

AGREEMENT AND DECLARATION OF TRUST
For The
EAST BAY DRAYAGE DRIVERS SECURITY FUND
(As Amended and Restated as of February 2021)

This Agreement, made and entered into on February 15, 2021, amends and restates the Agreement and Declaration of Trust, first made and entered into November 1, 1952, as subsequently amended, by and between the duly appointed Employer and Union Trustees of the East Bay Drayage Drivers Security Fund ("Board of Trustees" and "Fund," respectively).

RECITALS

WHEREAS, the Employers and Teamsters Local 70 ("Union") established an Agreement and Declaration of Trust, dated November 1, 1952, restated in 1960, 1976 and 1986, and amended from time to time thereafter, establishing the East Bay Drayage Drivers Security Fund; and

WHEREAS, the Union is the collective bargaining representative of various classifications of employees employed by the Employers pursuant to the terms of Collective Bargaining Agreements providing for monthly contributions to the Fund for the purpose of providing health and welfare benefits coverage and the costs of providing these benefits; and

WHEREAS, the 1952 and 1986 restatements of the Trust Agreement state that the Fund was established by and between the Union, the California Trucking Association, Inc., and the Bay Area Household Goods Movers' Association, Inc., and the then sitting Trustees; and

WHEREAS, in recognition of the dissolution of the Bay Area Household Goods Movers Association, Inc., the 1986 restatement defines "Association" as the California Trucking Association, Inc.; and

WHEREAS, by letter to the Fund dated May 22, 2020, the California Trucking Association's Chief Executive Officer states that the Association:

[D]isclaims any duty or responsibility to act with respect to the Fund or to oversee the operation or administration of the Fund. CTA has no basis to object and does not object to the proposed restatement of the Trust Agreement, so long as the Trustees do not assign duties or responsibilities or grant authority to [the Association]; and

WHEREAS, based on the dissolution of the Bay Area Household Goods Movers Association, Inc., and the California Trucking Association's disclaimer of interest in the Trust, the Employer Trustees on the Fund's Board of Trustees have assumed responsibility in full as representatives of participating Employers for purposes of the restatement of the Trust Agreement, for interpretation and administration of the terms of the Restated Trust Agreement, and for administration of the Fund and its benefit plans; and

WHEREAS, it is the purpose of the Fund to use its assets for the exclusive purpose of providing medical, health, and welfare benefits to certain employees of the Employers contributing to the Fund's benefits plans established and maintained by the Fund, and to defray the reasonable administrative and other expenses of the Fund and its benefit plans; and

**RESTATED AGREEMENT AND DECLARATION OF TRUST FOR
THE EAST BAY DRAYAGE DRIVERS SECURITY FUND**

WHEREAS, Article XI of the existing Trust Agreement permits the Trustees to amend the Agreement at any time; and

WHEREAS, the Trustees now desire to amend and restate the Trust Agreement to restate, inter alia, the powers, duties, authorities, and responsibilities of the Trustees and the nature of the benefits to be provided by the Fund to participants and their eligible dependents in the benefit plans established by the Board of Trustees.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, it is hereby mutually understood and agreed by the Trustees to amend and restate the Trust Agreement as follows:

ARTICLE I DEFINITIONS

As hereinafter used in this Agreement:

1.1. The term “Adoption Agreement” means an agreement, other than a Collective Bargaining Agreement, executed by an Employer which: (1) is in force and effect; (2) requires the Employer to make contributions to the Trust Fund on behalf of certain specified Employees; and (3) is acceptable to the Board of Trustees in accordance with any requirements, standards, rules, and regulations adopted by the Board. Any such Adoption Agreement shall be deemed to incorporate specifically the terms and conditions of this Trust Agreement and the Plan(s) in which the Agreement provides for participation. By executing an Adoption Agreement, each Employer that is a party to such Agreement thereby agrees to comply with and be bound by each and every provision of this Trust Agreement and such Plan(s) (as such documents may from time to time be amended by the Trustees).

1.2. The term “Benefits” means benefit payments as may be provided under any Plan(s) developed and established by the Trustees pursuant to this Trust Agreement.

1.3. The term “Board” means the individuals acting collectively as the Board of Trustees under this Agreement, which shall also be the “named fiduciary” as defined by ERISA Section 402(a)(2) and the “Plan administrator,” as defined by ERISA Section 3(16)(A) appointed to control and manage the operation and overall administration of the Trust Fund and its Plans, and the “Plan sponsor” as defined by ERISA Section 3(16)(B). The term “Trustees” means, collectively, the individual trustees of this Trust as of its adoption date and their successors.

1.4. The term “Collective Bargaining Agreement” means the contract between an Employer and the Union, together with any amendment, extension, or renewal of such contract, which is in force and effect and requires the Employer to make contributions to the Fund on behalf of its Employees; and is deemed acceptable to the Board of Trustees in accordance with any requirements, standards, and rules adopted by the Board.

1.5. The term “Covered Employee” means an Employee who has worked the hours required to establish eligibility for benefits under a Collective Bargaining or Adoption Agreement; for whom the Employer has made the contributions required by the Agreement; and who satisfies the conditions for eligibility established by the Benefit Plan.

1.6. The term “Dependent” means a spouse, domestic partner, or child, of a Covered Employee/Plan Participant who has satisfied the requirements for Dependent coverage as defined by the Plan in which the Covered Employee participates and is enrolled for coverage as a Dependent under the terms of the Plan.

1.7. The term “Employee” means any person employed by any Employer under, and within the scope of, the Collective Bargaining Agreement between the Union and such Employer, and any other employee(s) of an Employer accepted by the Trustees as participants in a Benefit Plan established by this Trust pursuant to uniform rules and regulations established by the Trustees. The term “Employee” also includes employees of the Union(s) covered by an Agreement providing for contributions to this Trust Fund, and retired employees who satisfy the eligibility rules of any Plan covering retired Employees established hereunder. The term “Employee” shall not include a sole proprietor or a partner of a partnership; provided, however, that this sentence shall not exclude a shareholder of a corporation that is an Employer and is duly organized and operated under the laws of a State of the United States of America who is employed by that corporation to render services pursuant to a Collective Bargaining Agreement.

1.8. The term “Employer” means any firm, company, corporation, or other signatory party to a Collective Bargaining Agreement, Subscriber Agreement, and/or Adoption Agreement under which payments are to be made to this Trust Fund on behalf of Employees and who, by so contributing to the Trust Fund, agrees to be bound by the terms of the Agreement and Declaration of Trust, as amended. The term “Employer” shall not include unincorporated self-employed persons or sole proprietorships that have no employees other than the sole proprietor, or partnerships that have no employees other than the partners.

1.9. The term “ERISA” means the Employee Retirement Income Security Act of 1974, as from time to time amended, and all rules and regulations promulgated pursuant thereto.

1.10. The term “Fund,” “Trust,” or “Trust Fund” means the Fund established pursuant to this Agreement.

1.11. The term “Health and Welfare Benefits” means any and all benefits as may be provided under any Plan developed and established by the Trustees pursuant to this Agreement and Declaration of Trust including, but not necessarily limited to, benefits of any or all of the following types: life, accident, disability and sickness, medical and hospital expenses, prescription drug expenses, vision and dental care expenses. Such term shall also include benefits payable to Dependents of Employees, and to retired Employees and their Dependents, subject to the Trustees’ authority to adopt a program for such benefits.

1.12. The term “Plan” or “Plans” means the rules and regulations setting forth the program or programs of health and welfare benefits for Covered Employees and Dependents and any amendments or modifications thereto adopted by the Board of Trustees, in its sole discretion, from time to time. Said Plan(s) shall be funded by the Trust Fund.

1.13. The term “Plan Participant” means any Covered Employee currently eligible to receive Benefits under a Plan and retired Employees who satisfy the eligibility rules of any Plan covering retirees established hereunder.

1.14. The term “Privacy Rule” means Parts 160 and 164 of Chapter 45 of the Code of Federal Regulations.

1.15. The term “Protected Health Information” or “PHI” shall have the meaning set forth in Section 160.103 of the Privacy Rule as may be amended from time to time.

1.16. The term “Subscriber’s Agreement” means the Fund’s written agreement in which an Employer affirms its obligation to make contributions to the Fund and agrees to be bound by the terms and conditions of the Trust Fund.

1.17. The term “Trustees” means collectively the individual trustees of this Trust as of its adoption date and their successors.

1.18. The term “Union” means Local 70, Brotherhood of Teamsters, Auto Truck Drivers, Line Drivers, Car Haulers and Helpers, Solid Waste, United Parcel Service and Port Drivers, Alameda County, California, and the term “Unions” or “Participating Union” means Local 70 and any other labor organization that adopts this Trust Agreement and participates in the programs of the Fund pursuant to procedures established by the Trustees and is party to a Collective Bargaining Agreement requiring an Employer to make contributions to this Fund.

ARTICLE II NAME, PURPOSE AND OPERATION OF TRUST

The parties hereby re-establish and continue the East Bay Drayage Drivers Security Fund for the uses and purposes as herein set forth.

2.1. Name. The Fund shall be known as the “East Bay Drayage Drivers Security Fund.”

2.2. Purpose. Contributions made into the Fund, and income received thereon, shall be set aside specifically for the purpose of financing health and welfare benefit programs authorized by this Trust Agreement and the Plans adopted pursuant thereto, and for the legitimate expenses in connection with the establishment and maintenance of such programs. Contributions may not be diverted to any other purpose, nor will any assets of the Trust Fund revert to any Employer. No benefits under any program authorized by this Trust Agreement may be paid until such benefits are due in accordance with the terms and conditions of such program as provided by the Board of Trustees.

2.3. Operation.

(a) This Trust Agreement shall be binding upon the Employers and the Union, and their successors, officers, agents, employees, parties in privity, administrators, Trustees, representatives, and assigns.

(b) It is intended that the Fund shall be established and operated in a manner that shall qualify it as an organization exempt from income taxation under Section 501(c)(9) of the Internal Revenue Code. To the extent that anything contained herein is inconsistent with the Internal Revenue Code provisions applicable to an organization exempt from taxation pursuant to Section 501(c)(9) this Agreement shall be deemed amended in such manner as will implement the purposes of the Fund while continuing to comply with the requirements of the Internal Revenue Code.

(c) It is intended that the Fund shall be established and operated in a manner compliant with ERISA. To the extent that anything contained herein is inconsistent with the applicable provisions of ERISA, this Agreement shall be deemed amended in such manner as will implement the purpose of the Fund while continuing to comply with the requirements of ERISA.

(d) It is intended that the Fund shall be established and operated as a jointly administered welfare fund within the meaning of, and in accordance with, Section 302(c) of the Labor Management Relations Act of 1947, as amended. To the extent that anything contained herein is inconsistent with said Act, this Agreement shall be deemed amended in such manner as will implement the purpose of the Fund while continuing to comply with the requirements of the Act.

2.4. Administrator. The Board may appoint an administrator, who may be an individual, partnership, or corporation, and shall establish the administrative office of the Fund for the collection and receipt of contributions, for maintenance of the Fund's records, for receiving all communications and notices to the Trustees, for processing claims received by the Fund, for service of process on the Fund, and for such other purposes as may be directed by the Board of Trustees.

2.5. HIPAA.

(a) It is intended that the Fund shall comply with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule as may be amended from time to time, at all times on and after April 14, 2003.

(b) The Fund shall disclose PHI to the Board of Trustees only to the extent necessary for the purpose of performing the administrative functions described in Section 164.504(a) of Chapter 45 of the Code of Federal Regulations to the extent permitted under the Privacy Rule. Such administration shall include, but shall not be limited to, appeals of adverse benefit determinations, financial oversight, data analysis, COBRA administration, coordination of benefits, and plan design. The Trustees will not use or further disclose PHI other than as permitted or required in accordance with this stated purpose or as required by applicable law.

(c) As a condition for obtaining PHI from the Fund, or from health care providers and HMOs providing covered Benefits in one or more of the benefit plans of the Fund, the Board of Trustees agrees to:

(1) Use or disclose any PHI received from a Plan, other than as permitted by this Section, only as permitted by the Privacy Rule, the Plan Document, or as required by law.

(2) Require each of its contractors or agents to whom the Board of Trustees may provide PHI to agree to the same restrictions and conditions that apply to the Trustees with respect to PHI.

(3) Bar the use or disclosure of PHI for employment-related actions or decisions in connection with any other plan of benefits or employee benefit plans sponsored by the Board of Trustees.

(4) Report to the Plans any use or disclosure of PHI that is inconsistent with the uses or disclosures authorized by the Privacy Rule of which it becomes aware.

(5) Make the PHI of a particular Employee available for purposes of the Employee's request for inspection or copying, in accordance with Section 164.524 of the Privacy Rule.

(6) Make PHI available to the Plans to permit Plan Participants to amend or correct PHI contained in the designated record set that is inaccurate or incomplete and incorporate such amendments in accordance with Section 164.526 of the Privacy Rule.

(7) Make available the information required to provide an accounting of disclosures in accordance with Section 164.528 of the Privacy Rule.

(8) Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Plans and to the Secretary of the U.S. Department of Health and Human Services ("DHHS") for the purpose of determining the Plans' compliance with Section 164.504 of the Privacy Rule.

(9) If feasible, return to the Plans or destroy all PHI received from a Plan in any form and retain no copies of such information when no longer needed for the purpose for which the disclosure was made. If return or destruction is not feasible, the Board of Trustees agrees to restrict and limit further uses and disclosures to the purposes that make the return or destruction infeasible.

(10) Use best efforts to request only the minimum necessary type and amount of PHI to carry out the functions for which the information is requested.

(d) The Board of Trustees represents that adequate separation exists between the Plans and the Board so that PHI will be used only for Plan administration. As a jointly-trusted multiemployer trust fund which contracts with a third-party administrator, the Trustees have no employees. No person in the employ of the Board of Trustees has access to PHI. In the event that the Board of Trustees hires or takes control of any class of employees, it shall amend to Plans and/or this Agreement as follows:

(1) To describe those employees or classes of employees or other persons under the control of the Board of Trustees to be given access to PHI;

(2) To limit access to and use of PHI by the individuals described above to Plan administration functions as defined in Section 164.504(a) of the Privacy Rule that are performed by the Board or its employees; and

(3) To provide for an effective mechanism for resolving any issues of noncompliance by persons described in part 1 of this Section (d).

(e) The provisions of this Trust Agreement regarding the Privacy Rule shall not be construed to establish requirements or obligations beyond those required by the Privacy Rule. Any portion of this Section or the Plans, including Plan amendments, that grant or appear to grant any additional rights with respect to PHI not required by the Privacy Rule shall not be binding on the Board of Trustees.

(f) The Board of Trustees reserves the right to amend or terminate any and all provisions set forth in this Article at any time to the extent permitted by the Privacy Rule.

(g) The Board of Trustees may delegate or allocate any authority or responsibility with respect to this Article. The Board of Trustees or its delegate has the discretion to construe and interpret the terms, provisions, and requirements of this Section. All decisions of the Board

of Trustees or its delegatee with respect to this Section will be given the maximum deference permitted by law.

(h) If a communication under this Article is required by the Privacy Rule to be in writing, the Board of Trustees will maintain such writing, or electronic copy, as documentation. If an action, activity, or designation is required by the Privacy Rule to be documented, the Board of Trustees will maintain a written or electronic record of such action, activity, or designation. The Board of Trustees will retain the required documentation for six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

(i) All capitalized terms within the Article not otherwise defined in this Agreement shall have the meaning given them in the respective Plan, or if no other meaning is provided in this Agreement or in the Plans, the term shall have the meaning provided under the Privacy Rule.

ARTICLE III TRUSTEES

3.1. Composition of the Board and Appointment of Trustees. The administration of the East Bay Drayage Drivers Security Fund shall be vested in a Board of Trustees consisting of no more than eight (8) persons, four (4) of whom shall be representatives of the Employers and four (4) of whom shall be representatives of the Union. The Board of Trustees may include one (1) additional person acting as a neutral umpire to be selected in the manner, and under the circumstances, hereinafter provided. With the exception of the neutral umpire, such Trustees shall serve without compensation and shall be selected, removed, or replaced as follows:

(a) There shall be no fewer than four (4) Trustees for this Fund.

(b) Each Trustee shall continue to serve as such until their death, incapacity, resignation or removal as herein provided.

(c) In the event of a vacancy in the office of an Employer Trustee, the remaining Employer Trustees shall appoint a replacement. In the event of a vacancy in the office of a Union Trustee, a replacement shall be designated by the Union. The Employer Trustees shall have the right from time to time to remove any Employer Trustee by giving five (5) days written notice to the Union Trustees. The Union shall have the right of removal and appointment of Union Trustees in accordance with the provisions of its Bylaws. If no Employer Trustees remain to make an appointment, the vacancies shall be filled by vote of the Employers then participating in the Trust, with each Employer's vote weighted in proportion to the number of its Employees covered by the Fund at the time of the vote.

(d) Any Trustee designated hereunder may resign by giving five (5) days written notice to the remaining Trustees.

(e) In the event of the resignation, death, disqualification, or legal disability of any Trustee designated hereunder, the vacancy shall be promptly filled.

(f) The number of Trustees may be decreased by vote of the Trustees in office, without formal amendment of this Trust Agreement, but in all events there shall be an equal number of Employer and Union Trustees and no fewer than four Trustees (two Employer and two Union).

(g) In the event of death, resignation, refusal, or inability to act on the part of any one or more of the Trustees, the remaining Trustees shall have all the powers, rights, and interests of

this Trust and shall be charged with their duties, provided that at least one Employer Trustee and one Union Trustee shall be required to act in any case.

(h) Any successor Trustee appointed hereunder shall, upon appointment and acceptance, and without any further act, succeed to all the duties, rights, titles, and powers, whether discretionary or otherwise, of their predecessor.

3.2. Acceptance of Trust and Trusteeship. The Trustees presently serving shall continue in their respective offices. Each such Trustee shall execute this Agreement and Declaration of Trust, or a duplicate thereof, and such execution shall constitute their acceptance of office. By their signature to this Agreement (or any counterpart or copy hereof) each Trustee hereby agrees to accept the trusteeship and to act in their capacities as Trustees and fiduciaries of the Fund in accordance with the provisions of this Agreement. Each Trustee shall continue to serve until their death, legal disability, resignation, or removal as provided herein.

3.3. Deadlock and Arbitration.

(a) In the event of a deadlock on any question or dispute which arises in the administration of the Fund, the Trustees shall on the motion of either the Employer Trustees or the Union Trustees select a neutral person as an impartial umpire to decide such dispute. If the Trustees are unable to agree within a reasonable length of time upon such impartial umpire, either the Employer Trustees or the Union Trustees may request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service, and the selection of the neutral umpire shall be made by the "striking off" procedure through representatives of the respective groups of Trustees. The neutral umpire shall be authorized to conduct a hearing, and to make a final and binding decision as to any dispute submitted to them under this provision. The Employer and Union Trustees shall be authorized to be represented by counsel in any such proceeding, and all costs, including legal fees and expenses of preparing for and conducting the arbitration, including, but not limited to the fees of respective legal counsel, expert witnesses, court reporter, and the fee of the neutral umpire, shall be borne by the Fund.

(b) The failure of any Trustee or Trustees to attend the hearing as scheduled and noticed by the impartial umpire shall not delay the arbitration, and the umpire is authorized to proceed to take evidence and issue their decision as though such Trustee or Trustees were present. All such arbitration hearings shall take place in Alameda County, California unless otherwise agreed upon by the Trustees and the umpire.

3.4. Meetings and Decisions of the Board of Trustees. Four (4) Trustees, consisting of two (2) representing the Employer and two (2) representing the Union, shall constitute a quorum of the Board of Trustees for the transaction of business. In the determination of all matters coming before the Board of Trustees for consideration, the Trustees representing the Employers shall have one (1) vote and the Trustees representing the Union shall have one (1) vote. The vote of each group shall be controlled by a majority within such group. For the purposes of quorum and voting, a Trustee is considered to be present and attending a meeting when connected to and able to participate in the meeting by telephone, video conference or other electronic means.

3.5. Chairpersons. The Trustees shall elect from their membership, at intervals to be determined by the Trustees, a Chairperson and Co-Chairperson, provided that one of such office holders shall be a Union Trustee and one shall be an Employer Trustee. The Chairperson and Co-Chairperson shall have the general authority to act on behalf of the Board of Trustees between Board meetings on

such matters as may require Board action prior to the next regularly scheduled Board meeting, provided, however, that no such action shall be binding on the Board unless ratified by action of the Board at the next regularly scheduled Board Meeting.

3.6. Expenses. Trustees shall be reimbursed by the Fund for all reasonable and necessary expenses actually incurred in connection with the administration of the Fund and its Plans, and in the performance of their duties as Trustees including, but not necessarily limited to, attending trustee educational activities, Board Meetings, and other meetings of or required by the Trust Fund.

3.7. Indemnification. Except as may otherwise be required by ERISA or other applicable law:

(a) The Trustees shall not be personally answerable for any liabilities or debts of a Plan or the Fund incurred by them as Trustees, but said debts and liabilities shall be paid out of the Trust Fund.

(b) Subject to ERISA, no Trustee shall be personally liable for any error of judgment or for any claims arising out of any act or omission of such Trustee or for any acts or omissions of any other Trustee, or any agent appointed by or acting for the Trustees, except as provided in this Section below.

(c) Neither the Trustees nor any individual or successor Trustee shall be personally responsible for any liability or debt of the Fund contracted by them as Trustees, or for the nonfulfillment of contracts, subject to the provisions herein which prescribe the standard of care applicable to Trustee action and except as provided in this Section below. Nothing in this Trust Agreement or in any plan or contract entered into hereunder shall be construed to broaden the personal liability of any Trustee or any other person in the position of a fiduciary for this Fund beyond the scope of liability applicable to fiduciaries provided in ERISA.

(d) The Trustees shall incur no liability in acting upon any papers, documents, date, or information believed by them to be genuine and accurate and to be made, executed or delivered or assembled by the proper parties subject to the applicable standard of care in the exercise of Trustee judgment as set forth in ERISA.

(e) The Trustees may consult legal counsel concerning any questions which may arise with reference to their duties or powers, or with reference to any other matter pertaining to this Agreement, or to the Trust Fund hereby established. The opinion of such legal counsel shall be considered full and complete authorization and protection with respect to any action taken or omitted by the Trustees in good faith in accordance with the opinion of such counsel, subject to the applicable standard of care in the exercise of judgment as set forth in ERISA. Costs and expenses of any action, including counsel fees, brought by or against the Trustees or any of them, except as otherwise provided in this Trust Agreement, or as may otherwise be provided by law, shall be paid from the Trust Fund.

(f) In addition to provisions concerning Trustees' personal liability set forth elsewhere in this Section or this Agreement, and to the extent not covered by insurance and permitted by ERISA and other applicable law, the Trustees, and each of them, shall have no liability for any act or omission to act of any kind done, made, or suffered by the Trustees, or any of them, in the course and scope of their duties as herein described, except any liability resulting from breach by said Trustees of the fiduciary duties owed by them in accordance with applicable law. The Fund shall exonerate, reimburse, indemnify, and hold harmless each Trustee individually, and the Trustees collectively, to the full extent permitted by applicable law, against any and all liabilities, damages, taxes, judgments, debts, assessments, penalties, losses, expenses,

costs, and claims, including, without limitation, reasonable attorneys' fees and court costs; actuarial and related consulting costs; accounting and auditing costs; investment management, trustee, and custodian costs; insurance premiums and related costs; and other professional fees (collectively, "Claims") arising out of their trusteeship or which may be authorized by the Trustees. The Trustees, individually and collectively, shall be further indemnified and reimbursed from the Trust Fund, to the extent permitted by applicable law, for the cost and expenses, including attorneys' fees, of defendant to any suit or proceeding brought against the Trustees, individually or collectively, or the Fund. In connection with any Claims, the Trustees shall be privileged to select and employ legal counsel to defend them, or represent them in the proceeding.

(g) If a Trustee is found liable for any Claims by the final determination of a court of competent jurisdiction for breach of the fiduciary duties owed by them in accordance with applicable law, they shall be obligated to reimburse the Trust for any sums (plus appropriate interest as determined by the remaining Trustees) expended on their behalf pursuant to the preceding sentence.

(h) The Trustees shall not be liable to a Union, an Employer, or any Plan Participant or Dependent or any other person for any action done, made, or suffered by them, or omitted by them, in good faith, except as otherwise provided by applicable law. The Trustees agree to exhaust efforts to obtain reimbursement of Claims from any available insurance coverage and assign to the Fund the right to seek reimbursement from the insurance carrier of any expenses or liabilities incurred by the Trustee.

(i) All of the provisions of this Section shall also apply to any claim brought against the spouse or lawful heirs of a Trustee arising out of the Trustee's status as a Trustee of this Fund.

ARTICLE IV POWERS OF THE BOARD OF TRUSTEES

4.1. Receipt of Payments. The Board of Trustees shall receive and hold all sums of money payable to the East Bay Drayage Drivers Security Fund and use such money for the purpose of providing and administering active and retired employee benefit programs including, but not necessarily limited to, medical and hospital care, life and disability insurance, prescription drugs, vision, dental care, and to pay the expenses of administering such Plans and Fund. All Plans of benefits are to be subject to the terms and conditions of the Collective Bargaining Agreements which provide for contributions to this Trust Fund, and to provisions of this Trust Agreement. The Board of Trustees shall have full power to administer said Fund. The Fund shall be maintained for the exclusive benefit of the Employees, their families, and Dependents. The Trustees shall have the authority in the administration of the Fund to accept or reject applications for participation in the programs of the Fund by parties to Collective Bargaining Agreements who are not presently participants. In addition, the Trustees shall have authority to disqualify existing participants from further participation in the Fund's programs if (1) their Collective Bargaining Agreements are modified in such a manner as to discontinue to provide for contributions required for programs administered by the Fund, or (2) contain provisions which are otherwise inconsistent with the proper administration of the Fund, or (3) for reasons related to actions against the interest of the Fund, such as fraud, and (4) any other basis deemed necessary by the Board to protect the interests of the Fund.

4.2. General Powers. Without limiting the general powers of the Board of Trustees, it shall be expressly empowered to do (or elect not to do) any of the following:

(a) To (i) deposit funds in any bank, savings and loan company, or other financial institution as the Trustees shall select in accounts which are fully insured by an agency of the United States Government; (ii) make other investments with such portion of the funds that are not required for current expenditures and charges in accordance with an investment policy established by the Trustees in writing from time to time, as permitted by ERISA, and deemed appropriate for comparable health and welfare funds; and (iii) appoint an investment manager or managers (as defined by ERISA) to manage the assets of the Fund, including but not limited to the power to acquire and dispose of such assets. All income from such accounts and investments shall be set aside for the exclusive purpose of the Fund.

Withdrawals from the Trust Fund may be made only upon the signature of two (2) Trustees, provided that withdrawals shall be upon the signature of at least one (1) Trustee representing the Employers and one (1) Trustee representing the Union. The Trustees, however, may delegate authority to the administrator of the Fund to make withdrawals from the Fund to pay claims and to pay bills incurred in the usual course of business, including the payment of insurance premiums and benefit claims, and to transfer funds between accounts as required to carry on the Fund's business.

Funds and credits attributable to each Plan may, in the discretion of the Trustees, be allocated to or aggregated with funds and credits of other Plans for any or all purposes. All monies contributed to the Fund for a specific Plan shall be deemed part of a common fund along with the funds allocable to any other Plan and may be utilized by the Trustees at their sole discretion to pay the expenses of or provide benefits under the Plan(s) that accrued such funds or to pay the expenses of or provide benefits under any or all other Plans administered hereunder.

(b) To procure a policy or policies of group insurance for the provisions of health and welfare benefits for Employees as authorized or permitted by the Insurance Code of the State of California, to procure group policies with health maintenance organizations (HMOs), and/or to establish a self-insured plan for direct payment of health and welfare benefits from the Trust Fund to the Employees and their Dependents, and to do any and all acts and things necessary or advisable to effectuate any such plan for the benefit of Plan participants and Dependents.

(c) To self-administer the Trust Fund and its benefit Plans or to retain a third-party administrator for purposes of day-to-day Trust Fund and Plan administration and operation.

(d) To provide for the administration of said Fund and for that purpose to provide all facilities, personnel, and services deemed necessary or advisable for such purpose. To retain attorneys, investment advisors, investment consultants, accountants, actuaries, appraisers, banks, brokers, consultants, custodians, insurance brokers, and any other persons or entities in connection with the operation, management, or administration of the Fund and to pay, as expenses of the Fund, any of their necessary and reasonable fees.

(e) To pay, or cause to be paid, from the Fund any and all expenses reasonably incurred in connection with the administration of said Fund.

(f) To maintain any and all actions or legal proceedings necessary for the protection of said Fund, its Plans, and/or the Trustees, and for the procurement of the Employees' benefits contemplated hereby. The Board may, in its discretion, compromise, compound, submit to arbitration, assign or settle any debt or obligation to or from the Fund; enforce or abstain from

enforcing any right, claim, debt, or obligation; reduce or increase the rate of interest, or otherwise modify, foreclose upon default, or enforce any such obligation; and waive or reduce any liquidated damages and/or interest assessed a delinquent Employer. Costs and expenses of any action, including attorneys' fees, brought by or against the Trustees or any of them shall be paid from the Fund except as may be provided by law or this Agreement.

(g) To adopt all necessary rules and regulations for the proper administration of the Fund and to delegate such of its powers and authority to any committee of the Trustees or agents as may be deemed advisable. The Trustees may delegate their authority to sign contracts and other legally binding instruments on behalf of the Fund, and any other of their ministerial powers or duties, to their representative, agent, employee, or to a third party administrator.

(h) To control and manage the operation and administration of the Trust Fund and the Plans sponsored by the Trust and to interpret and construe all provisions of the Trust and the Plans, including the discretionary authority to determine eligibility for benefits, to interpret and/or remedy any ambiguities contained in the Trust or Plans, and to allow or disallow the participation of any bargaining unit in the Fund. The Trustees shall make such rules, interpretations, computations, and findings of fact and take such other actions to control, manage, and administer the Trust and Plans as they deem appropriate. The rules, interpretations, computations, findings, and actions of Trustees shall be final, binding, and conclusive on all parties, including Employees, Retired Employees, Plan Participants, their Dependents and beneficiaries, as well as on Employers and Unions participating in the Trust and its Plans. The Trustees shall be deemed to have properly exercised their authority as described herein unless they have abused their discretion by acting arbitrarily or capriciously. In administration of the Trust and Plans the Trustees shall at all times discharge their duties in accordance with the standards set forth in ERISA Section 404(a)(1).

Any Plan participant or Dependent covered by any benefit program adopted by the Trustees whose claim is denied in whole or in part by the administration shall be entitled to appeal said denial to the Trustees, except for denials based on the failure of the Employee's Employer to make such contribution as is required for current eligibility. Any such appeals shall be in writing and shall be delivered to the administrator, who shall submit the matter for disposition by the Trustees. The Trustees may delegate their authority to decide such matters to a committee consisting of one (1) Employer Trustee and one (1) Union Trustee. The Trustees may adopt appropriate rules and regulations for the processing of appeals.

(i) To delegate the responsibilities or duties involved in the operation and administration of the Plans to the Chairperson and Co-Chairperson or any duly designated committees of the Board. The Trustees may so allocate their responsibilities or duties with respect to the management and control of Fund assets; provided, however, that the remaining Trustees shall not be liable for any losses resulting from the acts or omissions of those Trustees who have accepted the allocation of such fiduciary responsibilities, except as may otherwise be required by ERISA.

(j) To maintain suitable and adequate records of and for the administration of the Trust Fund, the Board may require any Employer and any Employee to submit to it any information, data, report, or documents, reasonably relevant to and suitable for the purposes of such administration. All participating Employers and Unions shall use their best efforts to secure compliance with any reasonable request of the Board for any such information, date, report, or documents. Upon request in writing from the Board, any Employer will permit a certified public accountant or other agent selected by the Board to enter the premises of such Employer during

business hours at a reasonable time or times, and to examine and copy such books, records, papers, or reports of such Employer as the Trustees may deem necessary in their sole discretion to determine whether the Employer is making full and prompt payment of all sums required to be paid by them to the Trust Fund. For any Employer payroll audit performed outside of California, the Employer shall pay costs incurred by the trust auditor for transportation, meals, and lodging in connection with the audit.

If an Employer refuses the Board's request to perform a payroll compliance test, the Employer shall be considered in breach of this Agreement. Attorneys' fees may be assessed against the Employer if the refusal is referred to legal counsel to secure compliance, even if no formal legal action is initiated. The Employer shall reimburse the Fund (in an amount to be determined by the Board of Trustees) for the Fund's attorneys' fees incurred to secure compliance with an audit request or payroll test. If legal action is instituted by the Fund for collection of delinquent contributions, the Employer shall pay all court costs, interest, and attorneys' fees.

In the event that an audit pursuant to this Section determines that an Employer's underpayments and/or overpayments to the Fund exceed \$3,000, or five percent (5%) of the required contributions for the period audited, whichever is greater, the Employer shall be responsible for the full cost of the compliance test (in addition to the underpayments, interest, and liquidated damages attributable thereto) including attorneys' fees, if applicable, incurred to enforce compliance with an audit request or payroll test.

(k) To procure fidelity bonds in an amount no less than required by law and may purchase other insurance covering claims against the Fund based upon conduct of any Trustee, Trust employee, representative or agent, or anyone providing services to the Trust. Such insurance shall provide for recourse against any person for whom the Trust may be liable, in accordance with ERISA although the insurer shall have the right to eliminate such recourse by the payment of an additional premium by such Trustee or by an organization other than the Fund. The cost of the premiums for such bonds and insurance shall be paid out of the Trust Funds, except for bonds covering the investment manager and custodian, if any. Nothing herein shall be construed to prohibit any Trustee (or their employer) or other person in a fiduciary relationship under the Trust from purchasing insurance to cover liability of one (1) or more persons who serve in a fiduciary capacity under the Trust.

The Board may purchase with Fund assets and maintain a policy or policies of insurance for fiduciary liability, health care purchasers, property, casualty, employment practices liability, cyber and other types of insurance (in its discretion) reasonably necessary to cover the Board and/or the Fund, Fund assets, individual Trustees, Fund employees, agents, and representatives and/or any other individuals deemed appropriate by the Trustees, in such amounts, against such risks, and with such deductibles as, in the Trustees' judgment, shall be appropriate in the operation and administration of the Fund.

(l) To increase the benefits available under any of the programs provided for by this Trust Agreement if in its judgment the Fund has sufficient assets to make such increases. Subject to the applicable terms of the Collective Bargaining Agreements providing for participation in the Fund, the Board of Trustees similarly shall have authority to decrease benefits under any of the programs provided for by this Trust Agreement if in its judgment such action is warranted. Exercise of the authority in this clause shall be subject to the limitations, if any, in applicable Collective Bargaining Agreements. The Trustees shall have the authority to establish and implement a funding policy with regard to the Plans and create, accumulate, and

maintain such margins or reserves as the Board of Trustees determines to be prudent or desirable in connection with the sound and efficient administration of the Plans and the Fund.

(m) To adopt and enforce such policies, rules, and regulations as they deem proper with respect to the treatment of active and/or retired Employees upon the termination, for any reason, of participation in the Trust Fund and its Plans by the Employer of active Employees or the former employer of retired Employees. Such policies respecting active Employees may include, without limitation, the assessment of a sum of money to be paid by their Employer which will prevent anticipated losses which may be incurred by the Trust by reason of any continued expenses which must be paid on behalf of employees of such Employer following termination. Such policies respecting retired Employees may include, without limitation, the termination of coverage or the adoption of increased post-retirement monthly contributions as a condition of continued participation, and rules pertaining to cessation and/or continued coverage for retirees upon withdrawal of their former employer from participation in the Fund, all subject to the terms of the applicable Collective Bargaining Agreements.

(n) To merge the Fund with or into other Trust Funds, providing that following such merger benefits will be continued in effect in accordance with the Collective Bargaining Agreements providing for contributions to be made to the Fund. The Trustees shall also have authority to approve or accept the merger of other trust funds into the Fund upon such terms and conditions that are consistent with the best interests of the Fund.

(o) To enter into agreements with other health and welfare benefit plans and trusts providing for the reciprocity of contributions and/or eligibility credit as between one or more of the Fund's Plans and such other plans and trusts.

(p) To take action between meetings and/or delegate to the Chairperson and Co-Chairperson on emergencies or other matters warranting action prior to the next scheduled Board of Trustees meeting. Such action may be taken by email, text, telephone or other reasonable means. Any such action shall be subject to ratification at the next Board meeting.

(q) To (in addition to any self-pay requirements imposed by the Consolidated Omnibus Budget Reconciliation Act of 1985 – COBRA) accept contributions by individual employees for participation in Plans administered by the Fund in circumstances where such persons have been covered by the Plan but become unemployed, or where such persons work for a number of different employers during a month and for that reason do not attain the required number of working hours for any single Employer to require it to contribute to the Fund on behalf of the Employee. The Trustees shall adopt rules governing the arrangements for such contributions to be made, including eligibility and termination of eligibility.

(r) To designate a representative of the Fund to accept legal process on behalf of the Fund. Except as provided in Section (a) of this Article, whenever the signature of the Trustees is required on any signature or instrument, the signature of the Chairperson and/or Co-Chairperson shall be sufficient and shall evidence the action of the entire Board of Trustees.

(s) Except as may otherwise be required by ERISA or other applicable law, to act upon any paper or document reasonably believed to be genuine and purporting to be made, executed, or delivered by the party in whose name it purports to be, and shall be indemnified and held harmless by the Fund for any liability arising from such actions.

(t) To allow for the participation of certain non-collectively bargained Employees of Employers as, within its complete discretion, the Board deems appropriate.

(u) To assess a termination premium on Employers who terminate participation in the Fund addressing such Employer's post withdrawal liability for active and retired employees.

(v) To take such other actions as may be required (1) for the prudent management of the Fund and its benefit plans and (2) as responsible fiduciaries.

ARTICLE V EMPLOYER PARTICIPATION AND OBLIGATION

5.1. Participation by Employers. An Employer must satisfy any requirements, standards, rules, and regulations for participation of Employers as the Board of Trustees may, in its discretion, deem proper and necessary for the sound and efficient administration of the Fund.

5.2. Subscriber Agreement. Each participating Employer shall execute a Subscriber Agreement which shall be coterminous with its current Collective Bargaining Agreement, and shall continue in effect during negotiation for a successor agreement, requiring contributions to be made to the Fund. The Subscriber Agreement shall be in a form approved by the Trustees, and shall provide, inter alia, that the subscriber Employer agrees to the terms and conditions of this Trust Agreement; and that the Employer Trustees and their successors are accepted and authorized to represent such Employer in the administration of the Fund. Such Subscriber Agreement and/or Collective Bargaining Agreement shall indicate the effective date for the Employer's participation in the Fund, the categories of employees who are covered, and the rate of contribution to the Fund to a standard determined by the Fund.

5.3. Contributions. Each Employer shall pay the Trust Fund on or before the 10th day of each month a monthly welfare payment as prescribed in the Collective Bargaining Agreement to which the Employer is a party for the following Employees:

(a) Unless otherwise provided in the Collective Bargaining Agreement, any Employee who has completed eighty (80) straight time hours during the preceding calendar months. For purposes of this Section, straight time hours shall include the first eight (8) hours on Saturdays, Sundays, and holidays. Any regular employee who is on sick leave shall have payment made by the Employer on their behalf for the month that said Employee returns to work and the following month, even though the Employee may not have completed eighty (80) hours of employment during the month involved.

(b) Any Employee who is new to the industry or who has not been covered for purposes of health benefits under the terms of a Collective Bargaining Agreement with an affiliate of the International Brotherhood of Teamsters during the preceding six (6) months shall be eligible for benefits only after the first day of the calendar month following the completion of three (3) months on the payroll of an Employer and the Employer's submission of such contributions on their behalf. After qualifying, such an Employee shall maintain an eligibility in accordance with paragraph (a), above. However, each Employer shall make monthly contributions to the Trust Fund on behalf of any such Employee, even though such Employee is not eligible for benefits, after completion of eighty (80) hours of employment in the preceding calendar month.

(c) Paid vacations, paid sick leave, and paid holidays shall be considered as time worked for purposes of computing time worked as provided above.

5.4. Trustee Approval. The Trustees have the right to accept or reject the participation of any Employer, or any Employer contributions, in accordance with the criteria or standards that the Trustees

develop, including to ensure that all Employers meet the criteria for participation set out in this Agreement.

5.5. Obligations of Employers. By executing or complying with the terms of a Collective Bargaining Agreement or Subscriber Agreement, or by making contributions to the Trust on behalf of Employees, each Employer shall be deemed to have, without any further action:

(a) Reviewed, understood, adopted, and agreed to all provisions of this Agreement, and any amendments hereto, which documents shall be deemed to have been incorporated by reference into such Collective Bargaining Agreement;

(b) Granted power of attorney to the Employer Trustees for purposes of all aspects of administration of the Fund, including, but not limited to, amendment and interpretation of this Agreement and any Plans adopted hereunder; and

(c) Agreed to comply and be bound unconditionally to the Trust established pursuant to this Agreement, and any amendments thereto, to the Plan(s) for which the Employer is contributing to the Fund, and to all of the decisions of the Trustees.

5.6. Termination Premium. The Board of Trustees have the authority to assess contributing Employers who terminate participation in the Fund, for any reason, a termination of participation premium. For purposes of this Section, an Employer shall become liable for the premium upon the withdrawal or termination of participation of:

(a) All of its non-collectively bargained employees;

(b) All of its non-collectively bargained employees in one or more classifications (e.g. all clericals or all management employees);

(c) All of its collectively bargained employees employed at any plant or location; or

(d) Any classification of collectively bargained employees while other employees continue participation in the Fund.

The formula applicable to assessment of a termination premium shall be determined from time to time by the Board of Trustees. Upon determination of a change to an existing formula for assessment, participating Employers shall be so informed.

ARTICLE VI DELINQUENT EMPLOYER PAYMENTS

6.1. Employer Contributions. Each Employer shall make payments on behalf of its Employees as provided by the applicable Collective Bargaining Agreement and Subscription Agreement, but shall do so in the time and manner prescribed by the Trustees. Each contribution to the Fund shall be made promptly, and in any event is due on or before the 10th day of the calendar month in which it becomes payable. If said contribution is not paid in full by the 25th day of the calendar month in which it is due, it shall be delinquent and the Employer shall be so notified. If legal action is instituted by the Fund for collection of the delinquent contributions, the Employer shall pay all court costs, interest, and reasonable attorneys' fees. The Trustees in their discretion may allow repayment of Employer delinquencies in installments.

6.2. Delinquent Payments. The parties recognize and acknowledge that the regular and prompt payment of Employer contributions to the Fund is essential to the maintenance and effectiveness

of the Trust Fund and that it would be extremely difficult and impractical to fix the actual expense and damage to the Fund which would result from the failure of an individual Employer to make the required payment in full within the time above provided. Therefore, the amount of damage to the Trust Fund resulting from any such failure is agreed as follows:

(a) The sum of six percent (6%) of the amount of payments due or \$25.00, whichever is greater, during the two weeks immediately following the date on which payments become delinquent;

(b) The sum of twelve percent (12%) of the amount of payments due, if the delinquency remains unpaid after the first two weeks immediately following the date on which payments become delinquent; and

(c) These amounts shall become due and payable to the Fund as liquidated damages and shall be in addition to interest, legal fees, and costs reasonably expended by the Fund in litigation.

6.3. The Trustees may, but shall not be required to, institute legal proceedings to collect delinquent Employer contributions, liquidated damages, and attorneys' fees. Such proceeding may be instituted by the Fund administrator upon receipt of general or specific instructions from the Trustees to do so, and may be brought in the name of the Fund or assigned to a third party for collection.

6.4. If the Employer becomes delinquent in paying any amounts required under this Article, they shall reimburse the Fund for all reasonable attorneys' fees, costs, and interest incurred by the Fund in connection therewith whether or not legal proceedings were instituted, it being recognized that the extent of legal services necessarily incurred in the collection of required Employer contributions may in certain cases have no relation to the fact that the amount of delinquency in question is relatively small. Attorneys' fees may be assessed if a delinquency is referred to legal counsel for collection, even if no formal legal action is initiated.

6.5. In addition to liquidated damages and attorneys' fees, a delinquent Employer shall also be assessed interest on the amount of such delinquency, computed from the time the contribution was payable, at the rate specified in Internal Revenue Code Section 6621, as said amount shall from time to time be determined.

6.6. Six percent (6%) liquidated damages as described above shall be assessed when billing for delinquencies discovered through a payroll audit of the Employer if the bill remains unpaid after thirty (30) days. Thereafter, if the delinquency remains unpaid after two weeks, liquidated damages of twelve percent (12%) shall apply.

6.7. Contributions paid by Employers shall first be applied to the earliest unpaid balance of such Employers, if any exists. Second, contributions shall be applied to pay contributions owed for each subsequent month of delinquency in chronological order, and thereafter contributions shall be applied to pay any liquidated damages, interest, and/or collections costs owing. Delinquent Employers who have filed for reorganization pursuant to Chapter 11 of the Federal Bankruptcy Code shall be eligible for waiver of this order of payment, subject to review by the Board of Trustees. The Trustees shall have the authority and discretion to modify this order of payment based on the circumstances of the delinquency.

6.8. Claims of covered Employees and retirees and their Dependents shall not be paid during a period when their Employer or former employer is delinquent in making current contributions. The

Trustees, however, shall have authority to waive this requirement based on the circumstances of the delinquency.

6.9. In addition to any other remedies to which the Trustees may be entitled under this Agreement, in the event that an Employer fails to make required contributions to the Fund, the Board of Trustees may bring an action on behalf of the Fund pursuant to Sections 502(g)(2) and/or 515, or any other applicable provision of ERISA or the Labor-Management Relations Act (or other applicable federal or state law) to enforce the Employer's obligation to contribute to the Fund. In addition to the amounts set forth in this Article, in the event that legal action is initiated for the collection of delinquent contributions, the delinquent Employer shall be liable for all costs and expenses incurred in collecting its contributions or other payments to the Fund, including but not limited to audit expenses, attorneys' fees, interest, court costs, and all other costs and expenses attributable to the collection of such contributions or other payments.

ARTICLE VII ANNUAL AUDIT

The Board of Trustees shall cause to be made annually an audit of the Fund, which shall be made available for inspection by interested persons at the principal office of the Fund.

ARTICLE VIII RIGHTS OF PARTIES IN THE FUND

8.1. No Interest in Trust Fund Assets. No Employer shall be liable for any payment of the East Bay Drayage Drivers Security Fund required of any other Employer, nor shall any Association or Union be liable for any such payments required of any Employer. No Association, Union, or Employer shall be liable for any welfare benefits as contemplated by this Agreement, nor any benefits, debts, liabilities, or obligations of the Fund or of the Trustees, except as provided in Section 5.6 of this Agreement regarding a Termination Premium. Neither the Association, nor the Union, nor any Employer, nor any Employee shall have any individual right, title, or interest in the money or property of the East Bay Drayage Drivers Security Fund, other than as specifically provided in this Trust Agreement or under the terms of the Plan(s). No Employer shall have any right to the return of any money it has paid into the Fund, except as expressly provided in this Article, and no Employee, Plan Participant, Dependent, or any other person shall have any right, privilege, or option to receive any cash or other consideration from the Fund in lieu of the benefits provided under the welfare Plan(s) established or proposed by the Board of Trustees.

8.2. Obligation of Trust Fund. The Fund shall provide and pay benefits under programs adopted pursuant to the Collective Bargaining Agreements, Subscription Agreements, and this Trust Agreement, but the liability of the Fund shall in no event extend beyond the funds which are available to it from contributions made to the Fund in accordance with the Collective Bargaining Agreements and Adoption Agreements and such income as is derived therefrom.

8.3. Return or Credit for Mistaken Contributions. The Fund has been established for the sole and exclusive purpose of providing benefits for Employees or their Dependents in accordance with the provision of the Plan(s). No persons, whether Employees, Dependents, or otherwise, shall have any interest in the Fund except as expressly provided in the Plan or this Trust Agreement. At no time shall any assets of the Fund be used for, or diverted to, purposes other than the exclusive benefit of Employees, Dependents, or other persons who may be entitled to receive benefits under the Plan, nor

will any assets of the Fund revert to or become the property of an Employer, except as set forth in this Section.

A contribution made by an Employer by mistake of fact or law may, in the sole and absolute discretion of the Board, be returned to the Employer only as follows:

(a) Refunds or credits for mistaken contributions discovered as a result of the Fund's payroll testing of an Employer are limited to payments made by the Employer during the thirty-six (36) calendar months preceding the last month tested. Refunds or credits for mistaken contributions discovered by the Employer, the administrator, or in any other matter are limited to payments made by the Employer during the 36 calendar months preceding the date the Trust Fund receives notice of the error.

(b) Refunds or credits are permitted only to the extent possible without loss to the Fund. The following deductions shall be made from all refunds or credits: (i) the amount of any benefits paid in reliance on the mistaken contribution; (ii) premiums paid to Health Maintenance Organizations (HMOs) and other pre-paid providers in reliance on the mistaken contribution; (iii) an administrative charge of twelve percent (12%) of the total contribution (for the cost for reviewing records in connection with the refund, legal fees, prepaid premiums for life insurance and vision benefits, and other non-refundable charges by providers of contract services to the Fund); and (iv) the cost of payroll testing if Employer underpayments or overpayments exceed \$3,000 or (5%) of the required contributions for the period tested, whichever is greater. Liquidated damages will be assessed on billings for payroll testing in accordance with Article VI, Delinquent Employer Payments.

(c) The determination as to whether an Employer has made a contribution or other payment to the Fund by mistake of fact or law, and whether such contribution or payment should be returned to the Employer, shall be made in the sole and absolute discretion of the Board of Trustees in accordance with ERISA and applicable law, taking into account all of the evidence submitted by such Employer to demonstrate that such contribution or payment was made by mistake; provided, however that the Employer shall have the burden of proving that such contribution or payment was made by mistake.

(d) Except as provided above, in no event shall any assets of the Fund revert to or become the property of an Employer.

ARTICLE IX PLANS OF BENEFITS

9.1. Benefits.

(a) The Board shall have the full and exclusive right, power, and authority, in its sole and absolute discretion, to determine all questions of the nature, type, form, amount, eligibility for, and duration of benefits (including, without limitation, matters pertaining to the interpretation and application of reciprocity agreements with other funds and plans) to be provided to Covered Employees and Dependents under each Plan. Notwithstanding the preceding sentence, no benefits other than health and welfare benefits as the Board may from time to time determine, may be provided to Covered Employees and Dependents (or paid for) by the Fund.

(b) Payment of benefits under each Plan shall be made directly from the Fund by the Board of Trustees (or its duly authorized agent) or may be provided for by the purchase and

delivery of such insurance contracts, policies, or certificates to such persons, in such manner, and at such time as the Board shall decide.

(c) The Board (or its agents) shall be fully protected in making, discontinuing, or withholding benefit payments from the Fund, or purchasing or delivering insurance contracts, policies, or certificates, or instructing the insurers with respect thereto, all in reliance upon information received from an Employer respecting the status of any Employee employed by such Employer. Each Employer shall indemnify and hold harmless the Fund and the Trustees, and each of them, from the consequences of relying on any information it has furnished to the Board or furnished by its agents or representatives.

(d) If for any reason, (including, without limitation, mistake of fact or law, or reliance on any false or fraudulent statements, information, or proof submitted by a claimant) benefit payments are made to any person or entity from the Fund in excess of the amount which is due and payable under the applicable Plan, the Board (or designee duly authorized by the Board) shall have full authority, in its sole and absolute discretion, to recover the amount of any overpayment (plus interest, attorneys' fees and costs). For purposes of this Section, "overpayment" shall be deemed to also refer to claims filed with the Fund which are related in any way to an action by the Employee or Dependent against a third party for which the Employee or Dependent has recovered any monies (even if said recovery is less than the total losses). For this purpose, an Employee or Dependent's uninsured motorist's insurance coverage shall also be deemed a "third party." The Board's authority shall include, but shall not be limited to, (1) the right to reduce benefits payable in the future to or on behalf of the person who received the overpayment, (2) the right to reduce benefits to an Employee or Dependent who is, or may become, entitled to receive payments under the Plan, (3) the right to reduce benefits payments to a person or entity to which the Employee or Dependent has assigned benefits payable in the future, (4) the right to initiate a lawsuit or take such other legal action as may be necessary to recover any overpayment (plus attorneys' fees and costs), and/or (5) the right to terminate the eligibility of an Employee or Dependent who defrauded the Trust Fund or failed to repay the Fund after discovery of an overpayment or assist in the Trust Fund's recovery from third parties for claims paid by the Trust Fund.

9.2. Written Plans of Benefits. The specific detailed basis upon which the eligibility for benefits; type, forms, nature, and amount of benefits payable (and any restrictions thereon); and the payment of benefits to Employees and Dependents is to be determined shall be specified in the Plans established (and as amended from time to time) by the Board, in its sole and absolute discretion. The terms of such Plans shall be binding on all Employees, Dependents, and persons claiming benefits thereunder, and on any Employer or Union participating in the Plan through a Collective Bargaining Agreement or Subscription Agreement.

9.3. Insurance Contracts. The written plan of benefits comprising the Plan may (but need not necessarily) consist, in whole or in part, of contracts with one or more insurance companies.

9.4. No Assignment of Benefits. Except as may otherwise be provided in the Plan(s), ERISA, or the Internal Revenue Code, including with respect to qualified medical child support orders ("QMCSOs") as defined in Section 609(a)(2) of ERISA:

(a) No benefit is payable at any time under any Plan prior to receipt thereof by an Employee (or Dependent or Employee's estate) and no monies, securities, or other property of any nature whatsoever in the Fund or contracts, policies, benefits, or monies payable therefrom

shall be subject in any matter to alienation, sale, transfer, assignment, pledge, attachment, garnishment, mortgage, lien, charge, or encumbrance of any kind, nor shall any benefit, until actually paid to the Employee (or Dependent or estate), be in any manner subject to the debts or liabilities of said Plan Participant.

(b) Benefit payments (or portions thereof) under a Plan or the Fund shall not in any way be subject to any legal process, execution, attachment, or garnishment, be used for the payment of any legal claim against any such person, or be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise.

(c) Notwithstanding the foregoing, a Plan Participant or a Dependent may assign their right to receive reimbursement from the Fund for a benefit that is covered under a Plan, to a qualified medical provider as determined pursuant to the terms of the applicable Plan. The Fund shall have full authority, in its sole and absolute discretion, to recover from such Plan Participant or qualified medical provider any excess benefit payments of the kind described, and in the manner provided in this Article. In the event that there is any dispute as to whether an assignment made pursuant to this Article is valid, the Board's decision shall be final, binding, and conclusive on all affected parties, including, without limitation, any qualified medical provider.

ARTICLE X ADDITIONAL PARTIES

10.1. Insurance Companies. No insurance company will be considered party to the Fund or to any Plan for any purpose, or in any way responsible for its performance, validity, or sufficiency. An insurance company will be obligated only to the extent set forth in any contracts issued by it and will not be required to take or permit any action contrary to the provisions of such contracts.

10.2. Other Parties. No Union, person, partnership, corporation, or other association dealing with the Trustees shall be obligated to see to the application of any assets or property of the Fund, unless such obligation is set forth in a written agreement, or to see that the terms of this Trust Agreement have been complied with, or be obligated to inquire into the necessity for or expediency of any act of the Trustees. If any instrument is executed by the Trustees (whether by all of them or in any manner specified in this Trust Agreement) it shall be to establish from the fact of such execution alone, in favor of any Union, person, partnership, corporation, or other association relying thereon, that at any time of delivery of such instrument this Trust Agreement was in full force and effect, that such instrument was executed and delivered in accordance with the terms of this Trust Agreement, and that the Trustees were duly authorized and empowered to execute and deliver such instrument.

ARTICLE XI GOVERNING LAW

The interpretation of this Agreement and the administration of the Trust created hereby shall be governed, to the extent not subject to federal law, by the laws of the State of California.

ARTICLE XII AMENDMENT AND RESTATEMENT

This Agreement and Declaration of Trust may be amended or restated in writing by the Board of Trustees at any time, without notice to any person or persons, provided however, that no amendment or

restatement shall alter the exclusive purpose of the East Bay Drayage Drivers Security Fund to provide health and welfare benefits for the Employees, nor cause the Fund to lose its tax-exempt status under Section 501 of the Internal Revenue Code. A copy of any amendment or restatement shall be sent to each Union and to each Employer party to this Fund.

ARTICLE XIII TERMINATION AND DURATION

13.1. Effective Date and Continuation. This Restated Agreement shall be effective as of September 1, 2020. The parties contemplate that new Collective Bargaining Agreements will be entered into continuing the Trust Fund and intend that this Trust Agreement shall continue in effect indefinitely. In the event, however, of the termination of this Agreement and Declaration of Trust, for any cause whatsoever, all money remaining in the Fund after the payment of insurance premiums and other expenses theretofore incurred, shall be paid over to another trust fund having substantially the same purposes, or shall be used for the procurement of health and welfare benefits, including group insurance, for the Employees covered by the benefit Plan(s) then in effect.

13.2. Termination.

(a) This Agreement and Trust Fund established hereunder may be terminated:

- (1) At any time, by a vote of the Board of Trustees;
- (2) Automatically, in the event that the obligation of all Employers to make contributions to the Fund terminates or if there shall be no assets remaining in the Fund;
- (3) Automatically, upon the death of the last survivor of such persons who are living at the time of its creation, who were entitled to receive benefits hereunder; provided that if, without the benefit of this provision, this Trust Fund does not violate the Rule of Perpetuities, it shall continue in perpetuity unless otherwise terminated.

(b) In the event of the termination of the Fund, the Board shall apply the assets of the Fund to pay or provide for the payment of any and all obligations of the Fund and distribute or apply any remaining surplus in a manner consistent, in their opinion, with this Agreement, the Plan(s), ERISA, the Internal Revenue Code, and any other applicable law; provided, however, that no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Participants and Dependents (except as provided in Article VII regarding Mistaken Contributions), the payment of administrative expenses of the Trust Fund, or for other payments in accordance with the provisions of this Trust Agreement.

(c) Upon termination of the Fund, the Board shall promptly notify all necessary parties, including the Unions, Employers, any insurance carriers, service providers, and as many Employees (and their Dependents) as possible, and the Board shall continue to act as Trustees for the purpose of concluding the affairs of the Fund. The Board may take any action with regard to insurance policies or group contracts that may be required, and which the Trustees, in their discretion, may deem appropriate.

13.3. Transfer of Assets. Nothing contained in this Agreement shall be deemed to prohibit the Board from transferring any assets of the Fund to another multiemployer health and welfare fund established for Employees or former Employees of the Employer(s) who were Plan Participants on such terms and under such conditions as the Board may determine.

**ARTICLE XIV
MISCELLANEOUS PROVISIONS**

14.1. Titles, Plural and Gender. Wherever required by context, the singular of any word used in this Agreement shall include the plural and the plural may be read in the singular. Words used in the masculine shall be read and construed in the feminine where they would so apply.

14.2. Severability. If any one or more of the covenants, agreements, provisions, or terms of this Agreement, or any amendment hereto, shall be held contrary to any provision of law, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions, or terms (or amendments) shall be enforced only to the extent not contrary to law or invalid; be needed severable from the remaining covenants, agreements, provisions, or terms of this Agreement; and shall in no way affect the validity or enforceability of the other provisions of this Agreement or the rights of the parties hereto.

14.3. Successor Provisions of Law. Any references to a section of ERISA or the Internal Revenue Code, or to any regulations or administrative guidance thereunder, shall be deemed to include a reference to any successor provision of ERISA or the Code, or of any successor federal law, regulation, or administrative guidance.

14.4. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof, is intended to be the complete and exclusive statement of the terms hereof, and may not be modified or amended except pursuant to the procedure set out in Article XII.

14.5. Construction. Anything in this Agreement, or any amendment hereof, to the contrary notwithstanding, no provision of this Agreement shall be construed so as to violate the requirements of ERISA, the Internal Revenue Code, or other applicable law.

14.6. Interpretation of Agreement. Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that the court, administrative body, or other entity interpreting or construing this Agreement shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all parties, by their respective representatives and agents, have fully participated in the preparation of all provisions of this Agreement.

This Amended Trust Agreement shall be effective as of March 1, 2021.

The undersigned hereby adopt, accept, and agree to the terms of this Trust Agreement.

Executed in Oakland, California, this 15th day of February, 2021 .

UNION TRUSTEES

By: Marty Frates
Marty Frates

By: Dominic Chiovare
Dominic Chiovare

By: Mark Hawkins
Mark Hawkins

By: Felix Martinez
Felix Martinez

EMPLOYER TRUSTEES

By: Richard Murphy
Richard Murphy

By: Michael Carnefix
Michael Carnefix

By: Greg Ong
Greg Ong

By: Richard Valle
Richard Valle