

Exhibit E

Jack London Improvement District Public Trust Agreement
Executed by the City and Port of Oakland July 2013

Jack London Improvement District Public Trust Agreement

Recitals

1. This Jack London Improvement District Public Trust Agreement (“Agreement”) memorializes the understanding of the City of Oakland (“City”), and the City of Oakland, acting by and through its Board of Port Commissioners (“Port of Oakland” or “Port”) regarding the proposed 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. While not a party to this Agreement, the Jack London Improvement District Steering Committee (“JLIDSC”) acknowledges and confirms that it supports and accepts the terms and conditions of this Agreement and covenants to assist in causing the JLID Entity (as defined below) to become a signatory to this Agreement and such other agreements as may be necessary or appropriate to effectuate the arrangement set forth in this Agreement.

3. The JLIDSC has proposed the creation of JLID, a business improvement district which 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. 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.

4. The JLIDSC has obtained the required number of signatures for the proposed formation of the JLID, subject to a protest vote by the property owners within the proposed district. The City Council intends to take action on July 16, 2013, to form the JLID if the protest vote fails to get a weighted majority. If the formation of the JLID is approved, all property owners in the district, including the Port, will be assessed an annual special assessment to fund JLID programs in accordance with the Management District Plan for the Jack London [Business] Improvement [Management] District (JLID) 2013 (“Management Plan”) dated March 27, 2013, and this Agreement.

5. The assessments, when due, would be collected either directly by the City (for non-taxable parcels, including all parcels owned by the Port in the JLID) or by the County of Alameda (for taxable parcels), and would be provided through the City to the entity charged with the administration of the JLID (“JLID Entity”). It is anticipated that, if the formation of the JLID is approved, the JLID Entity will be formed by the JLIDSC consistent with 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), the enabling legislation for the proposed JLID. The expenditure of the funds disbursed by the

City to the JLID Entity will be governed by a disbursement agreement entered into between the City and the JLID Entity, which will require that the disbursed funds be expended in accordance with the Management Plan and this Agreement ("Disbursement Agreement").

6. The proposed assessment for each property owner has been established based on an analysis of the relative benefit of the District's activities to each property. Because seven Port parcels and adjacent waterfront parcels (The Landing, KTVU, and Portobello) in Zone 2 (south of Embarcadero West) do not have thru-streets and thru-traffic, and accordingly will not require as high a level of service as Zone 1, the assessment rate proposed for parcels in Zone 2 is 35% of the rate proposed for parcels in Zone 1. Based on this analysis, the Port's assessed share for its thirteen parcels would be 14.157% percent of the total budget of \$767,426, or \$108,645 in the first year.

7. 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. The Port and staff of the State Lands Commission ("SLC") have raised a concern that the JLID assessment, if approved, could result in Trust funds being expended by the JLID Entity for non-Trust or purely municipal purposes and on lands that are not subject to the Trust or administered by the Port. A concern has also been raised about the fact that the decisions with respect to how to use the Port's share of the assessment would be made by the JLID Entity, which is not a trustee of the Trust. A concern has also been raised that the spending of Port Trust funds on lands outside of the Port must be justified by an objective showing that the spending of those Trust funds on non-Port property produces tangible benefits to the Trust and Port.

8. The City desires to demonstrate 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 Entity unless and until such revenues can and will be committed to Trust-consistent uses.

9. The City recognizes that the Port would not support the establishment of the JLID and would actively oppose its formation but for the legally binding promises, pledges, and covenants made herein.

Agreement

In recognition of the legitimate Trust concerns raised by the Port and SLC, and to ensure that any expenditure by the JLID Entity 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 Entity 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 Entity. City, through its City Council, shall require JLID and City compliance with the terms of this Agreement in the City resolution establishing the JLID Entity, and in the express terms of the Disbursement Agreement between the City and the JLID Entity. City hereby waives any and all claims it may have against the Port for nonpayment of any assessments to the JLID unless and until the JLID Entity is legally bound to act in accordance with this Agreement. Once the JLID Entity is legally bound to act in accordance with this Agreement, 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 Entity is not complying 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, upon City Council approval, will have the authority to enter into this Agreement and bind itself and to cause the JLID Entity to become a signatory to this Agreement and be bound by its terms.

3. These Trust requirements shall unconditionally apply to the JLID. To ensure compliance with the Trust, the entity charged with administering the JLID, the JLID Entity, 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 \$108,645, as lawfully adjusted over time, in any given year ("Port Share"):

a. Each year, in conjunction with the preparation of its proposed budget for the JLID, the JLID Entity shall prepare and submit to the Port a proposed expenditure plan ("Administrative Draft Port Share Plan") detailing how the JLID Entity 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 Entity 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 JLID Management Plan ("Port-Provided Services"). The JLID Entity 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 Entity shall prepare a "Draft Port Share Plan" as part of the final budget for the JLID. The JLID Entity 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 Entity 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 Entity'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 Entity 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 Entity 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 Entity, if requested by the Port or SLC, shall provide an annual audited financial statement, no more than once per calendar year.

d. The JLID Entity 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 District 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 Entity, and the City shall require the JLID Entity, and the JLID Entity 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 Entity 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 Entity 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.

“CITY”

CITY OF OAKLAND, a municipal corporation

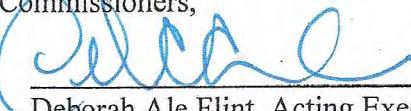
By:


Deanna Santana, City Administrator

“PORT”

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

By:


Deborah Ale Flint, Acting Executive Director

Approved as to form and legality:

By: J. London
Deputy City Attorney

THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY.

Approved as to form and
legality this 12th day
of July 2013.

Wen
Port Attorney

Port Resolution No. 1373
PA# 2013 - 243

"JLID ENTITY"

JLID

By: William Stoller,
lts President
3/31/14

Approved as to form and legality:

By: _____

Acknowledged and confirmed by "JLIDSC"

Jack London Improvement District Steering
Committee

By: Deborah Acosta
Deborah Acosta, Co-Chair

By: Gary Knecht
Gary Knecht, Co-Chair

By: Sara May
Sara May, Co-Chair

Approved as to form and legality:

By: _____

Approved as to form and legality:

By: _____
Deputy City Attorney

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UNTIL IT IS SIGNED BY THE
PORT ATTORNEY.

Approved as to form and
legality this _____ day
of July 2013.

Port Attorney

Port Resolution No. _____
PA# _____

"JLID ENTITY"

Acknowledged and confirmed by "JLIDSC"

Jack London Improvement District Steering
Committee

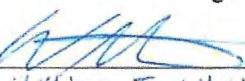
By: _____
_____, Its _____

By: _____
Deborah Acosta, Co-Chair

By: _____
Gary Knecht, Co-Chair

By: _____
Sara May, Co-Chair

Approved as to form and legality:

By: 
William J. White
Shute, Mihaly & Weinberger LLP