

PORT OF HOUSTON AUTHORITY OPEB PLAN
(Amended and Restated Effective as of January 1, 2019)

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**PORT OF HOUSTON AUTHORITY
OPEB PLAN
(Amended and Restated Effective as of January 1, 2019)**

The Port of Houston Authority of Harris County, Texas (the “**Plan Sponsor**”) maintains the Port of Houston Authority OPEB Plan (the “**Plan**”) for the benefit of the eligible Retirees (and their eligible Dependents) of the Plan Sponsor and the other adopting Employers, if any. The Plan Sponsor hereby amends and restates the Plan effective as of January 1, 2019.

Terms of the Plan pertaining to eligibility, coverage, exclusions and limitations on coverage, and other rules pertaining to the benefits available under the Plan are set forth in the SPD Document and the Welfare Program Documents (as defined herein) which are incorporated into the SPD Document in their entirety by reference. In addition, the SPD Document, as well as any other exhibits or appendices thereto, including the Welfare Program Documents, and the Policies set forth in the Policy Appendix to this document, are incorporated into the Plan in their entirety by reference and, together with this document, shall together form the complete Plan.

The capitalized terms used in the Plan, including the incorporated SPD, shall have the meanings set forth therein.

**ARTICLE I
DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions. As used in the Plan, any capitalized terms not defined herein shall have the meaning ascribed to them in the SPD Document, and the following words and phrases shall have the meanings ascribed to them as follows, unless the context clearly requires a different meaning:

- (a) **Affiliate.** An affiliate of the Employer, including: (i) any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer, (ii) any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer, (iii) any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer and (iv) any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).
- (b) **Beneficiary.** A Beneficiary under the Plan as defined under the terms of the respective Welfare Program.
- (c) **Claims Administrator.** The third party administrator, insurance company or other entity, as set forth in Appendix C of the SPD Document, as designated by the Plan Administrator to determine eligibility for benefits, process claims, and perform other administrative duties under the Plan or a Welfare Program.
- (d) **Claims Fiduciary.** The person or entity that serves as the named claims fiduciary with respect to reviewing and making final decisions regarding claims under a particular Welfare Program. The “Claims Fiduciary” shall be the Claims Administrator unless otherwise set forth in Appendix C of the SPD Document.
- (e) **Code.** The Internal Revenue Code of 1986, as amended, and the implementing regulations and other authority issued thereunder by the appropriate governmental authority. References herein to any section of the Code shall also refer to any successor provision thereof.
- (f) **Dependent.** A dependent (including a Spouse) of a Retiree who is covered under the Plan, as such term is defined under the terms of the respective Welfare Program.
- (g) **Effective Date.** The effective date of this amendment and restatement of the Plan, *i.e.*, January 1, 2019.
- (h) **Employee.** Any individual who is considered to be a common law employee of the Employer and on the payroll records of the Employer for purposes of federal income tax withholding under the Code, unless otherwise specifically provided in a Welfare Program. Except as otherwise specifically provided in a Welfare Program, the term “Employee” shall not include any person during any period that

such person was classified on the Employer's records as other than an employee. In particular, it is expressly intended that out-sourced workers and individuals not treated as common law employees by the Employer on its payroll records are not Employees even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. The term "Employee" shall not include anyone classified on the Employer's records as an independent contractor, agent, leased employee, contract employee, or similar classification, regardless of a determination by a governmental agency that any such person is or was a common law employee of an Employer.

For purposes of this definition, (a) a "leased employee" means any person, regardless of whether or not he is a "leased employee" as defined in Section 414(n)(2) of the Code, whose services are supplied by an employment, leasing, or temporary service agency and who is paid by or through an agency or third-party, and (b) an "independent contractor" means any person rendering service to the Employer and whom the Employer treats as an independent contractor by reporting payments for the person's services on IRS Form 1099 (or its successor), regardless of whether any agency (governmental or otherwise) or court concludes that the person is, or was, a common law employee of the Employer even if such determination has a retroactive effect.

Furthermore, notwithstanding anything to the contrary in a Welfare Program Document, the following categories of individuals shall not be considered "Employees" for any purposes of the Plan:

- (1) *Union Employees.* Employees who are included in a unit of employees covered by a collective bargaining agreement between employee representatives and one or more Employers, if (A) there is evidence that the type of benefits provided under the Plan were the subject of good faith bargaining between the employee representatives and such Employer and (B) the collective bargaining agreement does not require the Employer to cover such employees under the Plan. For purposes of the preceding sentence, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers or executives of the Employer.
- (2) *Part-time/Temporary/Seasonal/As-needed Employees.* As-needed employees, part-time employees, temporary employees, seasonal employees, or interns (which individually or collectively may be referred to by the Employer as "casual" employees), defined as follows:
 - (A) A "part-time employee" is an employee who is regularly scheduled to work for an Employer for less than 30 Hours of Service per week (or less than 130 Hours of Service per month).
 - (B) A "seasonal employee" is an employee hired into a position with an Employer for which the customary annual employment is six

months or less during the same part of the year, such as fall, spring, or summer. A seasonal employee's employment pertains to a certain season or period of the year which, by nature, may not be continuous or carried on throughout the year. Seasonal employees include, but are not limited to, summer interns.

- (C) A "temporary employee" is an employee who is hired to perform services for an Employer for a period which, as of the employee's start date, is not expected to exceed nine months, as determined by the Employer.
 - (D) An "as-needed employee" is an employee who do not have regular or systematic hours of work or an expectation of continuing work. A typical as-needed employee is employed on a daily basis when the need arises.
- (3) *Other:* Individuals paid for their work for the Employer through the payroll of the West Gulf Maritime Association, individuals who perform work for the Employer as members of Local 24, 28, or 1351 of the International Longshoreman's Association (ILA), and co-op workers.
- (i) **Employer.** The Plan Sponsor or any of its Affiliates which have adopted the Plan with the consent of the Plan Sponsor. As of the Effective Date, the Plan Sponsor is the only Employer which has adopted and is participating in the Plan.
 - (j) **Fiduciary.** The Plan Administrator, the Claims Fiduciary and any other person or entity who exercises fiduciary authority under the Plan, but only with respect to their specific fiduciary responsibilities. Any person or entity may serve in more than one fiduciary capacity with respect to the Plan.
 - (k) **Fully-Insured Program.** Each Welfare Program that is fully-insured with an insurance carrier, as designated in Appendix A of the SPD Document.
 - (l) **Participant.** A Retiree of the Employer who (1) meets the requirements for eligibility as set forth in the SPD and (2) properly enrolls for coverage under the Plan. The term "Participant" also includes any Dependent of a person specified in the immediately preceding sentence who is properly enrolled for coverage under the Plan. A person will cease to be a Participant when he no longer meets the requirements for eligibility as set forth in applicable provisions of the Plan.
 - (m) **Participant Contribution.** The contribution required to be paid by a Participant, if any, as determined under each Welfare Program. The term "Participant Contribution" thus includes, but is not limited to, contributions used for the provision of benefits under a self-funded arrangement of the Plan Sponsor or an Employer as well as contributions used to purchase coverage under insurance contracts or policies.

- (n) **Plan.** The Port of Houston Authority OPEB Plan, which consists of (1) this Plan Document, (2) the Policies set forth in the Policy Appendix and incorporated herein by reference, (3) the SPD Document as incorporated herein by reference, and (4) each Welfare Program Document incorporated hereunder by reference, as all such documents may be modified, amended, supplemented or superseded from time to time. The Plan Document, Policies, SPD Document and Welfare Program Documents each contain the terms of the Plan and together constitute the Plan.
- (o) **Plan Administrator.** The person or entity which has the authority and responsibility to manage and direct the operation of the Plan in its discretion. The Plan Administrator may assign or delegate duties to third parties, such as the Claims Administrator or the Claims Fiduciary, under the terms of either the Plan or any Welfare Program, or by means of a separate written agreement. The Plan Sponsor shall be the “Plan Administrator” of the Plan.
- (p) **Plan Document.** This wrap-around Plan document (including all appendices attached hereto), as it may be amended from time to time, into which the Policies, the SPD Document, and the Welfare Program Documents are incorporated by reference to together form the Plan.
- (q) **Plan Sponsor.** Port of Houston Authority of Harris County, Texas, or its successor in interest.
- (r) **Plan Year.** Each twelve (12) month calendar year commencing January 1st and ending on December 31st.
- (s) **Retiree.** An Employee who has retired in good standing from employment with the Employer. The term “Retiree” shall also include a Pre-10/24/17 LTD Employee who is receiving medical coverage under the Plan pursuant to Section 3.1(d)(1) of the SPD. However, until the Pre-10/24/17 LTD Employee actually retires (*i.e.*, first commences to receive a distribution of benefits under the Defined Benefit Plan or the Defined Contribution Plan), such designation as a “Retiree” shall be for purposes of the medical Welfare Programs under the Plan only.
- (t) **SPD.** The SPD document, including any appendices attached thereto, and each Welfare Program Document incorporated thereunder by reference, as all such documents may be amended from time to time, and all of which are incorporated into the Plan by reference and contain the terms of the Plan.
- (u) **SPD Document.** The wrap-around Summary Plan Description document, including any appendices attached thereto, into which the Welfare Program Documents are incorporated by reference to together form the SPD.
- (v) **Spouse.** A Retiree’s spouse as defined under the terms of the respective Welfare Program.
- (w) **Welfare Program.** A program of benefits that is offered by an Employer under the Plan to provide group health or other welfare benefits coverage to eligible

individuals. The Welfare Programs are incorporated into the SPD, which is, in turn, incorporated into the Plan. Each Welfare Program under the Plan is identified in Appendix A of the SPD Document. The Plan Sponsor may add or delete a Welfare Program from the Plan by amending Appendix A of the SPD Document.

- (x) **Welfare Program Document.** A written arrangement, including (1) a benefits booklet, summary of coverage, plan document or summary plan description, including any amendments, riders or attachments thereto, (2) an insurance contract between an Employer and an insurance company, health maintenance organization (HMO), administrative service organization (ASO) or other similar organization to provide certain employee group health benefits, including any amendments, endorsements or riders thereto, or (3) a certificate of coverage, schedule of benefits, notice or other instrument under which a Welfare Program is established, operated or maintained. Each of the documents referenced in items (1), (2) and (3) (above) is attached to the SPD Document as part of Appendix B thereto and incorporated, in its entirety, therein by reference. A Welfare Program Document (or any portion thereof) shall not, in and of itself, constitute either the written “Plan document” or the “Summary Plan Description” of the Plan, notwithstanding any references in any Welfare Program Document to the contrary; provided, however, each Welfare Program Document does contain the terms and provisions of the Plan. Any reference to a Welfare Program Document also refers to any amendment, rider, exhibit or attachment thereto.

1.2 Interpretation. Notwithstanding any reference in a Welfare Program Document that such Welfare Program Document, in and of itself (or any portion thereof), constitutes a written “Plan document”, the Plan shall consist of this document, the Policies as set forth in the Policy Appendix hereto, the SPD Document, including all appendices thereto, and the Welfare Program Documents for the Welfare Programs as identified in the SPD Document. If a term or provision of any Welfare Program Document or the SPD Document directly conflicts with a term or provision of this Plan Document, the term or provision of the Plan Document shall control unless specifically stated otherwise herein.

Notwithstanding the foregoing, if there is a conflict between a term or provision of this Plan document, a Welfare Program Document, a Policy or the SPD Document, and such conflict involves a term or provision required by the Code or other controlling law, on the one hand, and a term or provision not so required on the other, the term or provision required by controlling law shall control. This determination shall be made by the Plan Administrator. The terms and provisions of this Plan document shall not enlarge the rights of a Participant, Dependent, or Beneficiary, to any benefit available under a Welfare Program.

The terms and provisions of the Plan include the terms and provisions of the Plan document, the Policies listed in the Policy Appendix to the Plan, the SPD Document, and the Welfare Program Documents.

ARTICLE II ADMINISTRATION OF THE PLAN

2.1 Allocation of Authority. The Plan Administrator will control and manage the operation and administration of the Plan, except to the extent such duties have been delegated to other persons or entities as provided in the Plan or SPD. Any decisions made by the Plan Administrator or Claims Fiduciary (or any other person or entity delegated authority by the Plan Administrator or Claims Fiduciary, as applicable, to determine benefits in accordance with the Plan) will be final and conclusive on all Participants, and all other persons and entities, subject only to the claims appeal provisions of the Plan. Neither the Plan Administrator nor any Employee will receive any compensation from the Plan with respect to services provided under the Plan, except an Employee may be entitled to benefits hereunder.

2.2 Powers and Duties of Plan Administrator. The Plan Administrator (as well as the Claims Fiduciary but only with respect to reviewing and making decisions regarding claims under a Welfare Program) will each have such powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

- (a) to have final discretionary authority to (1) administer, enforce, construe, and construct the Plan, including the Welfare Program Documents, (2) make decisions relating to all questions of eligibility to participate, and (3) make a determination of benefits including, without limitation, reconciling any inconsistency, correcting any defect, supplying any omission and making all findings of fact;
- (b) to prescribe procedures to be followed by Participants filing applications for benefits;
- (c) to prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, any information that explains the Plan and benefits thereunder;
- (d) to receive from the Employer and from Participants such information as deemed to be necessary or appropriate for the proper administration of the Plan;
- (e) to furnish the Employer and the Participants such annual reports with respect to the administration of the Plan as deemed to be necessary or appropriate;
- (f) to receive, review and keep on file (as it deems necessary) reports of benefit payments by the Employer and reports of disbursements for expenses;
- (g) to exercise such authority and responsibility as it deems to be necessary or appropriate in order to comply with the terms of the Plan relating to the records of Participants including, without limitation, an examination at the Employer's expense of the records of the Plan to be made by such attorneys, accountants, auditors or other agents as it may select, in its discretion, for that purpose; and
- (h) to appoint persons or entities to assist in the administration as it deems to be advisable in its discretion; and the Plan Administrator may delegate thereto any power or duty imposed upon or granted to it under the Plan.

If, due to errors in drafting, any Plan provision does not accurately reflect its intended meaning, as demonstrated by prior interpretations or other evidence of intent, or as determined by the Plan Administrator in its sole and exclusive judgment, the provision will be considered ambiguous and will be interpreted by the Plan Administrator (or the Claims Fiduciary if applicable) in a fashion consistent with its intent, as determined by the Plan Administrator (or the Claims Fiduciary if applicable). The Plan may be amended retroactively to cure any such ambiguity, notwithstanding anything in the Plan to the contrary.

The Plan Administrator (or Claims Fiduciary if applicable) may rely upon the direction or information from a Participant relating to such Participant's entitlement to benefits hereunder as being proper under the Plan, and will not be responsible for any act or failure to act. Neither the Plan Administrator nor the Employer makes any guarantee to any Retiree in any manner for any loss or damage that may result from the Retiree's participation in the Plan.

All decisions, interpretations, determinations and actions in the exercise of the powers and duties described in this Section will be final and conclusive on all interested persons and entities subject only to the claims appeal provisions of the Plan. Benefits under the Plan will be paid only if the Plan Administrator (or Claims Fiduciary if applicable) determines in its discretion that the Participant is entitled to them.

- 2.3 Delegation by the Plan Administrator.** The Plan Administrator may delegate to other persons or entities any of the administrative functions relating to the Plan, together with all powers necessary to enable its designee(s) to properly carry out such duties hereunder, including, without limitation, delegation to the Claims Administrator, the Claims Fiduciary and the Disclosure Administrator. The Plan Administrator may employ such counsel, accountants, Claims Administrators, Claims Fiduciaries, consultants, actuaries and such other persons or entities as it deems advisable in its discretion. The Plan Administrator, as well as any person to whom any duty or power in connection with the operation of the Plan is delegated, may rely upon all valuations, reports, and opinions furnished by any accountant, consultant, third-party administration service provider, legal counsel, or other specialist. Moreover, the Plan Administrator and any such delegate who is also an Employee will be fully protected in respect to any action taken or permitted in good faith in reliance on such information.
- 2.4 Rules and Decisions.** The Plan Administrator may adopt such rules and procedures, as it deems to be necessary or appropriate for the proper administration of the Plan. The Plan Administrator will be entitled to rely upon information furnished to it which appears proper without the necessity of any independent verification or investigation.
- 2.5 Fiduciaries.** The Plan Administrator and the Claims Fiduciary are named fiduciaries. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan. The Plan Administrator may designate persons or agents (including third party administrators) to carry out fiduciary responsibilities under the Plan.

2.6 Complete and Separate Allocation of Fiduciary Responsibilities. It is intended that this Article II shall allocate to each named fiduciary the individual responsibility for the prudent execution of the actions assigned to each named fiduciary. The performance of such responsibilities shall be deemed a several assignment and not a joint assignment. None of such responsibilities, nor any other responsibility, is intended to be shared by two or more of such fiduciaries unless such sharing is expressly provided by a specific provision of the Plan or any Welfare Program Document. Whenever one named fiduciary is required by the Plan to follow the directions of another, the two shall not be deemed to have been assigned a shared responsibility, but the responsibility of the one giving the direction shall be deemed the named fiduciary with regard to said responsibility to be its sole responsibility, and the responsibility of the one receiving such direction shall be to follow any such direction to the extent that it is proper on its face under the Plan and applicable law.

2.7 Indemnification. To the full extent permitted by law, the Plan Sponsor and each other Employer (individually and collectively referred to in this Section 2.7 as the “**Employer**”), jointly and severally, shall indemnify, defend and hold harmless each past, present and future employee of the Employer who acts in the capacity of an agent, delegate or representative of the Plan Administrator (including any benefits committee) or the Plan Sponsor, under the Plan (collectively, each such employee shall be referred to in this Section 2.7 as a “**Plan Administration Employee**”) against, and each Plan Administration Employee shall be entitled without further act on his part to indemnity and defense from the Employer for, any and all losses, liabilities, costs and expenses (including the amount of judgments, court costs, attorneys’ fees and the amount of approved settlements made with a view to the curtailment of costs of litigation, other than amounts paid to an Employer) incurred by the Plan Administration Employee in connection with or arising out of any pending, threatened or anticipated possible action, suit, or other proceeding, including any investigation that might lead to such a proceeding, in which he is or may be involved by reason of, or in connection with, his being or having been a Plan Administration Employee. **This indemnity obligation is intended to indemnify the Plan Administration Employee against the consequences of his active, passive, concurrent or partial negligence; provided, however, such indemnity shall not include any and all losses, liabilities, costs and expenses incurred by any such Plan Administration Employee (a) with respect to any matters as to which he is finally adjudged in any such action, suit or proceeding to have been guilty of gross negligence or willful misconduct in the performance of his duties as a Plan Administration Employee, or (b) with respect to any matter to the extent that a settlement thereof is effected in an amount in excess of the amount approved by the Plan Sponsor (which approval shall not be unreasonably withheld).**

No right of indemnification hereunder shall be available to, or enforceable by, any Plan Administration Employee unless, within twenty (20) days after his actual receipt of service of process in any such action, suit or other proceeding (or such longer period as may be accepted by the Plan Sponsor), he shall have offered the Plan Sponsor, in writing, the opportunity to handle and defend same at its sole expense, and the decision by the Plan Sponsor to handle the proceeding shall conclusively determine that the Plan Administration

Employee is entitled to the indemnity provided herein unless he then expressly agrees otherwise.

Until and unless a final judicial determination has been made that indemnity is not applicable, all the costs and expenses of the Plan Administration Employee shall be promptly and fully paid or reimbursed by the Employer upon demand.

The foregoing right of indemnification shall inure to the benefit of the heirs, executors, administrators and personal representatives of each Plan Administration Employee, and shall be in addition to all other rights to which he may be entitled as a matter of law, contract, or otherwise.

- 2.8 Facility of Payment for Incapacitated Participant.** Whenever, in the Claims Fiduciary's opinion, a Participant is entitled to receive any payment of a benefit hereunder and is under a legal disability or is incapacitated in any way so as to be unable to manage his own financial affairs (including physical and mental incompetence or status as a minor), the Claims Fiduciary may direct payments to such person or to the person's legal representative (such as a guardian or conservator, upon proper proof of appointment furnished to the Claims Fiduciary), Dependent, or relative of such person for such person's benefit. Alternatively, the Claims Fiduciary may direct payment for the benefit of such person in such manner as the Claims Fiduciary deems to be advisable in its discretion. Any payment of a benefit, to the full extent thereof, that is made in accordance with the provisions of this Section 2.8 will be a complete discharge of any liability for the making of such payment under the Plan.

ARTICLE III BENEFITS

The actual terms and conditions of eligibility, coverage, exclusions and limitations on coverage, and the additional rules pertaining to the benefits of Participants under the Plan, are set forth in the SPD Document and the Welfare Program Documents. Any maximum benefit amounts, deductibles, copayments, out-of-pocket maximum amounts, and the reimbursement percentages for eligible charges under the Plan, are contained in the Welfare Program Documents, as they may be amended from time to time. The Welfare Program Documents, as then currently in effect, are incorporated in their entirety by reference into the SPD Document which, in turn, is incorporated by reference into the Plan Document.

ARTICLE IV

ADOPTION OF THE PLAN BY OTHER ENTITIES

- 4.1 Adoption Procedure.** With the approval of the Plan Sponsor, any Affiliate of the Plan Sponsor may adopt and become an Employer under the Plan by executing and delivering to the Plan Sponsor an adoption instrument stating that the Affiliate intends to adopt the Plan and to be bound as an Employer by all the terms and conditions of the Plan with respect to its eligible Retirees and their Dependents. The adoption instrument shall specify the effective date of such adoption of the Plan and shall become, as to such Affiliate and its Retirees, a part of the Plan.

- 4.2 Administration.** Any Affiliate which adopts the Plan shall designate the Plan Sponsor as its agent to act for it in all transactions affecting the administration of the Plan, and shall designate the Plan Administrator to act for such Affiliate and its Participants in the same manner in which the Plan Administrator may act for the Plan Sponsor and its Participants hereunder.
- 4.3 Withdrawal from Participation.** An Employer, by action of its governing body, may withdraw from participation in the Plan, with respect to its Retirees only, at any time, by providing notice of such withdrawal to the Plan Sponsor; provided, however, that such withdrawal must be approved by the Plan Sponsor, and the Plan Sponsor, in its discretion, may limit such withdrawal to the end of a Plan Year.

ARTICLE V FUNDING

Notwithstanding anything contained herein or in a Welfare Program Document to the contrary, participation in the Plan by a Participant and the payment of Plan benefits will be conditioned on such Participant Contributions towards the cost of coverage under the Plan at such time and in such amounts as the Plan Administrator will establish from time to time. The Plan Administrator will designate the applicable method by which the Participant must make any Participant Contributions, and the Participant must consent in writing (including electronically, as applicable) to such payment method to remain covered under the Plan. Nothing herein requires an Employer or the Plan Administrator to contribute to or under the Plan, or to maintain any fund or segregate any amount for the benefit of any Participant, Dependent or Beneficiary, except to the extent specifically required under the terms of a Welfare Program. No Participant, Retiree, Dependent, or Beneficiary will have any right to, or interest in, the assets of any Employer as the result of coverage under the Plan until actually paid.

Benefits or premiums for the Plan will be provided through a trust, insurance contracts, Policies, or through the general assets of the Employer in accordance with the terms of the relevant Welfare Program. An Employer will have no obligation, but will have the right, to insure or reinsure or to purchase stop loss coverage, where applicable, with respect to any Welfare Program under the Plan. To the extent that the Plan is provided through an Employer's purchase of insurance, payment of any benefits under such Welfare Program will be the sole responsibility of the insurer, and the Employer will have no responsibility for such payment.

ARTICLE VI AMENDMENT OR TERMINATION

The provisions of this Article VI will govern and control amendment and termination of the Plan, and will supersede any conflicting or inconsistent provisions set forth in a Welfare Program Document.

- 6.1. Right to Amend.** The Plan Sponsor, and any officer of the Plan Sponsor who is duly authorized by the Plan Sponsor for this purpose, will each have the right, authority, and power to make, at any time, and from time to time, any amendment to the Plan; provided, however, no amendment will prejudice any claim under the Plan that was incurred but not paid prior to the

effective date of the amendment, unless the person or entity responsible for the amendment, as applicable, determines such amendment is necessary or desirable to comply with applicable law or is required under the particular Welfare Program. Moreover, if the Plan is amended, a Participant's right to receive coverage for expenses incurred for supplies or services that were actually received or actually rendered on his behalf before the effective date of such amendment will not be reduced or eliminated. However, an amendment may reduce or eliminate a Participant's right to receive coverage for expenses that are or will be incurred for supplies or services that are received or rendered on or after the effective date of the amendment, even if such supplies or services were approved or are part of a series of treatments or services that began prior to such effective date.

6.2 Right to Terminate. The Plan Sponsor will have the right, authority, power, and discretion to terminate the Plan at any time, in whole or in part, without prior notice, to the extent deemed advisable in its discretion; provided, however, such termination will not prejudice any claim under the Plan that was incurred but not paid prior to the termination date unless the Plan Sponsor determines it is necessary or desirable to comply with applicable law.

ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Governing Law. The Plan shall be construed, regulated and administered under the laws of the State of Texas without regard to its conflicts of law principles, except as preempted by other controlling federal law, or as otherwise expressly provided in the applicable Welfare Program.

7.2 Invalidity of Particular Provision. If any provision of the Plan shall be held invalid or illegal for any reason, any invalidity or illegality shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the invalid or illegal provision had not been inserted herein.

7.3 Acceptance of Terms and Conditions of the Plan by Participants. Each Participant, by making application to become a Participant under the Plan, or by the execution of any form authorized under the terms of the Plan for himself or his legal representatives, approves and agrees to be bound by the terms and provisions of the Plan (including the incorporated SPD and Welfare Programs) and by the actions of the Plan Administrator and the Claims Fiduciary taken in accordance with the Plan.

7.4 Construction. Words used in the Plan in the singular shall include the plural and vice-versa. The gender of words used herein shall be construed to include whichever may be appropriate under particular circumstances of the masculine, feminine or neuter genders. Headings of articles and sections used herein are inserted for convenience of reference and shall not create any inference or presumption concerning the construction of the Plan.

7.5 Non-Alienation of Benefits. No benefit, right or interest of any Participant under the Plan shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, seizure, attachment or legal, equitable or other process, or be liable for, or subject to, the debts, liabilities or other obligations of such person. The Employer shall not be in

any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of any Participant entitled to benefits hereunder.

7.6 Limitation of Rights. Neither the establishment nor the existence of the Plan, nor any modification thereof, shall operate or be construed so as to:

- (a) give any person any legal or equitable right against the Plan (including any assets of the Plan), the Plan Sponsor, an Employer or the Plan Administrator, except as required by controlling law which cannot be waived; or
- (b) create a contract of employment with any Employee, obligate an Employer to continue the service of any Employee, or affect or modify the terms of an Employee's employment in any way, including the right of the Employer to discharge any Employee, with or without cause, at any time.

7.7 Costs and Expenses. Any costs and expenses incurred in the administration of the Plan shall be paid by the Plan, the Plan Sponsor and/or one or more Employers, as determined by the Plan Sponsor.

7.8 Assignment and Payment of Benefits. The provisions of this Section 7.8 shall supersede any provisions of a Welfare Program Document (other than the Welfare Program Document(s) of a Fully-Insured Program), but only with respect to the subject matter hereof, and shall govern and control.

Except as otherwise expressly provided under the terms of a written agreement with a provider of healthcare services or supplies to which the Plan Administrator, the Claims Fiduciary, or other delegate of the Plan Administrator is a named party (a "**Plan Agreement**"), no rights and benefits under the Plan can be assigned or transferred to any person or entity, including, but not limited to, an out-of-network healthcare provider (or any representative or agent with respect to such provider), either before or after healthcare services or supplies are provided to or on behalf of a Participant. In the absence of a Plan Agreement which specifically provides for assignment of the Participant's benefits and/or rights under the Plan (*i.e.*, is not merely an agreement between the Participant and the provider or its representative or agent), the Plan Administrator and Claims Fiduciary, as applicable, each reserve the unilateral right and discretion to elect to make any benefit payment under the Plan directly to the provider, the Participant, or to another designated person or entity, with each such payment being made on behalf of the Participant, and not to such payment recipient in its, his or her own right. Moreover, if the Plan Administrator or Claims Fiduciary, as applicable, elects to make any such direct payment, it shall not constitute a waiver by the Plan Administrator or Claims Fiduciary of the anti-assignment provisions of this Section 7.8. In addition, any payment made under the Plan to any such person or entity discharges the Plan's responsibility to the Participant for benefits under the Plan to the full extent of such payment.

Disclosures of information about the Participant can only be made to a Participant or a Participant's authorized representative and in accordance with applicable law and the terms of the Plan.

7.9 Overpayments. If, for any reason, any benefit, premium or fee under the Plan is erroneously paid to a Participant or to a healthcare or other services provider (including an assignee of the Participant as described in Section 7.8), insurance company or other person or entity for the benefit of a Participant (collectively, a “**Third-Party Payee**”), such person or entity shall be responsible for refunding the overpayment to the Plan. If such overpayment is not refunded within a reasonable time period as determined by the Plan Administrator, the overpayment shall be (a) charged directly to the Participant (including, without limitation, a covered Retiree on behalf of any of his Dependents or Beneficiaries) or Third-Party Payee as a reduction of the amount of future benefits otherwise payable on behalf of the Participant, or (b) recouped by any other method which the Plan Administrator or Claims Fiduciary deems appropriate in its discretion. For example, the selected repayment method may include, without limitation, offsetting other payments made by the Plan to, or on behalf of, the Participant or to the same Third-Party Payee (in which case, such payment offset to a Third-Party Payee shall not constitute an adverse benefit determination that is subject to the claims and appeals procedures of the Plan). For purposes of clarity and not limitation, in the event of the application of any overpayment recoupment to a Third-Party Payee pursuant to the foregoing provisions of this Section 7.9, the offset of the overpayment hereunder is an adjustment to the amount owed to the Third-Party Payee to reflect the overpayment and shall not be considered to be the denial or partial denial of a benefit claim under the Plan.

7.10 Entire Plan. The Plan document, Policies, SPD Document, Welfare Program Documents, and any appendices or exhibits attached thereto, together set forth the entire Plan, and fully supersede any and all prior plans, SPDs, agreements, representations, promises or understandings, written or oral, pertaining to the subject matter hereof. Any amendment to the Plan must be in writing and made in accordance with the applicable requirements of the Plan.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned officer, being duly authorized to act on behalf of the Plan Sponsor, has approved, adopted and executed this Plan document, as amended and restated effective as of January 1, 2019.

ATTEST:

PORT OF HOUSTON AUTHORITY

By: R. W. Walter

By: Erik A. Eriksson

Name: ROGER W. WALTER

Name: Erik A. Eriksson
Chief Legal Officer

Title: DIRECTOR, HUMAN RESOURCES

Title: _____

Date: 12/14/18

Date: 12.14.18

[Policy Appendix follows.]

PORT OF HOUSTON AUTHORITY

OPEB PLAN

(Amended and Restated Effective as of January 1, 2019)

POLICY APPENDIX

The group insurance policies issued by the insurance carrier to the Plan Sponsor (or other Employer), pursuant to which certain health benefits coverages under the Plan are provided to Participants, including any amendments, endorsements or riders thereto (each individually a “**Policy**” and collectively, the “**Policies**”), are attached hereto and incorporated, in their entirety, into this Plan document by reference.