

AGENDA REPORT

Resolution: Authorization for the Executive Director to Finalize and Execute the Revised Maritime and Aviation Project Labor Agreement (MAPLA) (SRD)

<u>MEETING DATE:</u>	9/28/2015
<u>AMOUNT:</u>	\$X, XXX, XXX (FY NN, One-Time, etc.) Choose an item.
<u>PARTIES INVOLVED:</u>	Alameda County Building and Construction Trades Council, Oakland, CA, Andreas Cluver, Secretary-Treasurer
<u>SUBMITTED BY:</u>	Amy Tharpe, Director of Social Responsibility
<u>APPROVED BY:</u>	J. Christopher Lytle, Executive Director
<u>ACTION TYPE:</u>	Resolution

EXECUTIVE SUMMARY

This Agenda Report summarizes the key terms agreed to in the revised Maritime and Aviation Project Labor Agreement (MAPLA), and requests authority for the Executive Director to finalize and execute the revised MAPLA for the period of October 1, 2015 to September 30, 2020.

BACKGROUND

On May 4, 1999, the Board of Port Commissioners (the Board) authorized the negotiation of a Project Labor Agreement and the retention of a Project Contractor and Legal Consultant to conduct the negotiations. On May 15, 2000, Davillier-Sloan, Inc./ Parsons Constructors, Inc. (DSI/PCI), on behalf of the Port, entered into a comprehensive Project Labor Agreement, known today as the Maritime and Aviation Project Labor Agreement (MAPLA).

The MAPLA was designed to ensure project labor stability, employ local residents, and support the implementation of the Port's small local business utilization program through the inclusion of a small business exemption. The MAPLA currently covers all projects in the Maritime and Aviation areas funded through the Port's Capital Improvement Program whose contracts are above \$50,000. On August 2, 2002, the Port and the Alameda County Building and Construction Trades Council (BTC) entered into a Settlement Agreement that extends

coverage of the MAPLA to Port tenant construction projects that exceed \$150,000 and until such time as the Airport Terminal Expansion project was complete, to tenant construction projects in the South Field area of the Airport that exceed \$50,000.

Initially adopted for five (5) years (through December 2004), the MAPLA was extended for two (2) years (through December 2006) as a result of the settlement of an arbitrator's award extending coverage of MAPLA to Port tenants' construction activities. MAPLA was further extended several additional times by Board action and with the concurrence of the BTC through June 30, 2008, with a month-by-month extension thereafter. In June 2010, the Board adopted a five (5) year extension to the MAPLA, and in February 2011, the Port and BTC executed an agreement to extend the MAPLA for five (5) years. Given that the negotiation has made considerable progress, but outstanding issues remained, on June 25, 2015, the Board of Commissioners authorized an extension of the agreement to September 30, 2015.

Since January 2014, Port staff and Davillier-Sloan, Inc. (DSI), the consultant currently providing MAPLA administrative services for the Port, worked with BTC to revise, amend, and reach agreement on a successor MAPLA.

The BTC and the Port have reached an agreement on the revised and amended MAPLA, and request that the Commission authorize the Executive Director to approve the revised MAPLA.

Staff recommends that the Board authorize the Executive Director to finalize and execute the revised and amended MAPLA for the period of October 1, 2015-September 30, 2020.

ANALYSIS

The revised MAPLA would cover the time period of October 1, 2015 through September 30, 2020.

The revised MAPLA differs from the existing MAPLA in the following major ways:

Modification to the MAPLA Coverage

- The existing MAPLA covers Maritime and Aviation projects at \$50K and above funded by the Port's Capital Improvement Program (CIP), as well as tenant projects at \$150K and above (except at South Field where \$50K or above is covered). The revised MAPLA will now cover all construction work contracts over \$150,000, regardless of funding source, for both construction and tenant work awarded by the Maritime and Aviation divisions (as defined by the Port budget), including particular instances of on-call contracts and the construction portion of hybrid professional services contracts;
- CRE work is not covered (including towers, poles, billboards, radio, and cell towers that are CRE revenue projects but located in or near the maritime and aviation areas);
- The revised MAPLA clarifies that coverage will include certain work done by specific trades such as on-site preparation, field surveying, materials and soils testing, modular furniture installation, painting, and pre-fabrication (for Sheet Metal and Pipefitters), to the extent they are part of construction contracts.

- Maintenance and warranty work: the revised MAPLA clarifies that work required or performed by manufacturers or sellers of equipment and systems to maintain eligibility of product warranty or in fulfillment of warranty are exempt.
- Specialty work for which the Port may receive an insufficient number of bidders will be referred to the MAPLA's Joint Administrative and Social Justice Trust Committee for discussion and potential resolution.
- The no strike, lockouts, and interruption provisions, as well as the labor peace provisions extend to all "covered work" in the Maritime- and Aviation-funded areas even if the work has been specifically exempted under the agreement, such as work performed by small businesses or core workers.

MAPLA coverage Extended to Include Off-Haul

- In the existing MAPLA, only on-site hauling was covered. In the revised MAPLA, on and off-site hauling will be covered with the following exemption for individual owner-operator truckers:

- Should they choose, owner-operator truckers who bid directly with the Port or with a prime contractor are automatically exempt from MAPLA coverage. Owner-operators who are contracted through brokers are able to exercise exemption through the MAPLA Small Business Exemption Program up to the limits of this program. The Port's Social Responsibility Division will develop a process for administering and monitoring the trucker exemptions. For those owner-operators who choose to be covered by the agreement, they shall only be required to pay a \$69 representation fee in lieu of paying Union regular dues, fees and fringe benefits.

Updated, Revised and Clarified MAPLA Small Business Enterprise Program (MSBE)

- In the existing MAPLA, there was a Small Business Exemption Program created to assist small, Local Impact Area, historically disadvantaged businesses with bidding and completing work with the Port. The aggregate value of the bid packages up to \$10M were excluded (could go to \$15M at request of the Social Justice Committee), a contractor would graduate out after receiving \$1M in contracts and no more than 20% of a craft's work may be subject to the exemption.
- In the revised MAPLA, the general terms of the SBE program will remain the same; the limit is at \$10M overall cap over the 5-year term of the revised MAPLA, with a possible increase to \$15M with a request and approval of the MAPLA's Joint Administrative and Social Justice Trust Committee (JASTC); the 20% per trade cap exist and \$1M contract award graduation rate per contractor.
- The new MSBE program differs from the existing program in that 1) the Port has the discretion to exclude all or any portion of a construction contract, including as needed for owner-operator trucker exemptions; 2) there will be an annual review by the JASTC of the caps and limits to adjust within the 5 year agreement period to account for project needs; and 3) it clearly defines a MSBE to be a firm that is a) located either in Alameda and Contra Costa Counties and b) meets the California Department of General Services definition of small business of average gross receipts of \$14M or less over the last 3 years.

Enhancements to the Apprentices Program

In an effort to increase the number of local, new hire apprentices available to work under MAPLA, there is a need to increase the opportunity for local residents to enter construction trades as apprentices. The revised MAPLA has added a number of new provisions, including:

- The BTC agrees to place annually no fewer than 25 new hire LIA apprentices, 10 of which shall come from the List Trades, defined as electrical, plumbing, sheet metal, glaziers, and elevator mechanics workers. All LIA apprentices will be dispatched from the union hall on a priority basis. Each year, the BTC will provide a compliance plan to the JASTC for review and approval. At the end of each year, the JASTC will review as to whether the goals have been met. The Port and BTC have agreed to support “Workforce Development Centers”, defined as construction-related, community based organizations that provide referrals qualified LIA/LBA residents and/or provide MC3-certified pre-apprenticeship training to LIA/LBA residents.
- For each construction contract, at \$1M in contract award, one new hire apprentices is required, and subsequently at each additional \$3M, one additional new hire apprentice is required. The contractor will now be able to qualify for ½ credit for new hire apprentices that they keep employed on non-MAPLA projects. This provision was added to give new hire apprentices greater opportunity to continue consistent work on a contractor’s projects.
- A new target to encourage the use of “disadvantaged” apprentices was added to the MAPLA: In the revised MAPLA, 25% of apprentice hours should be utilized by “disadvantaged workers”. Disadvantaged workers shall mean those LIA residents, prior to commencing work, who at least have one of the following barriers to employment: 1) is currently homeless, 2) is currently a custodial single parent, 3) is currently receiving public assistance, 4) has a criminal record or other criminal justice involvement, 5) has been unemployed for the previous one year, 6) has been emancipated from the foster care system, and/or 7) is a veteran of the U.S. Military.
- The Unions agree to work with designated Workforce Development Centers to identify qualified apprentices and support their entry into apprenticeship programs.

Streamlined Committee Structure

- Since its inception in 2000, the MAPLA was administrated by 2 main committees: the Joint Administrative Committee and the Social Justice Trust Fund Committee. The roles and responsibilities of the Committees and membership on these Committees were in need of attention.
- The BTC and the Port decided to combine the previous Social Justice Trust Fund Committee and the Joint Administrative Committee into one Committee called the “Joint Administrative and Social Justice Trust Committee” or JASTC. The Social Justice Committee, from the existing MAPLA, remains and will refer issues related to the Social Justice Program to the JASTC.
- Adhering to the original composition of the Social Justice Trust Fund Committee, the JASTC will consist of 7 representatives from the BTC and 7 representatives from the Port. There shall be 2 chairs, one from the Port and one from BTC. The purpose of this Committee is to resolve disputes related to the interpretation and implementation of MAPLA, including annual apprenticeship goals, social justice trust fund administration which included the (\$0.30) per hour worked contractor contribution to the Fund.

Core Employee Exemption Changed

- In the existing MAPLA, a Contractor can exempt up to 10 core employees. In the revised MAPLA, contractors may exempt up to 5 core employees with one “core” employee employed allowed for every one dispatched through the Union hiring hall up to the 5; the revised provision further clarifies that this policy extends to all Port contractors.

Employee Grievance Procedure

- The revised MAPLA changed the employee grievance procedure to require that employees of covered contractors grieve through the Master-Labor Agreements of the specific trades. Also, the arbitrators list was updated with new names that reflect the current individuals in this field.
- The revised MAPLA now refers step one grievances between the Port and the Unions to the Joint Administrative and Social Justice Trust Committee (“JASTC”) for resolution; if not resolved, the grievance is advanced in writing to Step Two. The revised MAPLA also refers all step three grievances to the JASTC Grievance Subcommittee whose decision is final and binding; absent a majority decision from the JASTC Grievance Subcommittee, the grieving party may advance the grievance to the Fourth Step, final and binding arbitration.

Remaining MAPLA provisions

- Other provisions and side letter agreements have been preserved with minor modifications for clarity and interpretation purposes.

BUDGET & STAFFING

The proposed action would require additional staff time to ensure effective monitoring of the updated agreement.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

While the matters addressed are directly related to the MAPLA. The action of extending and revising the MAPLA is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement and the provisions of the MAPLA do not apply to this action.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal C: Objective 2: Conduct comprehensive communication and outreach to stakeholders and strategic partners to improve workforce and small business opportunities.
- Goal I: Objective 2: Build and strengthen an effective partnership with labor unions.

LIVING WAGE

Neither the Port's Living Wage Ordinance (port Ordinance No. 3666) nor living wage requirements set forth in Section 728 of the Charter of the City of Oakland apply because there is no compensation to employees of Port contractors or recipients of port subsidies.

ENVIRONMENTAL

The recommended action is the approval of a revised existing agreement relating to labor utilization and continuity as well as social benefits derived from construction projects, each such project would have its own review and determination under the California Environmental Quality Act. ("CEQA"). The activity that is the subject of this report is covered by the general rule that CEQUA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the action recommended may have a significant effect on the environment. Therefore, the action is not subject to CEQA.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

OPTIONS

- Authorize the Executive Director to finalize and execute the revised Maritime and Aviation Project Labor Agreement for the period of October 1, 2015 and September 30, 2020. This is the recommended action.
- Do not authorize the Executive Director to finalize and execute the revised Maritime and Aviation Project Labor Agreement, and as such, there will be no agreement in place to support work force development and project labor stability.

RECOMMENDATION

- Adopt a resolution authorizing the Executive Director to finalize and execute the revised Maritime and Aviation Project Labor Agreement.