

PROJECT STABILIZATION AGREEMENT

For the

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT EAST
CONTRA COSTA BART EXTENSION PROJECT**

Between the

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And the

**CONTRA COSTA COUNTY BUILDING & CONSTRUCTION TRADES
COUNCIL**

AND ITS AFFILIATED LOCAL UNIONS

PREAMBLE

This Project Stabilization Agreement ("Agreement") is made and entered into this 30th day of November, 2011, by and between the San Francisco Bay Area Rapid Transit District ("BART" or "Owner") , together with other contractors and/or subcontractors ("Contractor (s)"), who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Attachment A), the Contra Costa County Building and Construction Trades Council ("Council") and the affiliated local unions who have executed this Agreement (referred to individually as "Union" and collectively as "Unions"). The parties further agree that the provisions of this Agreement shall apply only to the construction of the San Francisco Bay Area Rapid Transit District East Contra Costa BART Extension Project ("Project").

Recitals

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

WHEREAS, large numbers of workers of various skills will be required to perform the construction work, including those represented by the unions affiliated with the Contra Costa Building and Construction Trades Council and any other Union which is signatory to this Agreement and employed by Contractors who are signatory to this Agreement; and

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

WHEREAS, the interests of the general public, the Owner, the Unions and Contractors would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with the work; and

WHEREAS, the parties desire to mutually set forth and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship between the parties to this Agreement;

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

WHEREAS, the Owner has the absolute right to select as its contractor(s) the entity(ies) offering the lowest responsible bid; and

WHEREAS, the parties desire to provide optimal opportunities for Small Businesses and residents of the BART Service Area and the Local Area to participate on the Project; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the parties recognize the need for safe, efficient and speedy construction in order to reduce unnecessary delays and to shorten construction schedules, thereby further reducing costs, resulting in timely completion of the Project.

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

ARTICLE 1

PURPOSE

- 1.1 The purposes of this Agreement are to promote efficient construction operations on the Project, to provide opportunities for small local business enterprises, to insure an adequate supply of skilled craftspeople and to provide for peaceful, efficient and billing procedure for settling labor disputes. In so doing, the parties to this Agreement establish the foundation to promote the public interest, to provide a safe work place, to assure high quality construction and to secure optimum productivity, on-schedule performance and Owner satisfaction.
- 1.2 It is the intent of the parties to set out uniform and fair working conditions for the efficient completion of the Project, to maintain harmonious labor/management relations and to eliminate strikes, lockouts and other delays. The parties agree that one of the primary purposes of this Agreement is to avoid the tension that might arise on the Project if union and non-union workers of different contractors were to work side-by-side on the Project thereby leading to labor disputes that could delay the Project.
- 1.3 It is in the interest of the parties to this Agreement to facilitate employment of Local Area and BART Service Area residents and to utilize resources in the Local Area in the construction of the Project. The "Local Area" shall be defined as the communities of eastern Contra Costa County to be served by the Project. The "BART Service Area" shall be defined as the communities of Alameda, Contra Costa, San Francisco and San Mateo counties.

ARTICLE 2

SCOPE OF AGREEMENT

- 2.1 This Agreement shall apply only to that demolition, site preparation and new construction work awarded by the Owner and performed by the signatory Contractor(s) during the term of this Agreement. The Project includes: the construction of a ten (10) mile track extension eastward in the median of State Route 4 from the existing Pittsburg/Bay Point BART Station to Antioch; new passenger stations in Pittsburg (Railroad Avenue) and Antioch (Hillcrest Avenue); and a new yard/maintenance facility.
- 2.2 This Agreement shall apply only to construction/craft employees working on this Project represented by the Unions signatory hereto, and shall not apply to Contractors'

supervisors, technical or non-manual employees including, but not limited to: executives, engineers, office and clerical employees, drafters, supervisors, timekeepers, messengers, guards, employees above the classification of general foreman, inspectors, material testers, and/or x-ray technicians, except to the extent that such inspectors, material testers, and/or x-ray technicians are customarily covered by a Master Agreement and as to which classification a prevailing wage determination has been published. "Master Agreement" shall be defined as the multiemployer collective bargaining agreement that covers the geographic area of the Project.

- 2.3 There shall be no limitation or restriction upon the choice of materials or upon the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. Fabrication and detailing provisions contained in existing appropriate national or local agreements shall be applicable.
- 2.4 After installation by the Contractor(s) and upon notice of completion, it is understood the Owner reserves the right to perform start-up, operation, repair, maintenance or revision of equipment or systems with persons of the Owner's choice. If required, the service representative may make a final check to protect the terms of a manufacturer's guarantee or warranty prior to start-up of a piece of equipment.
- 2.5 It is expressly agreed and understood by the parties hereto that the Owner shall retain the right at all times to perform and/or subcontract all portions of the construction and related work on the Project site not covered by this Agreement.
- 2.6 It is recognized by the parties to this Agreement that the signatory Contractor(s) and Coordinator are acting only on behalf of said Contractor(s) and Coordinator, and said Contractor(s) and Coordinator have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind the Owner.
- 2.7 The working conditions and hours of employment herein provided have been negotiated by the Unions exclusively with the representatives of the Owner and the Contractor(s).

- 2.8 It is expressly agreed and understood by the parties hereto that the Owner shall have the right to purchase material and equipment from any source and the craftspersons will handle and install such material and equipment.
- 2.9 Without limiting the foregoing, the parties recognize and agree that the items specifically excluded from the scope of this Agreement include the following:
- (a) All work performed by employees of Owner;
 - (b) All employees of any Contractor, design team or any other consultant of the Owner not performing construction craft labor within the Scope of this Agreement;
 - (c) Any work performed on or near, or leading to or into the Project site by state, county, city or other governmental bodies, or their contractor(s); or by utilities or their contractor(s); and/or by the Owner, its employees, or its contractor(s) for work which is not part of the Project including, but not limited to, maintenance and operations;
 - (d) Off-site maintenance of leased equipment and on-site supervision of such work;
 - (e) Work performed by employees of an Original Equipment Manufacturer ("OEM") or other vendor on the OEM's or vendor's equipment if required by the warranty agreement provided by the OEM or vendor in order to maintain the warranty or guarantee on such equipment and provided that the warranty is the OEM's or vendor's standard warranty agreement for such equipment and is consistent with industry practice.
 - (f) The testing, tasking, troubleshooting and calibration of specialty equipment; and
 - (g) The construction of the Transfer Platform and guide-way improvements as described in BART Contract Number 04SF-110-A.
- 2.10 It is further agreed that, where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article 5 (No Strikes/No-Lockouts); Article 6 (Work Assignments and Jurisdictional Disputes); and Article 11 (Grievance Procedures) of this Agreement, which shall apply to such work.

ARTICLE 3

SUBCONTRACTS

- 3.1 Each Contractor agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm, or corporation who is or becomes party to this Agreement. Any Contractor or subcontractor working on the Project shall, as a condition of working on the Project, become signatory to and perform all work under the terms of this Agreement. The furnishing of materials, supplies or equipment and the delivery thereof shall in no case be considered subcontracting.
- 3.2 A subcontractor is defined as any person, firm or corporation who agrees under contract with the Contractor, or a subcontractor of the Contractor, to perform on the Project, any part or portion of the construction work covered by the prime contract, including the operating of construction equipment, performance of labor and/or installation of materials.
- 3.3 The Contractor has the primary obligation for the performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor elect to subcontract, the Contractor shall continue to have such primary obligation.
- 3.4 The Contractor will give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) business days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the subcontractor. Written notice at a Pre-Job Conference shall be deemed written notice under this provision for those subcontractors listed at the Pre-Job only.
- 3.4.1 Thereafter, if such subcontractor should become delinquent in the payment of any wages or benefits as above specified, the affected trust fund shall immediately give written notice thereof to the Contractor and to the subcontractor specifying the nature and amount of such delinquency.
- 3.4.2 In the event the Contractor fails to give written notice of a subcontract as required herein, such Contractor shall be liable for all delinquencies of the subcontractor on this Project only, without limitation.
- 3.4.3 The provisions of this Section 3.4 shall be applied only to the extent permitted by law and, notwithstanding any other provision of this Agreement, no aspect of the subcontractors' clause, including its enforcement, may be enforced by or subject to strike action.

- 3.5 Nothing in this Agreement is meant to interfere with the normal enforcement or collection rights of the fringe benefit trust funds.

ARTICLE 4

RELATIONSHIP BETWEEN PARTIES

- 4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of the Coordinator and signatory Contractor(s) unless signed by such parent, affiliate, subsidiary, or other division of such Coordinator or signatory Contractor(s).
- 4.2 Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor or any dispute between the signatory Union(s) and the Contractor respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability by a signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the signatory Contractors and the other Unions party to this Agreement.

ARTICLE NO 5

NO STRIKES -NO LOCKOUTS

- 5.1 During the life of this Agreement, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, sympathy strike, picketing or other work stoppage or hand-billing of any nature whatsoever, for any cause whatsoever, or any other type of interference of any kind, coercive or otherwise, and it is expressly agreed that any such action is a violation of this Agreement.
- 5.1.1 Withholding employees for failure of a Contractor to tender trust fund contributions as required in accordance with Article 16 or for failure to meet its weekly payroll is not a violation of this Article 5; however, the Union shall give the affected Contractor

and the Coordinator written notice seventy-two (72) hours prior to the withholding of employees.

- 5.2 Upon written facsimile or electronic mail notice of a violation to the Local and International Union(s) offices, the Union(s) and its officers shall take immediate action and will use its (their) best efforts to prevent, end or avert any such aforementioned activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including, but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. The Contractor(s) shall have the right, in the event of a work stoppage by the Union(s) in violation of this Agreement to replace the employees represented by the Union(s) in any way the Contractor(s) chooses, until the Union(s) effects the return to work of such employees. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 5.
- 5.3 In consideration of the foregoing, the Contractor(s) shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by the Contractor(s) for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include the Owner's or Contractors' decision to terminate or suspend work on the site or any portion thereof for any reason. 5.4 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and the procedure of Article 11, if invoked.
- 5.5 Any party to this Agreement may institute the following binding arbitration procedure when such a breach is alleged. In the event a party institutes this procedure, arbitration shall be mandatory.
- 5.5.1 The party invoking this procedure shall immediately notify William Riker, who the parties agree shall be the permanent Arbitrator under this procedure, the Coordinator and the Owner. In the event that the permanent Arbitrator is unavailable at any time, Thomas Angelo shall serve as the Alternate Arbitrator. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, electronic mail or similar means to the party alleged to be in violation and the involved Union International General President.
- 5.5.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.
- 5.5.3 The Arbitrator shall notify the parties by facsimile, electronic mail or similar means of the place and time chosen for the session. A failure of any party or parties to attend

said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

- 5.5.4 The sole issue at the hearing shall be whether or not a violation of this Article has, in fact, occurred and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator shall order cessation of the violation of this Article and other appropriate relief. Such award shall be served on all parties by hand or registered mail upon issuance.
- 5.5.5 The award shall be final, binding and non-reviewable as to the merits. A judgment of any court of competent jurisdiction shall be entered upon the award, which may be enforced by any such court, upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Facsimile, electronic mail or similar 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 5.5.4 of the 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 or by registered mail.
- 5.5.6 Liquidated Damages. A party found to have violated the provisions of this Article 5 No Strikes-No Lockouts shall cease such violation within eight (8) hours of the award of the Arbitrator. Should the violation continue past eight (8) hours, the party in violation shall pay to the affected party as liquidated damages the actual damages or the sum of ten thousand dollars (\$10,000.00) per shift, or portion thereof, whichever is greater, until such violation ceases. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.
- 5.5.7 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued.
- 5.5.8 The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be borne by the losing party.
- 5.5.9 The procedures contained in Section 5.4 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article shall be subject to the grievance and arbitration procedures of Article 11.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

- 6.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry("Plan") or any successor Plan.
- 6.2 All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractors shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedures that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions party to this Agreement.
- 6.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.
- 6.4 Each Contractor will conduct a pre-job conference with the Council prior to commencing work. The Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE 7

COORDINATOR

- 7.1 The Owner shall appoint a Coordinator who is responsible for the administration and application of this Agreement.
- 7.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions signatory hereto and will conduct the quarterly joint Labor/Management meeting referred to in Article 8 below. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, and will not be a party to any arbitration or litigation arising out of this Agreement.

ARTICLE 8

JOINT LABOR/MANAGEMENT MEETINGS

- 8.1 A joint Labor/Management meeting will be held on a quarterly basis between the Coordinator, the Owner, the Contractors and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craftsman and the Contractors on the Project. These periodic meetings will also include discussion of the scheduling and productivity on work performed on the Project.
- 8.2 A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Contractor's contract. When a contract has been let to a Contractor covered hereby, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union(s), Contractor or the Coordinator. 8.3 The Contractor performing the work shall have the responsibility for making work assignments in accordance with Article 6 of this Agreement. The work assignments shall be made in writing. Any craft objecting to the Contractor's proposed assignment of work shall have ten (10) working days from the date of the mark-up meeting to submit written objections to the Contractor before the Contractor makes the work assignments final.
- 8.4 The Coordinator will schedule and attend all Pre-Job and Mark-Up Meetings and participate in discussions as they pertain to the terms and conditions of this Agreement.

ARTICLE 9

MANAGEMENT RIGHTS

- 9.1 The Contractor(s) retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:
- A. Plan, direct and control the operation of all the work.
 - B. Decide the number and types of employees required to perform the work safely and efficiently.
 - C. Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.
 - D. Require all employees to observe the Contractors' Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at

the Pre-Job meeting and supplied to all employees and/or posted on the jobsite.

- E. Discharge or discipline employees for just cause.
- F. Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work that is authorized by the craft's local collective bargaining agreement; however, individual craftspeople shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft's refusal to work overtime shall be subject to the grievance procedure.
- G. No local rules, customs or practices, other than those specifically enumerated in this Agreement, are applicable.
- H. Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designer (in accordance with Article 21).
- I. The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.

ARTICLE 10

WORK RULES

- 10.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s). Foremen and general foremen shall take orders from the designated Contractor(s) representatives.
- 10.2 There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. Craftspersons using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen.
- 10.3 Security procedures for control of tools, equipment and materials are solely the responsibility of Contractor(s).
- 10.4 Employees shall be at their place of work (as designated by the Contractor at the pre-job meeting) and ready to work at the starting time and shall remain at their place of work performing their assigned functions until quitting time. A reasonable time will

be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.

- 10.5 Slowdowns, standby crews and featherbedding practices will not be tolerated.
- 10.6 It is understood by the Contractor(s) and agreed to by the Union(s), that the employees of the Contractor(s) will perform the work requested by the Contractor(s) without having any concern or interference with any other work performed by any employees of the Owner or others who are not covered by this Agreement including, but not limited to, maintenance and operations.
- 10.7 Contractors shall provide rest periods in accordance with Industrial Welfare Commission Order No. 16-2001. Any dispute regarding rest and meal periods provided in this section shall be resolved exclusively under the provisions of Article 11 of this Agreement.
- 10.8 There shall be no interference with vendor or supplier deliveries of equipment, apparatus, machinery and construction materials to the jobsite since such deliveries shall not fall under this Agreement. Unloading of the above will be performed by signatory Contractors' employees.
- 10.9 The Contractor(s) and the Unions recognize the necessity for promoting efficiency and agree that no rules, customs or practices shall be permitted that cause overmanning, limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kind of machinery, tools or labor-saving devices. However, the lawful manning provisions of the applicable craft's Master Agreement shall be recognized.

ARTICLE 11

GRIEVANCE PROCEDURE

- 11.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes or certain safety disputes as defined below) shall be considered a grievance.
- 11.2 A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within ten (10) working days after the incident which initiated the alleged grievance occurred.

11.3

Grievances shall be settled according to the following procedure:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor.

Step 2

In the event the matter remains unresolved in Step 1 above, within five (5) working days, the alleged grievance in writing may then be referred to the Business Manager of the Craft involved and the Labor Relations representative of the Contractor for discussion and resolution.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, the grievance in writing may then be referred to the International Representatives of the Craft involved and the Manager of Labor Relations of the Contractor or the Manager's designated representative, and the Coordinator for discussion and resolution.

Step 4

If the grievance is not settled in the preceding steps within five (5) working days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Coordinator. An Arbitrator selected from a permanent panel of Arbitrators consisting of William Riker, Barbara Kong-Brown, Thomas Angelo, and Robert Hirsch will hear grievances filed pursuant to this Article. Should the parties be unable to mutually agree on the selection of an Arbitrator from among those on the panel, selection for that given arbitration shall be made by alternately striking names from the list of names on the panel until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall be the party bringing forth the grievance. In the event the last remaining Arbitrator is not available in a reasonable time to hear the grievance and the parties have not mutually agreed to extend the time for arbitration, the last stricken Arbitrator will be selected. A reasonable time is defined as fifteen (15) days where the grievance concerns employment discharge and thirty (30) days for all other grievances.

The Arbitrator's decision shall be submitted in writing and shall be final and binding on all parties signatory to this Agreement. The expense of arbitration,

including the cost of the Arbitrator and the cost of necessary expense required to pay for facilities for the hearing of cases, shall be borne equally by the parties. The Arbitrator's decision shall be confined to the question posed by the grievance and the Arbitrator shall not have authority to modify, amend, alter, add to or subtract from, any provision of this Agreement.

- 11.4 The Contractors, as well as the Unions, may bring forth grievances under this Article 11.

ARTICLE 12

UNION RECOGNITION AND REPRESENTATION

- 12.1 All employees who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on a construction contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.
- 12.2 The Contractor(s) recognize(s) the Unions signatory hereto as the sole and exclusive collective bargaining representatives for its craft employees on the Project.
- 12.3 Authorized representatives of the Unions shall have access to the site during established working hours, provided they do not unduly interfere with the work of the employees; and provided further, that such representatives fully comply with the visitor safety and security rules established for the Project.
- 12.4 A Steward shall be a working journeyman appointed by the authorized union representative of the Local Union(s) who shall, in addition to work as a journeyman, be permitted to perform during working hours such Union(s) duties as cannot be performed at other times which consists of those duties assigned by the Business Manager or Business Agent. The Union(s) agrees that such duties shall be performed as expeditiously as possible and the Contractor(s) agrees to allow the Steward a reasonable amount of time for the performance of such duties. The Steward shall not leave the work area without notifying the appropriate supervisor.
- 12.5 The Steward will be paid at the journeyman wage for the job classification in which the Steward is employed.

- 12.6 The working Steward will be subject to discharge for just cause to the same extent as other employees provided, however, that the Union shall be notified twenty-four (24) hours prior to the discharge.
- 12.7 The Steward shall remain on the job until its completion, or until no more than three (3) employees are left on the job, provided the Steward is qualified to perform the work to be done; unless removed by the Business Manager.

ARTICLE 13

REFERRAL

- 13.1 Contractors performing construction work on the Project described in the Agreement shall, in filling craft job vacancies, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of Federal law. The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with Article 19.
- 13.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).
- 13.3 In the event referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period after such requisition is made by the Contractor(s) (Saturday, Sunday and holidays excepted), the Contractor(s) shall be free to obtain employees from any source. Such employees shall be recognized as temporary employees. These temporary employees shall be replaced by qualified journeymen when available.
- 13.4 It is an objective of the parties that not less than fifty percent (50%) of all hours worked by journeymen on the Project, on a craft by craft basis, be worked by residents of the BART Service Area and that not less than twenty-five percent (25%) of all hours worked by journeymen on the Project, on a craft by craft basis, be worked by residents of the Local Area. The Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor. The parties to this Agreement support the development of increased numbers of skilled construction workers from the Local Area and BART Service Area. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area and BART Service Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

ARTICLE 14

NON-DISCRIMINATION

- 14.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, religion, Vietnam veteran or Vietnam Era status, disability as identified in the Americans with Disabilities Act or any other basis recognized by law.

ARTICLE 15

APPRENTICES

- 15.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor(s) will employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
- 15.2 It is an objective of the parties to this Agreement that only BART Service Area residents shall be utilized as apprentices and a goal that not less than fifty percent (50%) of the hours worked by apprentices on the Project be worked by residents of the Local Area.
- 15.3 The Contractors shall reach this goal of fifty percent (50%) through the utilization of normal hiring hall procedures. The Unions are committed to working with the Contractor(s) to achieve these goals. All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprentices Programs.
- 15.4 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.
- 15.5 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

ARTICLE 16

WAGE SCALES and FRINGE BENEFITS

- 16.1 All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining agencies and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.
- 16.2 During the period of construction on this Project, the Contractor(s) agrees to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining unit on the effective date as set forth in the applicable agreement. The Unions shall notify the Contractor(s) in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.
- 16.3 The Contractor(s) hereby adopts and agrees to be bound by the written terms of the legally established local trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate local agreements. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds, and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). 16.4 Wages due shall be paid to all employees weekly, not later than on Friday, and not more than three (3) days' wages may be withheld and shall be paid before the end of the work shift.
- 16.5 When an employee is discharged, the employee shall be paid wages due immediately. An employee laid off or terminated shall be given a termination slip immediately upon termination of work. The termination slip shall be completed stating the reason for termination, and the employee's copy shall have, in addition to the firm's name, the firm's address. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

ARTICLE 17

HOURS OF WORK, OVERTIME and SHIFTS

- 17.1 Hours or Work: The work week will start on Monday and conclude on Sunday. Eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the shift. Forty (40) hours per week, Monday through Friday, shall constitute a regular week's work. The foregoing provisions of this Article are applicable unless otherwise provided in the General prevailing Wage Determinations

made by the Director of Industrial Relations pursuant to the California Labor Code. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.

17.2 Overtime: Overtime will be in compliance with the applicable General prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

17.3 Multiple Shifts: Multiple shifts authorized by the Owner may be established by the Contractor(s) for any portion of the work in accordance with this Section.

17.3.1 If two (2) or three (3) shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half ($\frac{1}{2}$) hour non-paid lunch period, the second shift shall consist of seven and one-half ($7 \frac{1}{2}$) hours of continuous work exclusive of a one-half ($\frac{1}{2}$) hour non-paid lunch period and the third shift shall consist of seven (7) hours of continuous work exclusive of a one-half ($\frac{1}{2}$) non-paid lunch period for eight (8) hours pay.

17.3.2 Multiple shift work may be performed at the option of the Contractor(s) but, when performed, it must continue for a period of not less than two (2) consecutive working days. Saturday and Sunday, if worked, can be used for establishing the two (2) day minimum shift work period. The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth day. In the event the second or third shift of any regular work shall extend into a holiday the employees shall be paid at their regular shift rate.

17.4 Special Shift Work. A special shift authorized by the Owner outside of the regular work day may be established by the Contractor(s) due to the requirements of the Project. No minimum consecutive working days will be authorized during Special Shift Work performed under this Section.

17.5 Four day, ten hour work week (4/10s). To the extent permitted by the applicable provisions of the California Labor Code, the Contractor(s), with one (1) week's notice to the Union(s), may establish a four (4) day per week, ten (10) hour per day work shift. The regular work week shall be from Monday through Thursday. Pay for each of these four (4) days shall be ten (10) hours at the straight time hourly rate.

17.5.1 Friday may be worked as a voluntary make-up day in those cases where the work is shut down due to inclement weather or an emergency situation. If a Friday is worked, the pay shall be one and one-half ($1 \frac{1}{2}$) times the straight time hourly rate for the first ten (10) hours worked. All work in excess of ten (10) hours shall be paid two (2) times the

straight time hourly rate. If a sixth or seventh day is worked, the pay shall be two (2) times the straight time hourly rate.

ARTICLE 18

HOLIDAYS

- 18.1 Holidays will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

ARTICLE 19

REPORTING PAY

- 19.1 Any employee reporting for work and for whom no work is provided, except when given notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts work shall receive four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.
- 19.1.1 Whenever minimum 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 sooner by the principal supervisor of the Contractor(s) or its designated representative.
- 19.1.2 The provisions of this Section are not applicable where the employee voluntarily quits or is out by reason of a strike, in which case the employee shall be paid for the actual time worked.
- 19.2 It will not be a violation of this Agreement when the Owner or Contractor(s) consider it necessary to shut down because of an emergency situation that could endanger life or property. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Owner or Contractor(s) request employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

ARTICLE 20

TRAVEL, SUBSISTENCE and ZONE PAY

- 20.1 Travel, subsistence and zone pay will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

ARTICLE 21

HEALTH AND SAFETY

- 21.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor(s), be bound by the safety rules and regulations as established by the Owner and Contractor(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.
- 21.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor(s) on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the contractor(s). Nothing in this Agreement will make the Unions(s) liable to any employee or to other persons in the event that injury or accident occurs.
- 21.3 A convenient supply of cold and potable drinking water shall be provided by the Contractor(s).
- 21.4 This Project shall be a drug free workplace. Workers shall not possess, use, be under the influence of, provide, dispense, receive, sell, offer to sell alcohol and/or controlled substances as defined by law while on the Owner's property. Violation of this provision shall subject the worker to discipline up to and including termination.

ARTICLE 22

CALL-INS

- 22.1 When employees are called in to work at times other than their regularly established shift, they shall be paid not less than four (4) hours at the applicable overtime rate for that day.

ARTICLE 23

HELMETS TO HARDHATS

- 23.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the

building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans' Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

- 23.2 The Unions and Contractor(s) agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 24

SMALL BUSINESS ENTERPRISE OPPORTUNITIES

- 24.1 The parties agree that it is an objective to utilize Small Businesses to perform a portion of the total contract value of the work to be performed on the Project. Small Businesses shall be defined as those entities whom are qualified under the State of California Small Business Program and listed in the State of California Department of General Services Database for small businesses or a BART small business program, should one be established. The contract between BART and a Contractor ("Contract") will include a minimum goal for work to be performed by Small Businesses on the Project. The Contract will include an incentive mechanism that will compensate the Contractor in its efforts to meet or exceed the Small Business goal.

ARTICLE 25

ENTIRE AGREEMENT

- 25.1 This Agreement represents the complete understanding of the parties. The provisions of this Agreement shall in every instance exclusively apply to and control work performed on the site of the Project and take precedence over provisions of the Master Agreements, or any other regional or national agreement. Nothing contained in the working rules, by-laws, constitution and other similar documents of the Unions or other Master Agreements, shall in any way affect, modify or add to this Agreement unless otherwise specifically indicated in this Agreement. Practices not part of the terms and conditions of this Agreement shall not be recognized.

- 25.2 The Unions agree that this Agreement covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of this Agreement, neither the Contractor(s), nor the Union(s) will be required to negotiate on any further matters affecting these or any other subject 110t specifically set forth in this Agreement except by mutual agreement of the Unions involved and the Coordinator.
- 25.3 Any other agreement or modification of this Agreement must be reduced to writing and signed by the parties.
- 25.4 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures.
- 25.5 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

ARTICLE 26

GENERAL SAVINGS CLAUSE

- 26.1 It is not the intention of either the Contractor(s) or the Union(s) parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, the Contractor(s) and Union(s) agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by 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 an applicable law and the intent of the parties hereto.

ARTICLE 27

DURATION OF AGREEMENT

27.1

This Agreement shall become effective on the date executed by the parties and shall continue in full force and effect until completion of the Scope of the Project. It is understood by the parties that portions of the Project may be completed in segments or phases and completion of any segment or phase may occur prior to completion of the entire Project. The application of this Agreement to any such segment or phase shall terminate upon acceptance by the Owner of any such segment or phase.

ATTACHMENT "A"
PROJECT STABILIZATION AGREEMENT
FOR
FOR THE EAST CONTRA COSTA BART EXTENSION PROJECT
BETWEEN THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
And
SIGNATORY CONTRA COSTA COUNTY BUILDING CONSTRUCTION TRADES UNIONS
AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor ("CONTRACTOR") on the San Francisco Bay Area Rapid Transit District East Contra Costa BART Extension Project, ("PROJECT"), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Project Stabilization Agreement ("AGREEMENT"), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 16 of this AGREEMENT.
- (3) The CONTRACTOR authorizes the parties to such local trust agreements 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;
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: _____ (Name of Contractor) (Authorized Officer & Title)

(Name of Prime Contractor or Higher Level Subcontractor)

(Address)

(Phone #) (Fax #)