

2021 Election Agreement Between
the International Brotherhood of Teamsters (“IBT”)
and
the Office of the Election Supervisor (“OES”)

WHEREAS, on February 17, 2015, the United States District Court for the Southern District of New York approved the Final Agreement and Order between the IBT and the United States of America (the “Final Order”) in *United States of America v. IBT*, 88 Civ, 4486 (LAP), Dkt. No. 4414; and

WHEREAS the OES¹ has conducted or supervised the IBT International Union Delegate and Officer Elections (“IBT Officer Election”), for 1991, 1996, 2001, 2006, 2011, and 2016, under Election Rules promulgated by the OES; and

WHEREAS the Final Order, ¶ 16, requires “that every IBT International Officer election occurring after the effective date of this Final Order shall be conducted pursuant to rules and procedures designed to ensure a fair, free, and democratic election,” which Election Rules “shall permanently ensure that each election will be conducted by secret ballot and that every member shall have the right to vote for or otherwise support the candidate or candidates of his or her choice, without being subject to penalty, discipline or improper interference or reprisal of any kind by the Union or any member thereof”; and

WHEREAS the Final Order, ¶ 19, provides that, during a five-year “Transition Period” starting with effective date of the Final Order, the Election Rules adopted by the GEB shall not differ in any material way from the rules that governed the 2011 International Union and

¹ “OES” refers to the Office, and all of the Officers, that have conducted or supervised the IBT International Union Delegate and Officer Elections since entry of the March 14, 1989 Consent Order in *United States of America v. IBT*, 88 Civ, 4486 (LAP). Specifically, “OES” includes the 1991 and 1996 Election Officers, the 2001 Election Administrator, and the 2006, 2011, and 2016 Election Supervisors. “All previous IBT Officer Elections” refers to the IBT Officer Elections conducted in 1991, 1996, 2001, 2006, 2011, and 2016.

Delegate Election (the '2011 Election Rules'), as supplemented and amended, which were agreed upon by the Government and the IBT and approved by the Court"; and

WHEREAS the Final Order, ¶ 20, provides that, after a five-year "Transition Period" starting with effective date of the Final Order, the IBT General Executive Board "shall promulgate Election Rules for succeeding election cycles which are substantially the same as those which governed the previous IBT elections but may make non-material changes as necessary to tailor the rules to a new election cycle," and states additional procedures for promulgating Election Rules; and

WHEREAS the Final Order, ¶ 18, provides that "[a]uthority to interpret and enforce the Election Rules shall rest at all times both during and following the effective date of this Final Order, both during and after the Transition Period, exclusively with the Independent Election Supervisor duly appointed pursuant to the IBT Constitution and this Final Order, who shall endeavor at all times to consult with all interested parties, including the IBT, before interpreting or enforcing the Rules. In addition, the Election Supervisor shall also have authority to recommend Election Rules to the GEB for consideration"; and

WHEREAS, the Final Order, ¶ 13, requires that the Election Supervisor appointed to supervise IBT Officer Elections "shall be experienced, effective, and completely independent of the IBT, and free from any actual or apparent conflict of interest" and shall meet certain qualifications;² and

² The Final Order's stated qualifications are that:

No individual may be appointed to the office of Independent Election Supervisor without substantial experience with union elections (desirable qualifications include knowledge of and experience with the mechanisms and procedures used in large scale elections, Title IV of the Labor Management Reporting and Disclosure Act and the IBT data systems) or law enforcement investigations, and a commitment to transparency in the election process. To the extent the Independent Election Supervisor lacks substantial experience

WHEREAS, the purpose of this 2021 Election Agreement ("Agreement") is to insure that the 2021 IBT Officer Election will be conducted with safeguards sufficient to ensure a fair, free, democratic and informed election, in accordance with this Agreement, the 2021 Election Rules discussed in Paragraph 4 of this Agreement, and the Final Order;

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the IBT and OES as follows:

1. Subject to the provisions of the Final Order, the 2021 IBT Officer Election will be conducted in accordance with this Agreement. Nothing in this Agreement precludes or limits the Secretary of Labor's exercise of authority under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq., or any other federal laws.

2. Pursuant to Final Order, ¶ 15, and consistent with the eligibility criteria of Final Order, ¶ 13, the IBT appoints Richard W. Mark, Esq., to serve as the Election Supervisor for the 2021 IBT Election (the "2021 Election Supervisor").³ The IBT provided notice of that

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with either union elections or law enforcement investigations, his or her staff shall include a person or persons with such experience. No individual serving as the Independent Election Supervisor or any member of his or her staff may be a candidate for any delegate position or International office. No individual serving as the Independent Election Supervisor or any member of his or her staff may be affiliated with any candidate for any delegate position or International office. No individual serving as the Independent Election Supervisor or any member of his or her staff may be a member of the IBT, a present or former paid or non-paid appointee of any IBT entity, or an individual who has been an employee, representative, or agent of any IBT entity within the previous ten-year period, except as provided in paragraph 14 [barring later IBT employment of the Election Supervisor, with a limited exception]."

³ Richard W. Mark served as the Election Supervisor of the 2006, 2011 and 2016 IBT Officer Elections, and served as Counsel to Election Officer Michael G. Cherkasky for the re-run of the 1996 IBT Officer Election. Mr. Mark was formerly an assistant United States Attorney

appointment to the United States Attorney for the Southern District of New York (“United States Attorney”) on [DATE] and no objection was made to that appointment. In the event of a vacancy in the position of 2021 Election Supervisor, the IBT will appoint a new 2021 Election Supervisor no later than 30 days following the vacancy or notice of the expected vacancy, whichever is earlier, and provide notice to the United States Attorney as required by Final Order, ¶ 15.

3. Subject to the 2021 Election Rules, and as contemplated by the Final Order, the 2021 Election Supervisor shall function similarly to the OES in 1991, 1996, 2001, 2006, 2011, and 2016. The 2021 Election Supervisor shall have the right to employ personnel and appoint designees, subject to the OES Budget agreed upon by the OES and the IBT. The 2021 Election Supervisor shall have the same authority to interpret and enforce the Election Rules as was exercised by OES in all previous IBT Officer Elections.

4. The 2021 Election Supervisor shall have the same rights of access to information, to suitable office space, to distribute materials about the IBT Officer Election in advance of the election, and to distribute materials to the IBT membership regarding the activities of the 2021 Election Supervisor as were exercised by OES in all previous IBT Officer Elections. Channels that the 2021 Election Supervisor may use to communicate with the IBT membership include, but are not limited to: the OES website and OES

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for the Southern District of New York. As one of the government’s counsel in *United States v. IBT*, 88 Civ. 4486, Mr. Mark participated in the negotiation of the March 14, 1989 Consent Decree, and represented the government in litigation relating to the Consent Decree. Mr. Mark also served as First Deputy Commissioner of the New York City Department of Investigation. Mr. Mark is “experienced, effective, and completely independent of the IBT, and free from any actual or apparent conflict of interest” relating to the IBT.

social media channels; reports in the IBT magazine distributed to all IBT members; newsletters or other publications disseminated to membership in IBT conferences or divisions; and the IBT's website and social media channels. The 2021 Election Supervisor shall submit reports to the IBT which, in turn, has the obligation to share these reports with the IBT membership.

5. The IBT appoints Barbara S. Jones, Esq., to serve as the Election Appeals Master for the 2021 IBT Officer Election (the "2021 Election Appeals Master").⁴ The IBT provided notice of that appointment to the United States Attorney for the Southern District of New York ("United States Attorney") on [DATE] and no objection was made to that appointment. In the event of a vacancy in the position of 2021 Election Appeals Master, the IBT will appoint a new 2021 Election Appeals Master no later than 30 days following the vacancy or notice of the expected vacancy, whichever is earlier, and provide notice to the United States Attorney as required by Final Order, ¶ 15.

6. In accordance with Final Order, ¶ 49, and subject to the 2021 Election Rules, the 2021 Election Appeals Master is intended by the parties to function similarly to the Election Appeals Masters in all previous IBT Officer Elections, and shall have the same rights as were conferred upon the Election Appeals Masters in all previous IBT

⁴ Barbara S. Jones served from 1996 to 2013 as a United States District Judge for the Southern District of New York. On December 16, 2016, upon the joint application of the IBT and the United States Attorney's Office for the Southern District of New York, Judge Preska approved the appointment of Judge Jones to serve as the Independent Review Officer under the Final Order. Before serving on the United States District Court, Judge Jones was the Chief Assistant to New York County District Attorney Robert M. Morgenthau. Previously she was an Assistant United States Attorney in the Southern District of New York, where she served as the chief of the Organized Crime Strike Force Unit. Judge Jones is "experienced, effective, and completely independent of the IBT, and free from any actual or apparent conflict of interest" relating to the IBT.

Officer Elections. The standard of review that the 2021 Election Appeals Master shall apply to decisions of the 2021 Election Supervisor shall be the same standard of review applied by the Election Appeals Masters in all previous IBT Officer Elections.

7. The 2021 IBT Election shall be conducted in accordance with Election Rules (the “2021 Election Rules”), which shall be prepared as provided in the Final Order, ¶¶ 17-21.

8. In accordance with Final Order, ¶ 43, “[t]he IBT shall pay all costs and expenses of, and provide suitable office space outside the premises of the IBT for, the Independent Election Supervisor [and the staff of the OES and shall establish a budget] . . . that is reasonable and adequate to ensure the effectiveness and independence [of the OES].” To that end, the OES will prepare a preliminary budget for the conduct of the 2021 IBT Officer Election within 30 days after the execution of this Agreement (the “OES Budget”). The OES Budget shall be no less than the amount expended by the 2016 Election Supervisor for the 2016 IBT Officer Election, as adjusted for inflation. It is intended that the OES Budget will include reasonable allocation for the payment of fees and expenses of the 2021 Election Supervisor and the 2021 Election Appeals Master (as well as the personnel employed by each) and will enable the 2021 Election Supervisor and 2021 Election Appeals Master to fulfill their obligations under the 2021 Election Rules and this Agreement.

9. The IBT commits to funding an OES Budget of at least the amount stated in ¶ 8, *above*. In addition to the OES budget, the IBT will directly pay the same types and categories of expenses as it paid in the 2016 IBT Officer Election including, without

limitation, office rent, OES-related travel, office-related lodging, postage, computer and other equipment costs, general administrative expenses, and hotel costs at the 2021 IBT International Convention (including travel, lodging, office, and other space) that need not be included in the OES Budget. Expenses for the conduct of local union delegate elections, other than expenses of the 2021 Election Supervisor and 2021 Election Appeals Master and their staffs, will be borne by the respective IBT local unions and therefore need not be included in the OES Budget. OES shall propose modifications to the OES Budget for the conduct of the 2021 IBT Election, including a supplemental budget if the initial OES Budget is not sufficient to enable the 2021 Election Supervisor and 2021 Election Appeals Master to fulfill their respective obligations. The IBT and/or its affiliates shall be responsible for paying the costs of the 2021 IBT Officer Election.

10. With respect to the conduct and supervision of the 2021 IBT Officer Election, the Government shall have all rights as provided for in the Final Order.

11. In accordance with Final Order, ¶ 44, the IBT shall purchase a policy of insurance in an amount sufficient to protect the 2021 Election Supervisor and the 2021 Election Appeals Master and any persons hired by or acting on behalf of the 2021 Election Supervisor and the 2021 Election Appeals Master, from personal liability (or costs incurred to defend against any claims or any the imposition of liability) for any of their actions on behalf of the IBT, the 2021 Election Supervisor, or the 2021 Election Appeals Master pursuant to or arising from the conduct or supervision of the 2021 IBT Officer Election pursuant to this Agreement, the 2021 Election Rules or the Final Order. If such insurance is not available, or if the IBT so elects, the IBT shall defend and


indemnify the 2021 Election Supervisor and the 2021 Election Appeals Master and any persons hired by the 2021 Election Supervisor and the 2021 Election Appeals Master from any personal liability (or costs incurred to defend against any claims or the imposition of liability) for any of their actions on behalf of the IBT, the 2021 Election Supervisor, or the 2021 Election Appeals Master pursuant arising from the conduct or supervision of the 2021 IBT Officer Election pursuant to this Agreement, the 2021 Election Rules or the Final Order.

12. Modifications of this Agreement must be in writing and signed by the IBT and OES.

13. Except as expressly provided for in Paragraph 1, nothing in this Agreement shall limit the rights of the Government or the IBT under the Final Order or the Court's authority or jurisdiction under the Final Order or the All Writs Act, 28 U.S.C. § 1651.

Dated: October 11, 2019

INTERNATIONAL BROTHERHOOD of TEAMSTERS

By: 

BRADLEY T. RAYMOND
General Counsel

OFFICE of the ELECTION SUPERVISOR

By: 

RICHARD W. MARK
2021 Election Supervisor