds of earth, construction materials, temporary structures, and other obstacles near any open runway, taxiway, or taxilane; in the related object-free area and aircraft approach or departure areas/zones; or obstructing any sign or marking.
- c. Runway resurfacing projects resulting in lips exceeding 3 inches (7.6cm) from pavement edges and ends.
- d. Heavy equipment (stationary or mobile) operating or idle near AOAs, in runway approaches and departures areas, or in OFZs.
- e. Equipment or material near NAVAIDs that may degrade or impair radiated signals and/or the monitoring of navigational and visual aids. Unauthorized or improper vehicle operations in localizer or glide slope critical areas, resulting in electronic interference and/or facility shutdown.
- f. Tall and especially relatively low-visibility units (i.e., equipment with slim profiles)—cranes, drills, and similar objects—located in critical areas, such as OFZs and approach zones.
- g. Improperly positioned or malfunctioning lights or unlighted airport hazards, such as holes or excavations, on any apron, open taxiway, or open taxilane or in a related safety, approach, or departure area.
- h. Obstacles, loose pavement, trash, and other debris on or near AOAs. Construction debris (gravel,

sand, mud, paving materials, etc.) on airport pavements may result in aircraft propeller, turbine engine, or tire damage. Also, loose materials may blow about, potentially causing personal injury or equipment damage.

- i. Inappropriate or poorly maintained fencing during construction intended to deter human and animal intrusions into the AOA. Fencing and other markings that are inadequate to separate construction areas from open AOAs create aviation hazards.

- j. Improper or inadequate marking or lighting of runways (especially thresholds that have been displaced or runways that have been closed) and taxiways that could cause pilot confusion and provide a potential for a runway incursion. Inadequate or improper methods of marking, barricading, and lighting of temporarily closed portions of AOAs create aviation hazards.

- k. Wildlife attractants—such as trash (food scraps not collected from construction personnel activity), grass seeds, or ponded water—on or near airports.

- l. Obliterated or faded markings on active operational areas.

- m. Misleading or malfunctioning obstruction lights. Unlighted or unmarked obstructions in the approach to any open runway pose aviation hazards.

- n. Failure to issue, update, or cancel NOTAMs about airport or runway closures or other construction-related airport conditions.

- o. Failure to mark and identify utilities or power cables. Damage to utilities and power cables during construction activity can result in the loss of runway/taxiway lighting; loss of navigational, visual, or approach aids; disruption of weather reporting services; and/or loss of communications.

- p. Restrictions on ARFF access from fire stations to the runway-taxiway system or airport buildings.

- q. Lack of radio communications with construction vehicles in airport movement areas.

- r. Objects, regardless of whether they are marked or flagged, or activities anywhere on or near an airport

that could be distracting, confusing, or alarming to pilots during aircraft operations.

s. Water, snow, dirt, debris, or other contaminants that temporarily obscure or derogate the visibility of runway/taxiway marking, lighting, and pavement edges. Any condition or factor that obscures or diminishes the visibility of areas under construction.

t. Spillage from vehicles (gasoline, diesel fuel, oil, etc.) on active pavement areas, such as runways, taxiways, ramps, and airport roadways.

u. Failure to maintain drainage system integrity during construction (e.g., no temporary drainage provided when working on a drainage system).

v. Failure to provide for proper electrical lockout and tagging procedures. At larger airports with multiple maintenance shifts/workers, construction contractors should make provisions for coordinating work on circuits.

w. Failure to control dust. Consider limiting the amount of area from which the contractor is allowed to strip turf.

x. Exposed wiring that creates an electrocution or fire ignition hazard. Identify and secure wiring, and place it in conduit or bury it.

y. Site burning, which can cause possible obscuration.

z. Construction work taking place outside of designated work areas and out of phase.

## APPENDIX 1. RELATED READING MATERIAL

1. Obtain the latest version of the following free publications from the FAA on its Web site at <http://www.faa.gov/arp/>. In addition, these ACs are available by contacting the U.S. Department of Transportation, Subsequent Distribution Office, SVC-121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.
  - a. AC 150/5200-28, *Notices to Airmen (NOTAM) for Airport Operators*. Provides guidance for the use of the NOTAM System in airport reporting.
  - b. AC 150/5200-30, *Airport Winter Safety and Operations*. Provides guidance to airport owners/operators on the development of an acceptable airport snow and ice control program and on appropriate field condition reporting procedures.
  - c. AC 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports*. Provides guidance on locating certain land uses having the potential to attract hazardous wildlife to public-use airports.
  - d. AC 150/5210-5, *Painting, Marking, and Lighting of Vehicles Used on an Airport*. Provides guidance, specifications, and standards for painting, marking, and lighting vehicles operating in the airport air operations areas.
  - e. AC 150/5220-4, *Water Supply Systems for Aircraft Fire and Rescue Protection*. Provides guidance for the selection of a water source and standards for the design of a distribution system to support aircraft rescue and fire fighting service operations on airports.
  - f. AC 150/5340-1, *Standards for Airport Markings*. Contains FAA standards for markings used on airport runways, taxiways, and aprons.
  - g. AC 150/5340-14B, *Economy Approach Lighting Aids*. Describes standards for the design, selection, siting, and maintenance of economy approach lighting aids.
  - h. AC 150/5340-18, *Standards for Airport Sign Systems*. Contains FAA standards for the siting and installation of signs on airport runways and taxiways.
  - i. AC 150/5345-28, *Precision Approach Path Indicator (PAPI) Systems*. Contains the FAA standards for PAPI systems, which provide pilots with visual glide slope guidance during approach for landing.
  - j. AC 150/5380-5, *Debris Hazards at Civil Airports*. Discusses problems at airports, gives information on foreign objects, and explains how to eliminate such objects from operational areas.
  - k. AC 70/7460-2, *Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace*. Provides information to persons proposing to erect or alter an object that may affect navigable airspace and explains the need to notify the FAA before construction begins and the FAA's response to those notices, as required by 14 CFR part 77.
2. Obtain copies of the following publications from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Send a check or money order made payable to the Superintendent of Documents in the amount stated with your request. The Government Printing Office does not accept C.O.D. orders. In addition, the FAA makes these ACs available at no charge on the Web site at <http://www.faa.gov/arp/>.
  - a. AC 150/5300-13, *Airport Design*. Contains FAA standards and recommendations for airport design, establishes approach visibility minimums as an airport design parameter, and contains the object-free area and the obstacle free-zone criteria. (\$26. Supt. Docs.) SN050-007-01208-0.
  - b. AC 150/5370-10, *Standards for Specifying Construction of Airports*. Provides standards for construction of airports. Items covered include earthwork, drainage, paving, turfing, lighting, and incidental construction. (\$18. Supt. Docs.) SN050-007-0821-0.



**APPENDIX 2. DEFINITIONS OF TERMS USED IN THE AC**

- 1. AIR OPERATIONS AREA (AOA).** Any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area includes such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runways, taxiways, or aprons.
- 2. CONSTRUCTION.** The presence and movement of construction-related personnel, equipment, and materials in any location that could infringe upon the movement of aircraft.
- 3. CERTIFICATED AIRPORT.** An airport that has been issued an Airport Operating Certificate by the FAA under the authority of 14 CFR part 139, Certification and Operation: Land Airports Serving Certain Air Carriers, or its subsequent revisions.
- 4. FAA FORM 7460-1, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION.** The form submitted to the FAA Regional Air Traffic or Airports Division Office as formal written notification of any kind of construction or alteration of objects that affect navigable airspace, as defined in 14 CFR part 77, Objects Affecting Navigable Airspace (see AC 70/7460-2, *Proposed Construction or Alteration of Objects that May Affect the Navigable Airspace*, found at <http://www.faa.gov/arp/>).
- 5. FAA FORM 7480-1, NOTICE OF LANDING AREA PROPOSAL.** Form submitted to the FAA Airports Regional Division Office or Airports District Office as formal written notification whenever a project without an airport layout plan on file with the FAA involves the construction of a new airport; the construction, realigning, altering, activating, or abandoning of a runway, landing strip, or associated taxiway; or the deactivation or abandoning of an entire airport (found at <http://www.faa.gov/arp/>).
- 6. MOVEMENT AREA.** The runways, taxiways, and other areas of an airport that are used for taxiing or hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and aircraft parking areas (reference 14 CFR part 139).
- 7. OBSTRUCTION.** Any object/obstacle exceeding the obstruction standards specified by 14 CFR part 77, subpart C.
- 8. OBJECT-FREE AREA (OFA).** An area on the ground centered on the runway, taxiway, or taxilane centerline provided to enhance safety of aircraft operations by having the area free of objects except for those objects that need to be located in the OFA for air navigation or aircraft ground maneuvering purposes (see AC 150/5300-13, *Airport Design*, for additional guidance on OFA standards and wingtip clearance criteria).
- 9. OBSTACLE-FREE ZONE (OFZ).** The airspace below 150 feet (45m) above the established airport elevation and along the runway and extended runway centerline that is required to be clear of all objects, except for frangible visual NAVAIDs that need to be located in the OFZ because of their function, in order to provide clearance protection for aircraft landing or taking off from the runway and for missed approaches (refer to AC 150/5300-13 for guidance on OFZs).
- 10. RUNWAY SAFETY AREA (RSA).** A defined surface surrounding the runway prepared or suitable for reducing the risk of damage to airplanes in the event of an undershoot, overshoot, or excursion from the runway, in accordance with AC 150/5300-13.
- 11. TAXIWAY SAFETY AREA.** A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an airplane unintentionally departing the taxiway, in accordance with AC 150/5300-13.
- 12. THRESHOLD.** The beginning of that portion of the runway available for landing. In some instances, the landing threshold may be displaced.
- 13. DISPLACED THRESHOLD.** The portion of pavement behind a displaced threshold that may be available for takeoffs in either direction or landing from the opposite direction.
- 14. VISUAL GLIDE SLOPE INDICATOR (VGS).** This device provides a visual glide slope indicator to landing pilots. These systems include precision approach path indicators (PAPIs), visual approach slope indicators (VASIs), and pulse light approach slope indicators (PLASIs).

## APPENDIX 3. AIRPORT CONSTRUCTION SAFETY PLANNING GUIDE

### Aviation Safety Requirements During Construction

**PURPOSE.** *This appendix provides airport operators with boilerplate format and language for developing a safety plan for an airport construction project. Adapt this appendix, as applicable, to specific conditions found on the airport for which the plan is being developed. Consider including a copy of this safety plan in the construction drawings for easy access by contractor personnel. Plans should contain the following:*

#### 1. GENERAL SAFETY REQUIREMENTS.

Throughout the construction project, the following safety and operational practices should be observed:

- Operational safety should be a standing agenda item during progress meetings throughout the construction project.
- The contractor and airport operator must perform onsite inspections throughout the project, with immediate remedy of any deficiencies, whether caused by negligence, oversight, or project scope change.
- Airport runways and taxiways should remain in use by aircraft to the maximum extent possible.
- Aircraft use of areas near the contractor's work should be controlled to minimize disturbance to the contractor's operation.
- Contractor, subcontractor, and supplier employees or any unauthorized persons must be restricted from entering an airport area that would be hazardous.
- Construction that is within the safety area of an active runway, taxiway, or apron that is performed under normal operational conditions must be performed when the runway, taxiway, or apron is closed or use-restricted and initiated only with prior permission from the airport operator.
- The contracting officer, airport operator, or other designated airport representative may order the contractor to suspend operations; move personnel, equipment, and materials to a safe location; and stand by until aircraft use is completed.

#### 2. CONSTRUCTION MAINTENANCE AND FACILITIES MAINTENANCE.

Before beginning any construction activity, the contractor must, through the airport operator, give notice [using the

Notice to Airmen (NOTAM) System] of proposed location, time, and date of commencement of construction. Upon completion of work and return of all such areas to standard conditions, the contractor must, through the airport operator, verify the cancellation of all notices issued via the NOTAM System. Throughout the duration of the construction project, the contractor must—

- a. Be aware of and understand the safety problems and hazards described in AC 150/5370-2, *Operational Safety on Airports During Construction*.
- b. Conduct activities so as not to violate any safety standards contained in AC 150/5370-2 or any of the references therein.
- c. Inspect all construction and storage areas as often as necessary to be aware of conditions.
- d. Promptly take all actions necessary to prevent or remedy any unsafe or potentially unsafe conditions as soon as they are discovered.

#### 3. APPROACH CLEARANCE TO RUNWAYS.

Runway thresholds must provide an unobstructed approach surface over equipment and materials. (Refer to Appendix 2 in AC 150/5300-13, *Airport Design*, for guidance in this area.)

#### 4. RUNWAY AND TAXIWAY SAFETY AREA (RSA AND TSA).

Limit construction to outside of the approved RSA, as shown on the approved airport layout plan—unless the runway is closed or restricted to aircraft operations, requiring a lesser standard RSA that is equal to the RSA available during construction (see AC 150/5370-2 for exceptions). Construction activity within the TSA is permissible when the taxiway is open to aircraft traffic if adequate wingtip clearance exists between the aircraft and equipment/material; excavations, trenches, or other conditions are conspicuously marked and lighted; and local NOTAMs are in effect for the activity (see AC 150/5300-13 for wingtip clearance requirements). The NOTAM should state that, "personnel and equipment are working adjacent to Taxiway \_\_\_\_."

##### a. Procedures for protecting runway edges.

- Limit construction to no closer than 200 feet (60m) from the runway centerline—unless the runway is closed or restricted to aircraft operations, requiring a lesser standard RSA

- that is equal to the RSA available during construction.
- Prevent personnel, material, and/or equipment, as defined in AC 150/5300-13, Paragraph 306, "Obstacle Free Zone (OFZ)," from penetrating the OFZ.
- Coordinate construction activity with the Airport Traffic Control Tower (ATCT) and FAA Regional Airports Division Office or Airports District Office, and through the airport operator, issue an appropriate NOTAM.

Complete the following chart to determine the area that must be protected along the runway edges:

Runway	Aircraft Approach Category*	Airplane Design Group*	RSA Width in Feet Divided by 2*
	A, B, C, or D	I, II, III, or IV	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\*See AC 150/5300-13, *Airport Design*, to complete the chart for a specific runway.

**b. Procedures for protecting runway ends.**

- Maintain the RSA from the runway threshold to a point at least the distance from the runway threshold as existed before construction activity—unless the runway is closed or restricted to aircraft operations, requiring an RSA that is equal to the RSA length available during construction in accordance with AC 150/5300-13. This may involve the use of declared distances and partial runway closures (see AC 150/5370-2 for exceptions).
- Ensure all personnel, materials, and/or equipment are clear of the applicable threshold siting criteria surface, as defined in Appendix 2, "Threshold Siting Requirements," of AC 150/5300-13.
- Prevent personnel, material, and/or equipment, as defined in AC 150/5300-13, from penetrating the obstacle-free zone.
- Ensure adequate distance for blast protection is provided, as needed.
- Coordinate construction activity with the ATCT and FAA Regional Airports Division Office or Airports District Office, and through the airport operator, issue an appropriate NOTAM.
- Provide a drawing showing the profile of the appropriate surfaces of each runway end where construction will take place. Where operations by turbojet aircraft are anticipated, review takeoff procedures and jet blast characteristics of aircraft and incorporate safety measures for construction workers in the contract documents.

Complete the following chart to determine the area that must be protected before the runway threshold:

Runway End Number	Airplane Design Group* I, II, III, or IV	Aircraft Approach Category* A, B, C, or D	Minimum Safety Area Prior to the Threshold*	Minimum Unobstructed Approach Slope
_____	_____	_____	_____ : FEET	_____ : 1 to (threshold)
_____	_____	_____	_____ : FEET	_____ : 1 to (threshold)
_____	_____	_____	_____ : FEET	_____ : 1 to (threshold)
_____	_____	_____	_____ : FEET	_____ : 1 to (threshold)

\*See AC 150/5300-13, *Airport Design*, to complete the chart for a specific runway.

**5. MARKING AND LIGHTING FOR TEMPORARY THRESHOLDS.**

Marking and lighting for a temporary threshold is \_\_\_/is not \_\_\_ required. The airport owner or contractor, as specified in the contract, will furnish and maintain markings for temporary thresholds. Precision approach path indicators (PAPIs) or runway end identification lights (REIL) are \_\_\_/are not \_\_\_ required. The airport owner or contractor, as specified in the contract, will furnish and install all temporary lighting. Include appropriate items per AC 150/5370-2, Chapter 3, "Safety Standards and Guidelines." *If marking and lighting for the temporary threshold is not required, delete this section of the safety plan. If visual aids and/or markings are necessary, provide details. (Include applicable 14 CFR part 77 surfaces in the contract documents.)*

**6. CLOSED RUNWAY MARKINGS AND LIGHTING.**

The following must be specified for closed runways. Closed runway marking are \_\_\_/are not \_\_\_ required. Closed runway markings will be as shown on the plans \_\_\_/as furnished by the airport owner \_\_\_/other \_\_\_ (specify). Barricades, flagging, and flashers are \_\_\_/are not \_\_\_ required at Taxiway \_\_\_ and Runway \_\_\_ and will be supplied by the airport \_\_\_/other \_\_\_ (specify).

**7. HAZARDOUS AREA MARKING AND LIGHTING.**

Hazardous areas on the movement area will be marked with barricades, traffic cones, flags, or flashers (specify). These markings restrict access and make hazards obvious to aircraft, personnel, and vehicles. During periods of low visibility and at night, identify hazardous areas with red flashing or steady-burning lights (specify). The hazardous area marking and lighting will be supplied by

the airport operator/contractor, as specified in the contract, and will be depicted on the plans.

**8. TEMPORARY LIGHTING AND MARKING.**

Airport markings, lighting, and/or signs will be altered in the following manner (specify) during the period from \_\_\_ to \_\_\_. The alterations are depicted on the plans.

**9. VEHICLE OPERATION MARKING AND CONTROL.**

Include the following provisions in the construction contract, and address them in the safety plans:

a. When any vehicle, other than one that has prior approval from the airport operator, must travel over any portion of an aircraft movement area, it will be escorted and properly identified. To operate in those areas during daylight hours, the vehicle must have a flag or beacon attached to it. Any vehicle operating on the movement areas during hours of darkness or reduced visibility must be equipped with a flashing dome-type light, the color of which is in accordance with local or state codes.

b. It may be desirable to clearly identify the vehicles for control purposes by either assigned initials or numbers that are prominently displayed on each side of the vehicle. The identification symbols should be at minimum 8-inch (20-cm) block-type characters of a contrasting color and easy to read. They may be applied either by using tape or a water-soluble paint to facilitate removal. Magnetic signs are also acceptable. In addition, vehicles must display identification media, as specified in the approved security plan. *(This section should be revised to conform to the airport operator's requirements.)*

c. Employee parking shall be \_\_\_\_\_ (specify location), as designated by the airport manager \_\_\_\_\_/ project engineer \_\_\_\_\_/other \_\_\_\_\_ (specify).

d. Access to the job site shall be via \_\_\_\_\_ (specify route), as shown on the plans \_\_\_\_\_/designated by the engineer \_\_\_\_\_/designated by the superintendent \_\_\_\_\_/designated by the airport manager \_\_\_\_\_/other \_\_\_\_\_ (specify).

e. At 14 CFR part 139 certificated and towered airports, all vehicle operators having access to the movement area must be familiar with airport procedures for the operation of ground vehicles and the consequences of noncompliance.

f. If the airport is certificated and/or has a security plan, the airport operator should check for guidance on the additional identification and control of construction equipment.

#### 10. NAVIGATIONAL AIDS.

The contractor must not conduct any construction activity within navigational aid restricted areas without prior approval from the local FAA Airway Facilities sector representative. Navigational aids include instrument landing system components and very high-frequency omnidirectional range, airport surveillance radar. Such restricted areas are depicted on construction plans.

#### 11. LIMITATIONS ON CONSTRUCTION.

Additional limitations on construction include—

a. Prohibiting open-flame welding or torch cutting operations unless adequate fire safety precautions are provided and these operations have been authorized by the airport operator *(as tailored to conform to local requirements and restrictions)*.

b. Prominently marking open trenches, excavations, and stockpiled materials at the construction and lighting these obstacles during hours of restricted visibility and darkness.

c. Marking and lighting closed, deceptive, and hazardous areas on airports, as appropriate.

d. Constraining stockpiled material to prevent its movement as a result of the maximum anticipated aircraft blast and forecast wind conditions.

#### 12. RADIO COMMUNICATIONS.

Vehicular traffic located in or crossing an active movement area must have a working two-way radio in contact with the control tower or be escorted by a person in radio contact with the tower. The driver, through personal observation, should confirm that no aircraft is approaching the vehicle position. Construction personnel may operate in a movement area without two-way radio communication provided a NOTAM is issued closing the area and the area is properly marked to prevent incursions. Two-way radio communications are \_\_\_\_\_/are not \_\_\_\_\_ required between contractors and the Airport Traffic Control Tower \_\_\_\_\_/FAA Flight Service Station \_\_\_\_\_/Airport Aeronautical Advisory Stations (UNICOM/CTAF) \_\_\_\_\_. Radio contact is \_\_\_\_\_/is not \_\_\_\_\_ required between the hours of \_\_\_\_\_ and \_\_\_\_\_. Continuous monitoring is required \_\_\_\_\_/or is required only when equipment movement is necessary in certain areas \_\_\_\_\_. *(This section may be tailored to suit the specific vehicle and safety requirements of the airport sponsor.)*

#### 13. DEBRIS.

Waste and loose material must not be placed in active movement areas. Materials tracked onto these areas must be removed continuously during the work project.

APPENDIX 4. SAMPLE NOTAM

\_\_\_\_\_ AIRPORT

FAA NOTAM # \_\_\_\_\_ DATE: \_\_\_\_\_  
AIRPORT I.D. # \_\_\_\_\_ TIME: \_\_\_\_\_

NOTAM TEXT:

NOTIFICATON:

#### TOWER \_\_\_\_\_  
PHONE # INITIALS TIME CALLED IN BY

#### FSS \_\_\_\_\_  
PHONE # INITIALS TIME CALLED IN BY

AIRLINES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CANCELLED:

NOTIFICATON:

#### TOWER \_\_\_\_\_  
PHONE # INITIALS TIME CALLED IN BY

#### FSS \_\_\_\_\_  
PHONE # INITIALS TIME CALLED IN BY

AIRLINES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# MARITIME CODE OF SAFE PRACTICES

## 1. TERMINAL SAFETY PRECAUTIONS

Work in active marine terminals is coordinated through the Port Wharfing office. Any unusual procedures that could impact terminal operation should be cleared with the Wharfingers and the Port's Engineering Department at least 24 hours in advance (or as soon as feasible).

Conduct operations in such a manner as to 1) protect the safety of terminal, trucking, and Port employees, contractors and the public and 2) minimize interference with terminal and vessel operations.

### VEHICLES INSIDE MARINE TERMINALS

Vehicles brought into the terminal must be equipped with identifying signs on each side. No personal vehicles are allowed.

Limits on-terminal vehicles to those necessary to perform the work.

Minimize the need to drive around the terminal. Stage operations and remain there. Do not travel on foot away from the work area. Enter and exit the terminal only via company vehicle.

Obey terminal driving rules. Where not otherwise posted, terminal equipment has the right of way. **Maximum speed is 10 mph.**

### SITE OF OPERATIONS

The area of operations should encumber no more space than is required to perform the work safely.

Delineate the area of the operation using traffic cones, K-rail, caution tape, or other high-visibility method. Where feasible, park vehicles to form a protective barrier.

### CONTROL OF PERSONNEL

Employees must wear hard hats and high visibility clothing (with reflective elements at night).

Employees should remain in the area of operations; do not wander around.

Use a "spotter" where employees are exposed to traffic.

## 2. WATER SAFETY, WORKING NEAR WATER

Many Port work operations take place on or under piers and pilings, generally close to the water.

**Where employees could fall into water and a danger of drowning exists**, use the following safety devices, as appropriate:

- Personal Floatation Devices (life jackets) approved by the Coast Guard, of a type that will support an unconscious person's head above water
- Ring Buoys (life saving rings) approved by the Coast Guard (30" in diameter)
- Lifesaving Boats, either manually or power-operated, for emergency use and equipped with oars and oarlocks attached to the gunwales (where feasible), boathook, anchor, ring buoy with 50 feet of 600 pound capacity line and two life preservers. (Oars are not required in boats powered by an inboard motor.)

*Exception:* When employees are continuously protected by railings, nets, safety harnesses or other fall restraint, the safety devices listed above are not required.

**While working under piers and Port structures in small boats**, employees should take the following precautions:

- Pay special attention to weather and tidal conditions. Do not take chances; heavy swells, white caps, rain, windy conditions, and high tides may prevent safe entry under the piers.
- Where the ability to see hazards is blocked, station one employee on shore in a watch capacity. This employee should have a radio or telephone capable of communicating with the U.S. Coast Guard.
- Wear a life jacket at all times (see above). Employees should also wear appropriate head and foot protection.
- Be sure the boat contains two oars at all times (see above).
- Maintain radio communication with an employee on watch at all times.
- Bring a small bucket for bailing water.
- Bring a portable air horn in case of radio failure.
- Where darkness could hamper visibility, equip life jackets with portable strobe lights. Bring a floating flashlight in the boat with you.
- Before launching a boat, check it for leaks and damaged areas. Report any problems to your supervisor.



### 3. DREDGING REQUIREMENTS

Contractors performing dredging operations on the Port of Oakland (Port) Project are required to comply with all Local, State, Federal, American National Standard Industry (ANSI A10.15), United States Coast Guard (USCG), Corps of Engineers (Engineer Manual EM 385-1-1, Section 19), and the requirements of the Port as specified in this manual. Exclusion of any specific code, standard, rule, policy, or regulation does not exempt the contractor from compliance. In all cases, the most stringent safety requirement is to be applied.

#### ***Documentation:***

Submit to the Port prior to physical work on the site copies of the current inspections and certifications issued by the USCG when applicable. This is to include any USCG Forms 835 issued the preceding year.

Submit monthly documentation indicating the results of monthly inspections and test to maintain safe operating conditions. This is to include records of any drills and emergency system checks.

Provide copies of the current license or certification of Officers and crew members to the Project Manager representing the Port Authority.

#### ***Safety Manual:***

As required by Cal/OSHA, the submitted safety manual must address job specific safety issues. In conjunction with that requirement, the Port requires submission of the following:

- Copy of the Severe Weather Precautions Policy established for emergency purposes
- Copy of the emergency plan for fire, sinking, flooding, man overboard, and hazardous material incidents.
- Completed copy of Safety Checklist for Launches, Motor Boats and Skiffs (enclosed).
- Completed copy of The Safety Checklist for Floating Plants (enclosed)

#### ***Maritime Personnel Requirements:***

Submit to the Port Project Manager and Safety Manager the names of the competent person, qualified person and the responsible person and the safety representative. Definitions as specified by ANSI A10.15 and this manual:

- Maritime Competent Person – One who is capable of identifying existing and predictable hazards in the surrounding or working conditions which are unsanitary, hazardous, or dangerous to employees and who has authorization to take prompt corrective measures for elimination of such.
- Maritime Qualified Person – One who, possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems relating to the subject matter, the work, or the project.
- Maritime Responsible Person – One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experiences successfully demonstrated their ability to solve or resolve problems relating to the subject matter, the work, or the project, and who has authority to take prompt corrective actions
- Maritime Safety Representative – One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to the employees. This individual designated by the Contractor of Subcontractor with authority to take prompt corrective measures to eliminate such unsafe hazards or working conditions. This individual shall have no assigned duties outside of their safety responsibilities.

### **Specific Requirements:**

The Port of Oakland Safety Standards references numerous agencies and recognized organizations responsible for developing safety standards, some specific to dredging. The Port has identified the following safety standards and requirements specific to dredging safety as mandatory. Contractor is required to incorporate a statement acknowledging inclusion or compliance with each of these items into their written safety program submitted to the Port for review, no exceptions. Contractor shall also incorporate any of the remaining Sections from each of the following standards that may be applicable to their Scope of Services at the Port.

#### **ANSI A10.15 – 1974 American National Standard Safety Requirements for Dredging**

- **Section 3.** “General Requirements for Floating Plant and Marine Equipment”, in addition to each of the following Sections:
- **Section 4.** “Safety and Health Requirements” Specifically **4.1** Planning. Address each items noted in **4.1** and have copy of program available to review upon request.
- Comply with **Section 6.** “Housekeeping”. Specifically **6.1.3** To provide headroom and eliminate tripping hazards, hose lines and electrical conductors should be elevated over or placed under walkway or working surfaces or covered by adequate crossover planks.
- Comply with **Section 10.1** Fire Extinguishers. Fire extinguishers shall be provided and maintained in accordance with American National Standard for Installation of Portable Fire Extinguishers, Z112.1 – 1971 (NFPA No. 10 – 1970), and American National Standard Safety Standard for Soda-Acid Fire Extinguishers, Z171.1 – 1969 (UL 7 – 1969).
- **Section 10.4.3** “Apparatus and Equipment”. Fire fighting apparatus and equipment should be provided and installed in accordance with applicable National Fire Protection Association standards.
- **Section 10.5** “Fire Alarm Devices”. A siren, telephone system, or other alarm arrangements shall be provided on all dredges and quarter boats.
- **Section 10.6** “Fire Fighting Organizations, Training, and Drilling”.
- **Section 12.** “Welding, Cutting, and Heating”. Specifically **12.2.5** Jacketed vessels shall be vented before and during welding, cutting, or heating operations in order to release any pressure which may build up during the application of heat.
- **Section 14.1** Emergency Plan – Procedures and Drills.
- **Section 15.** “Accessways and Passageways”. Specifically **15.1** Non-slip surfaces shall be provided on all working decks, stair treads, ship ladders, platforms, catwalks, and walkways, particularly on the weather side of all doorways opening on deck. - **15.4** All floating pipelines 8 inches nominal diameter and over shall be equipped with walkway and guardrail on one side. Walkways shall be at least 20 inches wide and securely anchored to the pipeline, except that when floating pipelines, because of their design or application, cannot be used as an access or walkway, they need not meet these requirements. – **15.6** When two or more pieces of floating plant are being used as one unit, they shall be securely lashed or fastened together so as to minimize the opening between them. – and **15.10** At least two means of escape shall be provided from general areas in which crews are quartered or work regularly.
- **Section 16.** “Launches and Motorboats”. Specifically **16.1** On all marine work at least one launch or motorboat and operator shall be provided. In the following circumstances, a qualified crewman shall be assigned in addition to the operator:
  - (1) When extended trips are made from the work site.
  - (2) When conditions of navigation make it hazardous for an operator to leave the wheel at any time while underway
- **Section 19.** “Facilities for Quartering Personnel”. (if applicable)
- **Section 20.** “Pressurized Equipment and Systems”.
- **Section 22.** “Precautions Before Entering Closed or Confined Spaces” Specifically **22.2** “Work in Isolated or Confined Spaces”. Copy of the JHA shall accompany safety program for review prior to start of work.

**Corps of Engineers (Engineers Manual 385-1-1)**

- **Section 19.A.03 d** USCG approved PFD (Types I, II, III, or V) shall be worn by all personnel on decks exposed to severe weather, regardless of other safety devices used.
- **Section 19.D** Dredging.
- Submit monthly (but no less than quarterly, updated Safety Checklist for Floating Plants. Use of a different checklist must be submitted for approval.

## SAFETY CHECKLIST FOR FLOATING PLANT

**PROJECT:** \_\_\_\_\_

**CONTRACT #:** \_\_\_\_\_

<b>Contractor Name:</b>	<b>Subcontractor Name:</b>
<b>Plant Name:</b>	<b>Owner:</b>
<b>Superintendent:</b>	<b>Captain:</b>
<b>Engineer:</b>	<b>Number in Crew:</b>
<b>Contract Inspector:</b>	<b>Date of Inspection:</b>

1. Is a copy of the current USCG Form 835 available for plants regulated by USCG? (19.A.01)	Yes	No	N/A
2. Is documentation of an accredited marine surveyor (SAMS or NAMS) available for non-USCG inspected plants? (19.A.01)	Yes	No	N/A
3. Do all officers and crew possess an appropriate USCG license or USACE license and certification? (19.A.02)	Yes	No	N/A
4. Are periodic inspections and test records of all floating plant, equipment, and machinery available as part of the official project file? (19.A.01)	Yes	No	N/A
5. Is there a severe weather plan which contains the following available? (19.A.03)	Yes	No	N/A
a. a description of potential types of sever weather hazards and steps to guard against the hazards?			
b. the timeframe for implementing the plan?	Yes	No	N/A
c. the name and location of the safe harbor?	Yes	No	N/A
d. the name of the vessels which will be used to move any non-self	Yes	No	N/A

propelled plant, and their type, capacity, speed, and availability?			
e. river gage readings at which floating plant must be moved away from dams, river structures, etc. to safe areas?	Yes	No	N/A
6. Is the station bill conspicuously posted throughout the vessel? (19.A.04)	Yes	No	N/A
7. Has each crew member been given a written description of their emergency duties and are they familiar with them? (19.A.04)	Yes	No	N/A
8. Have the following drills and tests been recorded in the station log? (19.A.04)	Yes	No	N/A
a. abandon ship drill?			
b. fire drill?	Yes	No	N/A
c. man overboard drill?	Yes	No	N/A
d. pump shell or pipe rupture?	Yes	No	N/A
e. hull failure?	Yes	No	N/A
f. emergency power and lighting tests?	Yes	No	N/A
g. bimonthly emergency power generator tests?	Yes	No	N/A
h. bimonthly emergency lighting storage batteries test?	Yes	No	N/A
9. Are material safety data sheets (MSDSs) available for all hazardous materials on board? (06.B.01)	Yes	No	N/A
10. Are employees trained to handle hazardous materials? (06.B.01)	Yes	No	N/A
11. Are at least two employees on each shift certified in CPR and first aid? (03.A.02)	Yes	No	N/A
12. Is there a first aid log at each first aid station? (01.D.04)	Yes	No	N/A
13. Are first aid kits located in readily accessible location and adequately stocked? (03.B.01/.02)	Yes	No	N/A
14. Is there an adequate supply of approved, potable drinking water available? (02.A.01)	Yes	No	N/A
15. Are outlets dispensing non-potable water clearly marked "Water Unfit for Drinking", "Washing or Cooking"? (02.A.07)	Yes	No	N/A

16. Are the proper numbers of toilets, wash basins, and showers provided? (02.B.06/.07)	Yes	No	N/A
17. Are the water, soap, and a means of drying available? (02.C.02)	Yes	No	N/A
18. Is the latest information published by the USCG regarding aids to navigation available on board the vessel? (19.A.11)	Yes	No	N/A
19. Is the vessel equipped with the following: (19.A.05)	Yes	No	N/A
a. fenders?			
b. axes or emergency cutting equipment?	Yes	No	N/A
c. an appropriate navigational signal device?	Yes	No	N/A
d. general alarm system operated from primary electrical system with standby batteries on trickle charge?	Yes	No	N/A
e. easily accessible emergency controls that are adequately protected against accidental operation?	Yes	No	N/A
f. explosion-proof lights around gasoline and oil barges or other locations where a fire or explosive hazard exists?	Yes	No	N/A
g. interconnected emergency alarms?	Yes	No	N/A
h. smoke alarms in living quarters?	Yes	No	N/A
i. doors that open from both sides?	Yes	No	N/A
j. clearly marked emergency exits?	Yes	No	N/A
k. emergency stops for prime movers operating a dredge pump?	Yes	No	N/A
l. GFCI protection on grounded 120 or 240 volt systems in toilet/shower spaces, galley, machinery spaces, weather deck, exterior or near any sinks?	Yes	No	N/A
m. properly maintained and identified water tight compartments?	Yes	No	N/A
20. Fuel systems (19.A.06)	Yes	No	N/A
a. Are tanks or lines free of gauge glasses or try cocks?			
b. Do all fuel tanks have shut-off valves that can be operated outside the compartment in which the tank is located and outside the engine	Yes	No	N/A

compartment and outside the house bulkheads at or above the weather deck?			
c. Is there a shut-off valve at the engine end of the fuel lines that are 6 feet or more in length and can it be operated from outside the house bulkheads at or above the weather deck? Over board discharge?	Yes	No	N/A
d. Are all carburetors on gasoline engines equipped with a backfire trap or flame arrestor?	Yes	No	N/A
e. Are all carburetors (except downdraft type) equipped with a drip pan, with flame screen, which is continuously emptied by suction from the intake manifold or if permitted by the overboard discharge?	Yes	No	N/A
f. Are fuel storage tanks diked or curbed IAW NAVFAC DM-22? If not, are portable tanks used IAW USCG requirements in 46CFR Parts 64 and 98.3?	Yes	No	N/A
21. Are cables which cross the waterways between floating plants or between plant and mooring marked? (19.A.07)	Yes	No	N/A
22. Is there a fire and emergency warning system (or an established fire watch) on all vessels where people are quartered? (19.A.07)	Yes	No	N/A
23. Are all floors, decks, and bilge's free of accumulation of fuel and grease? (19.A.07)	Yes	No	N/A
24. Are there holdbacks or rings available to secure equipment during rough weather? (19.A.07)	Yes	No	N/A
25. Are all deck openings, elevated surfaces, and similar locations provided with guardrails, bulwarks, or taut cable guardlines? (19.A.07)	Yes	No	N/A
26. Are all rotating machinery, hot pipes, and moving cables guarded against accidental contact? (16.B.03)	Yes	No	N/A
27. Are hazardous energy control procedures available to insure that machinery will not be operated while greasing or making repairs? (12.A.01/.08)	Yes	No	N/A
28. Are decks free of tripping hazards? Or adequately marked in yellow? (19.A.07)	Yes	No	N/A
29. Is all deck cargo carried on fuel barges placed on dunnage? (19.A.07)	Yes	No	N/A
30. Are all pieces of floating plants operating as one unit securely fastened	Yes	No	N/A

together with no openings (or guarded openings)? (19.A.07)			
31. Is there a list of confined spaces available? (19.A.08)	Yes	No	N/A
32. Are all permitted required confined spaces labeled? (19.A.08)	Yes	No	N/A
33. Are engine spaces housing internal combustion engines having electric spark ignition systems equipped with exhaust fans? (19.A.10)	Yes	No	N/A
34. Are all machinery spaces and non-diesel fuel tanks compartments equipped with at least 2 ventilators, fitted with fans? (19.A.10)	Yes	No	N/A
35. Are the following spaces provided with an adequate natural ventilation system? (19.A.10)	Yes	No	N/A
a. spaces containing a portable fuel tank?			
b. living spaces or galley?	Yes	No	N/A
c. other compartment spaces?	Yes	No	N/A
36. Do vent intakes extend to within one foot of the bottom of the compartment? (19.A.10)	Yes	No	N/A
37. Is suitable eye protection provided at battery charging stations? (05.B.01/.05)	Yes	No	N/A
38. Are eye wash stations provided at battery charging stations? (06.B.02)	Yes	No	N/A
39. Are flammable items such as paint and thinners properly stored? (09.B)	Yes	No	N/A
40. Are gasoline and other flammable liquids properly stored, dispensed, and handled? (09.B.01/.02/.03)	Yes	No	N/A
41. Does all electrical wiring meet requirements of USCG-259, the National Electrical Safety Code and the National Electric Code? (11.A.01)	Yes	No	N/A
42. Are insulated mats provided at locations where machinery has exposed live parts? (11.A.07)	Yes	No	N/A
43. Are switch and transformer banks adequately protected and marked to keep unauthorized personnel out of the danger area? (11.A.02)	Yes	No	N/A
44. Are portable electric tools grounded by a multi-conductor cord with an identified conductor and a multi-contact polarized plug-in receptacle? (11.C.01)	Yes	No	N/A



45. Are ground fault circuit interrupters provided in locations where portable tools could be used? (11.C.05)	Yes	No	N/A
46. Are flexible cords protected in work area, appropriately secured or suspended and are they used for appropriate usages? (11.A.03 and Table 11-1)	Yes	No	N/A
47. Are all means of access properly secured, guarded and free of slipping and tripping hazards? (19.B.01)	Yes	No	N/A
48. Are all working decks, stair treads, ship ladders, platforms, catwalks, and walkways provided with non-slip surfaces? (19.B.01)	Yes	No	N/A
49. Are grab bars provided on the sides of super structure of tugs, tenders, and launches except where railings are present? (19.B.01)	Yes	No	N/A
50. Are double rung or flat tread type Jacob's ladders restricted to use only when no safer form of access is practical? (19.B.01)	Yes	No	N/A
51. Is there a safe means for boarding or leaving the vessel? (19.B.02)	Yes	No	N/A
52. Is there a stairway, ladder, ramp, gangway or personnel hoist provided at all personnel points of access with breaks of 19 inches or more in elevation? (19.B.02)	Yes	No	N/A
53. Are gangways and ramps: (19.B.02)	Yes	No	N/A
a. secured at one end by at least one point on each side with lines or chains to prevent overturning?			
b. supported at the other end in such a manner as to support them and their normal loads in the event they slid off their supports?	Yes	No	N/A
c. placed at an angle no greater than that recommended by the manufacturer?	Yes	No	N/A
d. provided with a standard guardrail?	Yes	No	N/A
54. Are stairs or permanent inclined ladders provided for vertical access between decks? (09.B.03)	Yes	No	N/A
55. Is there at least 2 feet of clearance on outboard edges for passageways? (19.B.3)	Yes	No	N/A
56. Is the vessel equipped with at least one portable or permanent ladder	Yes	No	N/A

with at least one portable or permanent ladder with which to rescue a person in the water? (19.B.04)			
57. Are there at least 2 means of escape from all assembly, sleeping and messing areas on the plant? (19.B.04)	Yes	No	N/A
58. Are all means of access maintained safe and functional? (19.B.04)	Yes	No	N/A
59. Are all floating pipelines used as walkways equipped with a walkway which is at least 20 inches wide and has a handrail on at least one side? (19.B.05)	Yes	No	N/A
60. Are floating pipelines that are not intended as walkways barricaded on both ends? (19.B.05)	Yes	No	N/A
61. Are positive measures taken to raise and secure the ladder and to block suction and discharge lines during maintenance on pumps and suction or discharge lines? (19.D.01)	Yes	No	N/A
62. Do floating or trestle supported dredge pipelines display the following lights at night and in periods of restricted visibility: (19.D.02) a. One row of yellow lights that: (1) flash 50-70 times per minute? (2) are visible all around the horizon? (3) are visible for at least 2 miles on a clear night? (4) are between 3-10 feet above water? (5) are approximately evenly spaced? (6) are not more than 30 feet apart where the pipeline crosses a navigable channel? (7) are sufficient in number to clearly show the pipeline's length and course?	Yes (1)	No	N/A
	(2)		
	(3)		
	(4)		
	(5)		
	(6)		
	(7)		
b. two red lights at each end of the pipeline (including ends in a channel where the pipeline is separated to allow vessels to pass that: (1) are visible all around the horizon? (2) are visible for at least 2 miles on a clear dark night? (3) are 3 feet apart in a vertical line with the lower light at the same height above the water as the flashing yellow light?	Yes (1)	No	N/A
	(2)		
	(3)		
63. Is the dredge designed such that a failure or rupture of any dredge pump component including the pipe shall not cause the dredge to sink? (19.D.04)	Yes	No	N/A
64. Is submerged pipeline resting on the bottom where it crosses the navigation channel and is it and the anchoring system no higher than the required project depth? (19.D.03)	Yes	No	N/A

65. Is buoyant or semi-buoyant pipeline fully submerged and on the bottom? (19.D.03)	Yes	No	N/A
66. Is raised pipeline adequately marked? (19.D.03)	Yes	No	N/A
67. Is a bilge alarm or shutdown interface available on any dredge with the dredge pump below the waterline? (19.D.07)	Yes	No	N/A
68. Are two positive means available to secure "stone boxes" when the boxes are under positive pressure? (19.D.08)	Yes	No	N/A

**REMARKS: (for specifics and details to "NO" / "N/A" Answers to above)**

**Contractor Inspector Signature**

**Contractor QC/ Safety Officer / Project Manager Signature**

SAD Form 1437a-R (March 1997) - *Previous editions may be used for contracts referencing the 1992 Edition of EM 385-1-1.* (SAFETY CHECKLIST FOR FLOATING PLANT- Total 6 pages)

## SAFETY CHECKLIST FOR LAUNCHES, MOTORBOATS, AND SKIFFS

PROJECT: \_\_\_\_\_

CONTRACT #: \_\_\_\_\_

<b>Contractor Name:</b>	<b>Subcontractor Name:</b>
<b>Superintendent:</b>	<b>Engineer:</b>
<b>Name of Equipment:</b>	<b>Number in Crew (if applicable):</b>
<b>Inspector:</b>	<b>Date of Inspection:</b>

1. Is a qualified crew person assigned to assist with deck duties under the following circumstances: (19.C.01) a. when extended trips (more than 2 hours) are made from the work site?	Yes	No	N/A
b. when conditions of navigation make it hazardous for an operator to leave the wheel while underway?	Yes	No	N/A
c. when operation other than tying-in require the handling of lines?	Yes	No	N/A
d. when operating at night or in inclement weather?	Yes	No	N/A
e. when towing?	Yes	No	N/A
2. Are all motorboats, launches, and skiffs posted with the number of passengers and weight they can carry? (19.C.02)	Yes	No	N/A
3. Is there a PFD available for each passenger and crew member? (19.C.02)	Yes	No	N/A
4. Do all launches and motorboats that are <u>less than 26 feet</u> in length have at least one 1A-10B:C fire extinguisher on board? (19.C.03)	Yes	No	N/A
5. Do all launches and motorboats that are <u>26 feet or more</u> in length have at least 2 1A-10B:C fire extinguishers on board? (19.C.03)	Yes	No	N/A

6. Do all launches and motorboats that have gasoline or liquid petroleum gas power plants or equipment in cabins, compartments, or confined spaces have built-in automatic CO2 or other equally effective type of fire extinguishing system? (19.C.03)	Yes	No	N/A
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**REMARKS: (for specifics and details to "NO" / "N/A" Answers to above)**

**Contractor Inspector Signature**

**Contractor QC/ Safety Officer / Project Manager Signature**

SAD Form 1437b-R (March 1997) - *Previous editions may be used for contracts referencing the 1992 Edition of EM 385-1-1.* (SAFETY CHECKLIST FOR LAUNCHES, MOTORBOATS & SKIFFS - Total 2 pages)

## ACCIDENT INVESTIGATION & REPORTING PROCEDURES

All accidents and incidents related to the construction program which result in personnel injury or illness, or damage to buildings or equipment, as a result of an accident or natural phenomena will be investigated.

It is the Contractor's obligation to investigate all accidents, provide all information outlined below, and submit the information to Port & Aon site management.

### B. PURPOSE

The purpose of investigating job related accidents and illnesses is:

1. To determine cause for the purpose of preventing recurrence, and in some instances, to determine whether gross negligence was involved.
2. To comply with applicable federal, state, and local codes and regulations relating to loss reporting.
3. To provide documentation of occupational injuries and illnesses, and to assist in Workers' Compensation claims management.
4. To ensure sensitive notification for an injured employee's family, and for objective releases to the news media.

### OCIP CONTRACTOR'S PROCEDURAL MANUAL

The Contractor's Project Manager shall follow the procedures for reporting and submitting TASMAN Project insurance claim forms as per the instructions located within the OCIP Contractor's Procedural Manual.

This manual provides directions for reporting serious project accidents and examples of various OCIP Insurance Carrier's reporting and investigation forms and appropriate State Workers' Compensation First Report of Injury Form and Supplemental Report of Injury Form that must be completed by the Contractor's Project Manager. Additional OCIP Insurance Carrier forms are also provided for filing project related property damage claims.

### RESPONSIBILITIES

1. Contractor. Project Management has several specific responsibilities in Reporting and investigation serious project accidents, including:
  - I. Upon notification of a serious accident immediately insure that the Contractor's Crew Foreman has called the Local 911, Fire Rescue Department and other emergency response organizations and when required the appropriate Utility Company Emergency Crews.
  - II. Evaluate those emergency actions which have been taken by Crew Foreman to minimize the extent of loss to employees, the General Public and property when a serious accident or emergency condition exist and, when required, direct the Crew Foreman to implement additional company emergency actions.
  - III. Immediately notify, by phone, the Port Project Manager of known accident conditions and the Contractor's emergency actions that have been taken for this serious accident.
  - IV. Travel to the field location to assist the Crew Foreman at the accident scene.
  - V. Notify the families of each employee who has been seriously injured.
  - VI. As per the instruction in the OCIP Contractor's manual complete the appropriate OCIP insurance carrier's reporting and investigation forms. First fax then mail, within 12 hours, the completed and signed insurance forms to the appropriate parties as per the direction in the manual.
  - VII. As per OSHA regulations, notify the OSHA Area Director's Office within 12 hours of the accident involving a fatality or hospitalization of three or more Contractors' employees.

- VIII. Comply with the State's motor vehicle regulations concerning the procedures for reporting company-owned automobile and/or on the road motor vehicle accidents to Local, City or State Police Department(s).
- IX. Assist the OCIP Insurance Carrier's Claims Handling Supervisor and Loss Control Representative in their follow up investigation of the direct and indirect causes of this serious accident so that the resulting insurance claim(s) can be properly processed and close out in both a timely and cost effective professional manner.
- X. Prior to making any Contractor's verbal or written (on or off the record) press statements concerning the serious accident or emergency conditions, the Contractor's Project Manager must first clear the Contractor's press statement with the Port's Project Management Team, the Port's Communications Department, and the Contractor Project Manager prior to release to the press.

2. Contractor Crew Foreman.

- i. Take those emergency actions necessary to minimizing the extent of injuries to employees, the General Public and property damage when a serious accident or emergency condition exists.
- ii. Immediately call the Local 911, Fire Rescue Department and the Utility Company's emergency response number and then inform them of the emergency conditions and the Contractor's emergency actions that have been taken.
- iii. Render prompt first aid treatment for all injured personnel until the emergency medical personnel arrive at the scene and take over first aid or medical treatment.
- iv. As soon as time permits notify the Contractor Project Manager of the serious accident or emergency conditions.
- v. Upon the arrival of the Contractor's Project Manager to the field location provide a summary of the emergency conditions and actions taken.
- vi. Assist the Contractor's Project Manager in completing the OCIP accident reporting and investigation form.

3. Contractor Company Safety Coordinator

- I. When directed by the Port, conduct an OCIP confidential follow-up investigation of the Contractor's serious accident.
- II. Provide other safety-related reports, information and technical assistance to the OCIP Insurance Team, as requested.



# OCIP CONSTRUCTION PROJECT

## ACCIDENT/INCIDENT INVESTIGATION FORM\*

### PERSONAL INFORMATION

1. Name of Injured \_\_\_\_\_ Date of Hire \_\_\_/\_\_\_/\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_  
Contractor \_\_\_\_\_ Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Job Title \_\_\_\_\_ SS# \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Rate of Pay \$ \_\_\_\_\_  
HR/MNTHLY \_\_\_\_\_ Telephone # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
2. Injury Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ am/pm Work Shift Start: \_\_\_:\_\_\_ am/pm
3. Medical Care? Y/N \_\_\_\_\_  
Treating Hospital/Clinic/Physician? \_\_\_\_\_  
Has employee returned to work? (Y/N, restricted duty, date & time) \_\_\_\_\_
3. Accident Location: (Specific Site Location with reference points): \_\_\_\_\_
4. Type of Injury: \_\_\_\_\_
- | Word Being Done: | Body Part(s) | Signs/Symptoms |
|------------------|--------------|----------------|
| 5. _____         | _____        | _____          |
6. Employee trained for work? Yes\_\_ No\_\_ When? \_\_\_\_\_  
Date \_\_\_\_\_ Trainer: Name/Title \_\_\_\_\_
7. Employee authorized for work? Yes\_\_ No\_\_ If yes, \_\_\_\_\_  
Authorizing Person: Name/Title \_\_\_\_\_

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### ACCIDENT DESCRIPTION

8. Accident Description: (who, when, where, how, why) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Result of Site Investigation: (area coned off, new procedures) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Result of Tool/Equipment Investigation: (defective, wrong tool) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Primary Accident Cause(s) & Contributing Factors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITNESS(ES)**

12. Name & job position: \_\_\_\_\_  
Relation to injured party: \_\_\_\_\_  
Description of incidents leading to injury/illness: (one on one interview) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECOMMENDATIONS**

13. Job covered by: a. Job Hazard Analysis? \_\_\_\_\_ Bulletin, Document, Manual, Instruct.  
b. Safety rule/regulation: \_\_\_\_\_ Handbook, Bulletin (Citation)

14. Is the procedure/rule/regulation adequate? Yes\_\_ No

15. If no, recommended change(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Recommendation to prevent similar accidents: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Investigator(s): \_\_\_\_\_  
Date: \_\_\_\_\_

18. Reviewed by: \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_/\_\_/\_\_      \_\_/\_\_/\_\_      \_\_/\_\_/\_\_

19. Project management review & analysis: (suggestions for prevention of reoccurrence) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. New procedures/training/controls implemented? Date \_\_/\_\_/\_\_ List changes \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional information and/or comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## JOB HAZARD ANALYSIS (JHA)

### A. SCOPE:

This procedure outlines the purpose for and method of Job Hazard Analysis studies that will be required for each phase of construction work involving hazardous work. All job supervisors and contractors safety representatives are responsible to complete a Job Hazard Analysis form one week **prior** to the actual hazardous operations.

**Project Management approval must be obtained prior to any on-site work activities.**

### B. PURPOSE:

The purpose of accident prevention pre-planning is to prevent unnecessary hazards that are likely to occur and to make sure each employee performing an operation will have the necessary material and equipment on hand when needed. Due to the speed at which jobs proceed, it does not allow a single operation to continue long enough to become safe through trial-and-error. To cope with safety problems peculiar to our industry, this procedure has been established so management can pre-determine the hazards and develop an appropriate plan to prevent the hazards from becoming accidents.

### C. RESPONSIBILITY:

It is the responsibility of the Contractor's Safety Coordinator to insure that Job Hazard Analysis studies are performed for all operations involving hazardous work activities.

1. Job Hazard Analyses studies will be completed by the contractors site safety supervisor and lead foremen for the job(s) or operation(s) that are to be performed. This analysis will be done on the attached "Job Hazard Analysis" form.

The JHA's will be utilized for during the weekly tool box safety meetings and prior to the hazardous operation being conducted as a training and education tool.

Construction operations which require the completion of a JHA include:

1. Any operation involving the compliance with the Respiratory Protection Regulations (i.e. confined space, sand blasting, asbestos, lead, etc.).
2. All trenching and excavation work.
3. Demolition work.
4. Crane and boom truck operations.
5. Use of construction hoists.
6. Fall protection.
7. Scaffolding operations.
8. Power actuated tools.
9. Welding and cutting operations.
10. Re-bar setting & form work.
11. Concrete pour work.
12. Masonry wall erection.
13. Steel erection work.
14. Roofing operations.
15. Electrical work.

# JOB HAZARD ANALYSIS

Construction Phase:		Location:
Supervisor:		Safety Representative:
Port QMC:		Date:
ACTIVITY OPERATIONS	UNSAFE CONDITION, ACTION or OTHER HAZARD	PREVENTATIVE or CORRECTIVE ACTION THAT WILL BE TAKEN

# BACK TO WORK PROGRAM

## PURPOSE

The Port Management, the Contractor and Aon Risk Services have developed a program designed to assist workers who are **temporarily** disabled due to an illness or injury. This program is called the "Return to Work Program."

This includes a team effort, including disabled workers, their attending physician, the insurance carrier, and project management. This program applies to all contractors and tiered-contractors on the Port's Project.

Studies shows that return to work programs are therapeutic and help speed the recovery process. In addition, injured workers stay "in touch" with the work environment and with fellow workers, which helps to facilitate a smooth and speedy transition back to their normal job. This also creates an opportunity for cross training and developing new skills.

Everybody "wins" with this type of program. The job site wins by retaining the use of valuable trained workers while at the same time minimizing workers' compensation and other costs. Workers win by returning to their regular job and income sooner, and by avoiding the negative effects of a long-term absence.

## PROCEDURES

When workers report illnesses or injuries, they will be given certain forms and may be sent to a doctor for examination and/or treatment. If the doctor determines that the worker qualifies for our Return to Work Program, the doctor will complete the appropriate forms indicating the restrictions and conditions for transitional work. **We will then attempt to provide a modified work position until the worker is able to resume regular duties.**

All modified work is temporary in nature and is designed to facilitate a return to regular duties as soon as possible. Modified work positions may be offered at any project, and/or any shift. Modified work positions can also be offered on a varied schedule.

Failure to report for work at the designated time and place will be regarded as a voluntary resignation and could affect your time loss compensation and/or re-employment/reinstatement rights.

This is not designed as a substitute for reasonable accommodation under any applicable federal or state laws, such as the Americans with Disabilities Act, The Rehabilitation Act 1973 or other applicable laws.

To preserve the ability to meet the Port's Project needs under changing conditions, the right is reserved to revoke, change or supplement these guidelines at any time with or without written notice. No permanent employment for any term is intended or can be implied by this policy. But, while in effect, all doctor recommended restrictions will be followed. The site management, on a two-week basis or after a doctor's visit, will review with the worker the availability of continued modified work.

**PORT OF OAKLAND - OCIP PROJECT  
SAFETY RULES TRAINING, ORIENTATION, AND  
DOCUMENTATION FORM S+H 6-9 - SAFETY RULES TRAINING,  
ORIENTATION, AND DOCUMENTATION**

I, \_\_\_\_\_, hereby acknowledge that I have received training and understand the OCIP Construction Safety Rules. I also agree to abide by all applicable state & federal OSHA standards and manufacturers guidelines and report incidents immediately to my supervisor or the project management team.

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SUPERVISOR

\_\_\_\_\_  
DATE

## APPENDIX A

### CONTRACTOR QUESTIONNAIRE

APPENDIX B

SUBSTANCE ABUSE PROGRAM



## APPENDIX C

### PRE-CONSTRUCTION EXPOSURE ANALYSIS