

Amended and Restated Jack London Improvement District Public Trust Agreement

Recitals

1. This Jack London Improvement District Public Trust Agreement ("Agreement") amends and restates the Jack London Improvement District Public Trust Agreement, dated July 1, 2013. It memorializes the understanding of the City of Oakland, acting by and through its City Council ("City"), and the City of Oakland, acting by and through its Board of Port Commissioners ("Port of Oakland" or "Port") regarding the Jack London Improvement District ("JLID") and compliance with the requirements of the City's statutory trust grants (including Chapter 107 of the Statutes of 1852, Chapter 174 of the Statutes of 1923, Chapter 45 of the Statutes 1937, Chapter 343 of the Statutes of 1937, Chapter 720 of the Statutes of 1941, and Chapter 218 of the Statutes 1945) and the common law public trust for commerce, navigation, and fisheries (collectively referred to as the "Trust"), and shall govern the use of Port funds within the JLID.

2. On July 18th, 2023, the Oakland City Council unanimously approved the renewal of the JLID and the JLID has been constituted according to the procedures set forth in the City's authorizing resolution and the requirements outlined in the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999) and the laws of the State of California.

3. By executing this Agreement, the Port of Oakland approves the Port's participation in the JLID.

4. All owners in the District will be assessed an annual special assessment to fund JLID programs in accordance with the Management District Plan dated January 2023 (the "Management Plan").

5. The assessments, when due, will be collected either directly by the City (for non-taxable parcels) or by the County of Alameda (for taxable parcels), and will be disbursed through the City to the JLID Advisory Board, the entity charged with administering the JLID. The expenditure of the funds disbursed by the City to the JLID Advisory Board will be governed by a disbursement agreement entered into between the City and the JLID Advisory Board (the "Disbursement Agreement"), which requires that the disbursed funds be expended in accordance with the Management Plan and this Agreement. The JLID Advisory Board will acknowledge and confirm any amendments to this Agreement.

6. The JLID includes parcels owned by the Port ("Jack London Square") and parcels in the surrounding neighborhood. Jack London Square includes filled tidelands that, by various statutes, have been granted by the State of California to the City subject to the Trust, and under the City Charter are held by the Port under the exclusive control and management by the Board of Port Commissioners. The Port provides significant services (including security, landscaping, graffiti removal, marketing, promotions, special events, sidewalk cleaning, website hosting, weed removal, trash pickup and maintenance) to Jack London Square. The parties have a common interest in attracting a greater number of visitors to Jack London Square and in improving the visitor experience to make Jack London Square a major waterfront destination.

7. The assessment for each property owner is established based on an analysis of the relative benefit of the District's activities to each property. Based on this analysis, the Port's assessed share for its parcels in Year 1 will be \$251,483.18 or 15.86% of the total budget of \$1,617,800.

8. As a trustee of Trust lands, the Port is required to use the revenues generated from those lands for purposes consistent with the Trust and, in ordinary circumstances only on lands subject to the Trust and administered by the Port.

9. The City desires to affirm to the Port that the Port, like all property owners within the JLID, will benefit in proportion to its fair share contribution, consistent with all applicable laws governing special assessment districts, and that such benefit will render the assessments on Port lands a permissible expenditure of Trust funds and enters into this Agreement with the intention of providing broad assurances to the Port that Trust revenues will not be disbursed to or expended by the JLID Advisory Board unless and until such revenues can and will be committed to Trust-consistent uses. The City recognizes that this is a material condition for the Port's participation in the JLID.

Agreement

In recognition of the duties of the Port in upholding the Trust and to ensure that any expenditure by the JLID Advisory Board of any assessment paid by the Port is consistent with the Trust, the parties agree as follows:

1. Compliance with the Trust requires that the JLID Advisory Board maintain, account for, and expend all assessments received from the Port in accordance with the requirements set forth below in Section 3.

2. To comply with its obligations as trustee under the Trust, the Port shall not and will not pay any assessment for the JLID unless and until this Agreement is caused to be made legally binding on the JLID Advisory Board. The City, through its City Council, shall require JLID and City compliance with the terms of this Agreement in the express terms of the Disbursement Agreement between the City and the JLID Advisory Board. The City shall waive any and all claims it may have against the Port for nonpayment of any assessments to the JLID to the extent the JLID Advisory Board fails to comply with the terms of this Agreement. If, for any reason, this Agreement is invalidated, then the Port shall have no obligations to pay any assessments into the JLID. The City represents and warrants to the Port that it has the authority to enter into this Agreement and bind itself and to cause the JLID Advisory Board to become a signatory to this Agreement and be bound by its terms.

3. These Trust requirements shall unconditionally apply to the JLID. The JLID Advisory Board shall comply with the following with respect to any assessment assessed against the Port or paid by the Port to the JLID, which amount shall not exceed \$251,483.18, as lawfully adjusted overtime, in any given year ("Port Share"):

a. Each year, in conjunction with the preparation of its proposed budget for the JLID, the JLID Advisory Board shall prepare and submit to the Port a proposed expenditure plan ("Administrative Draft Port Share Plan") detailing how the JLID Advisory Board intends to provide services and make expenditures of the Port Share consistent with and benefiting the Trust for the coming year. In recognition of the significant services that the Port already provides in the Jack London Square, the JLID Advisory Board can realize efficiencies and economies of scale by utilizing the Port and/or its service providers to provide certain services within the scope of the Management Plan that are presently being or could be provided by those entities. Accordingly, the parties agree that a portion of the Port Share will be used to pay the Port for the costs of providing services or improvements within Jack London Square (and, if consistent with the Trust and subject to the agreement of the Port, outside Jack London Square) that are within the scope of the Management Plan ("Port-Provided Services"). The JLID Advisory Board shall consult with the Port in developing the Administrative Draft Port Share Plan for the purpose of identifying that portion of the Port Share that will be allocated to Port-Provided Services for the coming year and for the purpose of identifying Trust-consistent expenditures of the Port Share.

b. Following consultation with the Port on the Administrative Draft Port Share Plan, the JLID Advisory Board shall prepare a "Draft Port Share Plan" as part of the final budget for the JLID. The JLID Advisory Board shall submit the Draft Port Share Plan to the Port. For each proposed service and expenditure described in the Draft Port Share Plan that will take place on lands not owned by the Port, the JLID shall provide a written objective analysis clearly demonstrating the benefits to the Port of each proposed expenditure. For each proposed service and expenditure described in the Draft Port Share Plan, the Board of Port Commissioners shall determine, in its reasonable discretion, whether the proposed services and expenditures are consistent with the Trust and this Agreement and whether the JLID has established by objective analysis that the Trust will receive a proportionate special benefit. Any Port disapproval of a proposed service or expenditure shall be in writing and include brief findings explaining why the expenditures or services are inconsistent with the Trust or why the Port will not receive a proportionate special benefit. If the Port disapproves of a proposed expenditure, the JLID Advisory Board and the Port shall cooperate in good faith to identify potential alternative expenditures for inclusion in the Draft Port Share Plan. The parties shall ensure that the Draft Port Share Plan shall include allocation of the entire Port Share for the subject year. If and where the total amount of Port-approved expenditures would be less than the total Port Share, the parties expressly agree that the remainder of the Port Share shall be automatically allocated to pay the Port for Port-Provided Services. Forty-five (45) days after the JLID Advisory Board's submittal to the Port of the Draft Port Share Plan, those elements of the Draft Port Share Plan not disapproved by the Port (if any), along with any alternative expenditures that the Port and JLID Advisory Board agree and any Port-Provided Services remainder, shall become and shall be called the "Final Port Share Plan."

c. Upon development of the Final Port Share Plan, the Port shall pay to the City and the City shall disburse to the JLID Advisory Board the Port Share for the coming year to

pay for the total projected expenditures in the Final Port Share Plan. The JLID Entity shall maintain the Port Share in an account separate from all other funds of the JLID (including, but not limited to, all other funds obtained from a special assessment of other property owners within the JLID) ("Port Share Account"), and shall separately account for all expenditures of the Port Share. The JLID Advisory Board, if requested by the Port or SLC, shall provide an annual audited financial statement, no more than once per calendar year.

d. The JLID Advisory Board may expend funds from the Port Share only if the expenditure is listed in the Final Port Share Plan. At the end of each year, any unused funds remaining from the Port Share shall be paid to the Port for Port-Provided Services. Such payment shall be made no less than thirty (30) days after the end of the year, unless the parties have agreed in writing to some alternative allocation of such funds.

e. Without limiting the range of permissible expenditures of the Port Share or the Port's power and authority to disapprove specific expenditures, the following general understandings with respect to JLID expenditures have been agreed to by the Port:

i. The following may, upon the objective showing required in Paragraph 3(b), above, be paid for by Port Trust funds: litter removal, graffiti removal, sidewalk plantings, and other beautification efforts on streets and sidewalks outside, but immediately abutting and, in some cases, leading to, Jack London Square. Specifically, these streets and sidewalks are limited to the following: the northern side of Embarcadero West between Broadway and Alice Street; Broadway between Embarcadero and 6th Street; Washington Street between 2nd Street and 6th Street; Franklin between Embarcadero and 5th Street; Webster Street between Embarcadero and 6th Street; Harrison Street between 2nd and 5th Street; and Alice Street between 2nd and 5th Street.

ii. The following may be paid for by Port Trust funds: increased security and litter removal throughout the JLID as needed to offset the direct impacts of special events at Jack London Square, but only during the dates and times of those special events and within a 24 hour period immediately following such special events, and only if the special events are approved and organized by the Port's Common Area Operator and held on Port owned property.

iii. The following may, upon the objective showing required in Paragraph 3(b), above, be paid for by Port Trust funds: wayfinding signage within the JLID that directs visitors and tourists to Jack London Square and the waterfront, or to parking for Jack London Square or to events in the Square.

iv. The following are Trust-consistent uses: (aa) Port-Provided Services that the Port intends to provide, or (bb) other services or improvements on Port-owned property within and around Jack London Square consistent with the Management Plan and deemed appropriate and desirable by the Port, to the extent not duplicative of services or improvements that the Port (or its tenants by agreement with the Port) is already obligated to undertake.

f. Notwithstanding anything to the contrary in this Agreement, Port Trust funds shall not be used to pay for JLID or City administrative costs.




g. The Port and the State Lands Commission shall have the right at any time to audit the expenditures made by the JLID Advisory Board, and the City shall require the JLID Advisory Board, and the JLID Advisory Board shall upon becoming a signatory to this Agreement, make available all of its books and records for any such audit and cooperate fully with respect to any such audit. The City and the JLID Advisory Board agree to maintain all books and records with respect to expenditures of the Port Share for a period of four (4) years after the term of the JLID.

h. At the end of the term of the JLID, or upon the disestablishment of the JLID, the City shall return to the Port any unspent Port Share held by the City, and shall require the JLID Advisory Board to return, to the Port any unspent Port Share within sixty (60) days, unless such funds are already owed for work or services already performed under the Final Port Share Plan.

4. This Agreement may be executed in counterparts, including by electronic signature or scanned signatures, each of which shall constitute an original and all of which, taken together, shall be considered one and the same instrument.

(Signatures on Following Page)

Approved By:

<p>“CITY” CITY OF OAKLAND, a municipal corporation, acting by and through its City Council</p> <p> <u>Jestin Johnson (Sep 23, 2024 12:04 PDT)</u></p> <p>Jestin Johnson, City Administrator</p>	<p>“PORT” CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners</p> <p>_____</p> <p>Danny Wan, Executive Director</p>
<p>Approved as to form and legality</p> <p>_____</p> <p><u>Selia Warren</u> Selia Warren (Sep 20, 2024 10:49 PDT)</p> <p>Selia Warren, Supervising Deputy City Attorney City Attorney’s Office</p>	<p>Approved as to form and legality</p> <p>_____</p> <p>Mary C. Richardson, Port Attorney Port Attorney’s Office</p>
<p>JLID ADVISORY BOARD</p> <p>DocuSigned by:  9/12/2024 2:01 PM PDT</p> <p><u>Kim Cole, President</u></p> <p>_____</p> <p></p> <p>Savlan Hauser, Executive Director</p>	