



# City of San Leandro

Meeting Date: February 10, 2015

## Staff Report

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**File Number:** 14-448

**Agenda Section:** WORK SESSION

**Agenda Number:** 2.A.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Chris Zapata  
City Manager and  
Rich Pio Roda  
City Attorney

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for Discussion and Direction to Staff on Community Workforce Agreements

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### SUMMARY AND RECOMMENDATIONS

This report provides an overview of policy options related to the consideration of a Community Workforce Agreement as well as work that has been conducted to date on this issue. Staff requests that the City Council provide direction on next steps, accounting for staff's questions and the issues identified below.

### BACKGROUND

Staff considers the following 2014-2015 City Council goals applicable to the City Council's consideration of this policy:

- Place San Leandro on a firm foundation for long-term fiscal sustainability;
- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation; and
- Maintain and enhance San Leandro's infrastructure.

A Community Workforce Agreement ("CWA," referred to from time to time and by other jurisdictions as a Project Labor Agreement) is a contract between a public agency and the respective building trades groups or unions within the jurisdiction of the public agency that governs, among other things, the role of organized construction trade unions in the execution of a public agency's projects. This issue relates to the City Council's goals because it will impact the process for completing major expenditures within the City's budget, the role that local businesses and employees play in that process, and ongoing efforts to enhance and maintain the City's infrastructure.

Based on direction from the City Council, over the past several months staff held discussions with the Building and Construction Trades Council of Alameda County to explore policy options related to the implementation of a CWA.

Staff also held discussions with numerous stakeholder groups including local San Leandro businesses, the San Leandro Chamber of Commerce, and multiple business associations. Through this process, strong opinions have been presented both for and against the City's potential adoption of a Community Workforce Agreement. The primary arguments in favor of a CWA are that it may ensure labor peace on City projects, which assists in delivering projects on-time and on budget and that it promotes the payment and provision of quality wages and benefits for the employees who work on these projects. The primary argument in opposition is that a CWA puts non-union contractors at a disadvantage in competing for City projects. Staff was not directed to fully reconcile these positions, but will provide a summary of this feedback to the City Council.

Concerns have also been raised that the City may be proceeding down a path toward the adoption of a CWA without having first engaged in a more basic discussion of the goals it hopes to achieve by approving a CWA, and the metrics that will be used to determine success in meeting those goals. Staff seeks direction from the City Council on whether or not alternative approaches and additional dialog should be explored.

## **Analysis**

### **Review of Community Workforce Agreements and Project Labor Agreements from other Agencies**

Staff compiled and reviewed comparable agreements from other Bay Area public agencies. Staff identified two Bay Area cities -- Berkeley and Martinez -- that have adopted community workforce agreements or project labor policies. Additionally, staff reviewed policies adopted or agreements approved by Alameda County, the San Leandro Unified School District, the Port of Oakland and the Hayward Unified School District.

### **Draft Community Workforce Agreement**

As a starting point for discussions with the Building and Construction Trades Council of Alameda County, staff and the Trades Council used the City of Berkeley's Community Workforce Agreement as a model. It is not a foregone conclusion that the model provides the most appropriate vehicle to create an agreement for San Leandro. It does, however, provide an opportunity to assess many of the common components of a CWA.

A DRAFT agreement based on the City of Berkeley Community Workforce Agreement is attached. It reflects a preliminary set of terms and conditions provided and negotiated by City staff, the City Attorney, and the Building Trades Council. The attached document is not a finished product recommended for adoption and additional details remain to be resolved if the City Council provides direction to proceed further with it.

The basic mechanics of the agreement are as follows:

Covered Work and Cost Threshold: City staff recommends setting a baseline value so that the CWA would apply to City construction projects whose value exceeds \$1,000,000. The Building Trades request a minimum value of \$250,000. Staff's recommendation is based on programmatic necessities, including but not limited to maintaining efficiency of process and budget and project management flexibility. Based on staff research, other agencies have used the following thresholds:

- City of Berkeley: \$1,000,000 and above
- City of Martinez: \$500,000 and above
- San Leandro Unified School District: Between \$500,000 and \$3,000,000
- Port of Oakland: Varies, some as low as \$50,000
- Contra Costa County: \$1,000,000
- Solano County: \$10,000,000

Contracts would still be subject to competitive bidding laws, the payment of prevailing wages, and the City would still be required by law and its own ordinances to select the lowest responsive and responsible bidder.

The work covered under the draft CWA includes all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other related activities for the projects that is within the craft jurisdiction of one of the Unions and that is part of the projects, including, pipelines, site preparation, survey work, and demolition. Some details related to the definition of covered work remain subject to refinement and negotiation with the Building Trades Council.

Staff recommends that the agreement not apply to projects for which there is a prohibition, exclusion or other limitation imposed because of a grant, funding, or other agreement, as determined by the City, that creates a risk to the City of any repayment or return to source of any funds received.

Labor Peace: For all projects covered by the Agreement, the Unions would agree that there will be no strikes, sympathy strikes, work stoppages, picketing, hand billing, or slowdowns of any kind, for any reason, on the projects, at a job site of the projects or at any other facility of the City.

Union Hiring Hall: Contractors working on covered projects would be required, in filling craft job requirements, to utilize and be bound by the registration facilities and referral systems authorized by the unions who are signatory to the CWA. This is commonly referred to as the union hiring hall.

This version of the CWA allows non-union contractors to use no more than five of their own employees and only if an equal number of union workers are also retained by the contractor. Non-union workers hired under this provision would still be required to register with the union hiring hall and the non-union contractor would be required to pay into the union trust fund, covering health and pension benefits for these workers.

Local Hire and Apprentices: Berkeley's Agreement provides that Berkeley residents will

perform a minimum of 30% of the hours worked, on a craft by craft basis. The contractors are required to make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. Although well-intentioned, empirical evidence shows that this clause has not impacted local hiring in Berkeley in significant numbers. Out of 1,322 individuals working on qualified projects, only 19 (1.4%) were Berkeley residents. Additionally, according to staff research implementation and monitoring of this requirement created a substantial burden on City of Berkeley staff.

The attached draft includes the 30% goal and a requirement that contractors make “good faith” efforts to meet it. The agreement also requires contractors to hire one San Leandro resident as a New Apprentice for the first \$1 million of the bid amount. Thereafter, for every \$5 million of project monies, the contractor would be required to hire one additional New Apprentice. The intent of the clause is to increase pathways for San Leandro residents into the building trades although staff believes that it is likely to impact a relatively small number of residents.

Funding: In Berkeley, to cover the expenses related to the implementation and management of the local hiring program, each contractor must contribute ten cents per hour worked or paid to each employee performing work on any project covered by the Agreement. These local hire funds are deposited in a City account to be used for implementation and management of the CWA. After almost three years, this mechanism yielded only \$2,468.00. This requirement is not recommended for San Leandro. San Leandro staff proposed that the Building Trades provide sufficient funding to cover the cost of one Analyst I position in the City's Finance Department; the Building Trades Council is not willing to include that requirement. Thus, funding for implementation and oversight of an agreement (and/or any related policy) remains unresolved.

## **Potential Challenges**

Impact on Non-Union San Leandro Businesses and Consistency with the San Leandro Local Inclusion Policy: Although the agreement does not prohibit non-union contractors from bidding on projects, some stakeholders' feedback on the current version of the agreement opine that there would be strong limitations on a non-union contractor's ability to use their own employees, which creates an implicit barrier to non-union contractors bidding on such projects. As presently written, a contractor could use no more than five of their own employees and would have to pay into the union trust fund for pension and health benefits for these employees. Staff has received conflicting feedback regarding the feasibility of this provision. Some local San Leandro businesses and contractors have already signaled to City staff that they would not bid on City projects, either as a prime or subcontractor, if an agreement with such a requirement were adopted. Other local San Leandro businesses encourage the City to adopt a CWA, with this requirement as written.

In 2014, the City Council adopted a Local Inclusion Policy that gives San Leandro businesses an advantage in competing for City contracts. As noted above, a Community Workforce Agreement would create challenges for non-union contractors, including some San Leandro businesses. If San Leandro businesses opt not to bid on City projects due the existence of a CWA, they would be unable to realize any of the benefits of the Local Inclusion Policy, especially the bid preference that is permitted by ordinance. Some stakeholders have expressed concern that the CWA could negate the benefits of the Local Inclusion Policy for

non-union contractors.

Costs of Implementation and Oversight: Staff costs for implementation include monitoring payroll and other records to oversee and track the impact of the local hiring goal, staffing a Joint Administrative Committee, updating bid documents, and participating in the resolution of disputes if any should arise. The City of Berkeley has devoted a significant share of one full-time position in their Health, Housing, and Community Services Department for implementation and monitoring of the program. Berkeley estimates the annual cost to be \$61,000. San Leandro does not have a comparable position on staff at this time and it is not yet clear where the resources to support implementation and oversight would come from.

Impact on Project Costs: It is extremely difficult to estimate what, if any, impact a Community Workforce Agreement would have on the cost of City construction projects. Based on its experience so far, Berkeley staff theorized that the policy is most likely to impact the cost of complex projects with multiple subcontractors, because those projects are more likely to have significant administrative costs for contractors related to the implementation of the program. Berkeley identified some instances in which contractors stated that they chose not to bid on City projects due to the requirements of the CWA, which created a smaller pool of bidders that Berkeley staff thinks caused an impact through higher bids.

### **Stakeholder Concerns Alternative Approaches**

As noted above, several stakeholders, including local contractors and developers, the Associated Builders and Contractors, Inc., and the San Leandro Chamber of Commerce expressed concern about the potential adoption of a CWA. The most common concern is that a CWA is inherently unfair to non-union contractors. In a debate that has taken place in several other jurisdictions, stakeholders on opposing sides of this issue have made contradictory claims regarding the ability of non-union contractors to participate in City projects under a CWA. It is not possible for staff to definitively reconcile these positions.

A more fundamental concern expressed by other community stakeholders is that the City would benefit from a discussion of goals related to public contracting prior to determining the best tool to accomplish them.

In order to provide an alternative approach for City Council consideration, the Chamber of Commerce submits a proposed addendum to the City's Local Inclusion Policy, which is attached. The Open Hiring Policy Addendum establishes the framework for a local resident training and hiring system, whether a contractor is a union contractor or a non-union contractor.

### **Request for Council Direction**

Staff requests that the City Council provide direction on next steps.

Consideration of Alternative Approaches: City staff met with the Building Trades Council, the Chamber of Commerce, the Associated Building Contractors, private developers, and individual businesses to receive feedback on the proposed policy. However, no consensus has emerged and there is no indication that a compromise exists that would satisfy all parties.

City Council direction is requested on whether staff should continue moving forward with the Building Trades on a draft CWA. Alternatively, the City Council could direct staff to conduct additional outreach or explore alternative approaches such as the Local Inclusion Policy - Open Hiring Policy Addendum submitted by the San Leandro Chamber of Commerce.

If the City Council desires to move forward on the current draft agreement, staff requests direction on the following items:

Threshold for Projects Subject to a CWA: City staff recommends setting a baseline value so that the CWA would apply to City construction projects whose value exceeds \$1,000,000. The Building Trades request a minimum value of \$250,000.

Priority of the Local Business Inclusion Policy and Impact on San Leandro Businesses that are Non-Union Contractors: As noted above, it could be challenging to implement a Community Workforce Agreement, as presently drafted, while maintaining consistency with the goals of the Local Business Inclusion Policy that was adopted last year. The Local Inclusion Policy seeks to make it easier for all San Leandro businesses to contract for City projects, but the Community Workforce Agreement imposes requirements that some local non-union contractors find prohibitive. Options may be available that would make the policy more palatable for non-union contractors, potentially limiting the extent to which a Community Workforce Agreement would conflict with the goals of the Local Inclusion Policy. Staff seeks Council direction on the desire to consider these revisions.

Implementation Costs: Implementing an agreement will require significant staff resources that are not presently available. Implementation of a CWA will involve a significant modification to the City's bidding practices as well as ongoing monitoring and tracking. Staff recommends not moving forward without providing for these costs. City Council direction on this matter is requested.

### **Current Agency Policies**

The Local Inclusion Policy provides a bid incentive for San Leandro businesses bidding for City contracts and also sets a goal of 25% participation in City projects by San Leandro businesses.

### **Summary of Public Outreach Efforts**

City staff met with the Building Trades Council, the Chamber of Commerce, the Associated Building Contractors, private developers, and individual businesses to receive feedback on the proposed policy. The Chamber of Commerce also held a meeting with San Leandro contractors.

### **Legal Analysis**

The City Attorney's Office has been working with staff throughout the outreach and discussions of an agreement. The CAO has also reviewed the Berkeley model, and made edits so that it comports with the current objectives of the City, and State and Federal law.

**ATTACHMENTS**

- Draft Community Workforce Agreement
- Local Inclusion Policy - Open Hiring Policy Addendum (submitted by a consortium of stakeholders organized by the San Leandro Chamber of Commerce)

**PREPARED BY:** Jeff Kay, Business Development Manager  
Richard D. Pio Roda, City Attorney

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**DRAFT COMMUNITY WORKFORCE AGREEMENT**  
**For the City of San Leandro**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ ("Effective Date"), by and between the City of San Leandro ("City") together with other contractors and/or sub-contractors, who shall become parties to this Agreement by signing the "Agreement to be Bound" (Attachment A), and the Local Unions signatory hereto and the Alameda County Building & Construction Trades Council and its affiliated local unions who have executed this Agreement.

**PURPOSE**

The purpose of this Agreement is to support the efforts of the City to increase employment opportunities for workers who reside in San Leandro, to help increase training and employment opportunities for the City's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools, to promote efficiency of construction operations performed for and within the City of San Leandro and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects.

**RECITALS**

WHEREAS, the successful completion of the City's construction projects is of the utmost importance to the City of San Leandro; and

WHEREAS, the interests of the general public, the City, the Unions and Contractor(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on construction work for and within the City of San Leandro by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, contracts for construction work within the City of San Leandro will be awarded in accordance with the applicable provisions of the Charter of the City of San Leandro, the California State Public Contract Code and the Labor Code, including but not limited to requiring competitive bidding and prevailing wages; and

WHEREAS, the City of San Leandro has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:



**ARTICLE 1**  
**DEFINITIONS**

- 1.1 "Agreement" means this Community Workforce Agreement.
- 1.2 "Alameda County Residents" shall include any residents living in any city or unincorporated section of Alameda County six months prior to the award of a Project.
- 1.3 "San Leandro Resident" means any individual who six months prior to the award of a Project can certify through a utility bill, or other similar means acceptable to the parties to this Agreement that the individual resides within the boundaries of the San Leandro City Limits.
- 1.4 "City" means the City of San Leandro.
- 1.5 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract. For this definition of "Completion", "Final Acceptance" shall mean that point in time at which the engineer for the City has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written Notice of Completion of the work.
- 1.6 "Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or other business entity, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the City or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of a Project. As applicable depending on its context, "Contractor" shall refer to Contractor or Contractor and Subcontractor.
- 1.7 "Construction Contract(s)" means all of the contract(s) for construction of any Project.
- 1.8 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.
- 1.9 "New Apprentice" is San Leandro Resident who is enrolled in a State of California approved apprenticeship program that is a joint labor management apprentice program for no more than twenty-four months.
- 1.12 "Project" mean any construction project awarded by the City, by and through its City Council, and paid for in part by City General Fund or City Enterprise Fund monies whose value as either estimated by the City or bid by the Contractor exceeds \$1,000,000 (one million dollars).
- 1.13 "Union" or "Unions" means the Council and any other labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.
- 1.14 "Project Manager" means the person or persons or business entity designated by the City to oversee all phases of construction on the Projects.

1.15 "Schedule A Agreement" means the local master labor agreement of a Union signatory to this Agreement and which is listed in Appendix A.

## **ARTICLE 2 SCOPE OF AGREEMENT**

2.1 Parties: This Agreement shall apply and is limited to all Contractors and Subcontractors performing Construction Contracts necessary for the Projects, the City, the Council and any labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 Project Description: This Agreement shall apply to the award of all of the Construction Contracts identified by the City as part of the Projects. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Projects. Should the City suspend or remove any contract from the Projects and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City.

2.3 Covered work:

2.3.1 (a) This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, rights-of-way, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation, pipelines, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

(b) This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion unless it is a new contract and falls below the threshold identified in section 1.12, or is performed by City Employees.

2.3.2 The Projects include work necessary for the Projects performed in temporary yards or areas adjacent to and dedicated to the Projects, and at any on-site batch plant(s) constructed solely to supply materials to the Projects, when those sites are dedicated exclusively to the Projects. This Agreement covers all on-site fabrication work over which the City, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects. This Agreement also covers all off-site fabrication work traditionally performed by the Unions that is part of the Projects, provided such off-site fabrication work is covered by a provision of a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement).

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by bid specifications.

2.3.4 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement:

2.4.1 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City which are outside the identified scope of work of the Projects.

2.4.2 This Agreement is not intended to, and shall not affect the current or anticipated operation, maintenance, access to or use of any of the City's buildings or facilities, whether or not such facilities are identified in Section 1.12 above. List maintenance activities: roofing, painting, landscaping, slurry seal, Annual street sealing project?

2.4.3 This Agreement shall not apply to a Contractor or subcontractor's executives, managerial employees, engineering employees, design employees, supervisors (except those covered by existing building and construction trades collective bargaining agreements), office and clerical employees.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by the City or its contractors for work not part of the scope of the Projects. Further, this Agreement shall not be construed to prohibit or restrict the City or its employees from performing work on or around the Project construction sites or from entering the sites for any purposes deemed necessary or appropriate by the City.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment or the on-site supervision of such work.

2.4.6 This Agreement shall not apply to Projects for which there is a prohibition, exclusion or other limitation imposed because of a grant, funding, or other agreement, law, rule, or regulation, or

any other factor, as determined by the City, that creates a risk to the City of any repayment or return to source of any funds or all funds received.

2.5 Termination, Suspension and/or Delay of Work: It is understood and agreed that the City, at its sole option, may change, terminate, delay and/or suspend any and all portions of the covered work at any time. Further, the City may prohibit some or all work on certain days or during certain hours of the day to comply with applicable codes, laws or regulations, permits or to accommodate the ongoing operations of the City's facilities and/or to mitigate the effect of the ongoing Projects' work on the businesses and residents in the neighborhood of the Project sites; and/or require such other operational or schedule changes that it may be deemed necessary, in its sole judgment, to effectively maintain the primary purpose of the City's facilities and to remain a good neighbor to the residents and businesses in the area of any Projects. In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the affected Contractor with reasonable notice of any changes, beyond what was stated in the bid documents, that it requires pursuant to this Section.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 4, 8, 11, and 12 of this Agreement shall apply to such work.

### **ARTICLE 3**

#### **EFFECT OF AGREEMENT/SUBCONTRACTORS**

3.1 By executing this Agreement, the Unions and the City agree to be bound by each and every provision of this Agreement.

3.2 By accepting the award of a Construction Contract for the Projects, whether as contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.3 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party unless performing work within the scope of the project(s).

3.4 It is understood that this Agreement, together with the referenced Schedule A Agreements, constitute an integrated, self-contained, stand-alone agreement, and that by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area, or national agreement as a condition of performing work within the scope of this Agreement. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the Schedule A Agreements, shall be resolved according to the procedures set forth in Article 11 of this Agreement; provided, however, that should a dispute involve a single Schedule A Agreement and a Contractor signatory thereto, and not involve interpretation or application of this Agreement, then such dispute shall be processed and resolved pursuant to the grievance provisions of that Schedule A Agreement. Should there be a dispute in the first instance as to whether the provisions of Article 11 of this Agreement or the grievance procedures of a Schedule A Agreement apply, the dispute shall be presented initially to an arbitrator who shall be

selected pursuant to the method described in Article 11, within thirty (30) days of the execution of this Agreement. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and be heard and decided within three (3) calendar days. Should the arbitrator hold that Article 11 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 11, or, absent mutual agreement, commence processing the dispute at Step I of that Article.

3.5 Subcontractors. At the time that any Contractor enters into a subcontract with any subcontractor of any tier for the performance of construction or construction trucking work within the scope of this Agreement, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified by the negotiating parties, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree to be bound by each and every provision of the Agreement prior to the commencement of work.

3.5.1 Each Contractor and Subcontractor shall evidence their agreement to be bound to this Agreement by executing the Agreement To Be Bound form attached hereto as Appendix A. A copy of the Agreement To Be Bound executed by the Contractors and Subcontractors shall be submitted to the Union(s) prior to both the commencement of work and the Pre-Job Conference and will be a required submittal within the City's bid packages. If the Contractor or Subcontractor refuses to execute the Agreement To Be Bound, then such Contractor or Subcontractor shall not be awarded a Construction Contract to perform work on the Projects. A Contractor or Subcontractor who executes the Agreement to Be Bound shall be considered a signatory party to this Agreement.

3.6 It is understood that the liability of each Contractor and Subcontractor and the liability of each Union under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City and/or any Contractor or Subcontractor.

3.7 With regard to any Contractor or subcontractor that is independently signed to any Schedule A Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Schedule A Agreement. Any such subcontracting clause in a Schedule A Agreement shall remain and be fully enforceable between each craft union and its signatory employers and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft Unions and their respective signatory employers under a Schedule A Agreement. To the extent that the provisions of this Agreement are inconsistent with any other provisions contained in a Schedule A Agreement, the provisions of this Agreement shall prevail

#### **ARTICLE 4**

#### **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1 The Unions, City and Contractor agree that for the duration of the Projects:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or construction persons employed on the Projects, at a job site of the Projects or at any other facility of the City because of a dispute on the Projects. Nor shall the Unions or construction persons employed on the Projects participate in any strikes, sympathy strikes, work

stoppages, picketing, hand billing, slowdowns, or otherwise advising the public that a labor dispute exists at a Project jobsite because of a dispute between Unions and Contractor(s) on any other project.

4.1.2 As to construction persons employed on the Projects, there shall be no lockout of any kind by a Contractor covered by this Agreement

4.1.3 If a Schedule A Agreement between a Contractor and the Union expires before the Contractor completes the performance of a Construction Contract and the Union or Contractor gives notice of demand for a new or modified Schedule A Agreement, the

Union agrees that it will not strike, picket, hand-bill, slowdown or engage in any other disruptive activity against the Contractor and the Contractor will not lockout construction persons of the Union on said Construction Contract for work covered under this Agreement and the Union and the Contractor agree that the expired Schedule A Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Schedule A Agreement is reached between the Union and Contractor. If the new or modified Schedule A Agreement reached between the Union and Contractor provides that any terms of the new Schedule A Agreement shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified Schedule A; Agreement, which are applicable to construction persons employed on the Projects within seven (7) days.

4.1.4 It shall not be considered a violation of this article for a Union to withhold labor (but not picket) from any Contractor/Employer who fails to make its timely payment of Trust Fund contributions or fails to meet its weekly payroll. The affected Union shall give 72-hours written notice to the City and to the Contractor/Employer prior to withholding labor due to a Contractor's failure to make timely payment of Trust Fund contributions and 24- hours written notice to the City and to the Contractor/Employer when a Contractor/Employer fails to make weekly payroll or when paychecks are determined to be nonnegotiable by a financial institution normally recognized to honor such paychecks, during which time the Contractor/Employer shall have the opportunity to correct the default.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, in lieu of or prior to any other action at law or equity, when a breach of this Article 4 is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify Robert Hirsch whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, William Riker shall be the alternate arbitrator. If neither is available, than the arbitrator shall be chosen from the list provided in Schedule \_\_\_\_\_. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to the City, to the Council and to the involved local Union if a Union is alleged to be in violation of this Agreement.

4.2.2 Upon receipt of said notice, the arbitrator named above or an agreed upon alternate from the list provided in Schedule \_\_\_\_\_ shall convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The Arbitrator shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said arbitration shall be completed in one session, which, with appropriate

recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of this Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The decision shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article 4 and other appropriate relief and such award shall be served on all parties by hand or the most expedient means allowed by law that meets the timelines set forth herein.

4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2.4 of this Article 4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or the most expedient means allowed by law that meets the timelines set forth herein.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligations under this article.

4.3 Liquidated Damages. If the arbitrator determines that a violation of Section 4.1 has occurred, the breaching party shall, within eight (8) hours of the issuance of the decision take all steps necessary to immediately cease such activities and return to work. If the breaching party involved does not cease such activities by the beginning of the next regularly scheduled shift following the expiration of the eight (8) hour period after the arbitrator's issuance of the decision, then the breaching party shall pay the sum of ten thousand dollars (\$10,000) as liquidated damages to the City per shift until the breach is remedied. The arbitrator shall retain jurisdiction for the sole purpose of determining compliance with this obligation and determining the amount of liquidated damages, if any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

## **ARTICLE 5**

### **PRE-JOB CONFERENCE**

5.1 A mandatory pre-job conference shall be held after the award of the contract and prior to the commencement of each Construction Contract. Such conference shall be attended by a representative each from the participating Contractor(s), including all sub-contractors, and Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will

be held at least fourteen (10) days before the work commences. Unless otherwise agreed to by the parties, all pre-job conferences will be held at San Leandro City Hall.

**ARTICLE 6**  
**NO DISCRIMINATION**

6.1 The Contractors and Unions agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability against any person, or applicant for employment on the Projects.

**ARTICLE 7**  
**UNION SECURITY**

7.1 The Contractors recognize the Union(s) as the sole bargaining representative of all construction persons working within the scope of this Agreement.

7.2 All construction persons who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on the Projects, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union construction persons from joining the local union.

**ARTICLE 8**  
**REFERRAL AND LOCAL HIRE PROGRAM**

8.1 Referral

8.1.1 Contractor (s) performing construction work on the Projects described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto ("Job Referral System"). Such Job Referral System will be operated in a non-- discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and nondiscrimination.

8.1.2 The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.1.3 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Unions(s).

8.1.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a seventy-two (72) hour period after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain employees from any source. Contactor(s) shall promptly notify the Union(s) of any applicants hired from other sources. This provision does NOT affect core employees as defined below.



8.1.5 Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s).

## 8.2 Local Hire

All parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the hall, qualified and available, and bona-fide San Leandro and if no San Leandro residents are available, than Alameda County Residents, for Project work.

8.2.1 The parties also recognize and support the City's commitment to provide opportunities for participation on the Projects to San Leandro businesses through the City's Local Business Preference Ordinance. In furtherance of this commitment, the parties agree that such San Leandro contractors and subcontractors awarded work on the Projects may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

- (1) possess any license required by state or federal law for the Project work to be performed;
- (2) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (3) were on the Contractor's active payroll for at least sixty (60) out of the one hundred and eighty (180) calendar days prior to the contract award;
- (4) have the ability to perform safely the basic functions of the applicable trade, and
- (5) are San Leandro residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

Alternative language for discussion – from City of Martinez PLA:

The contractor and subcontractors agree to use the union hiring hall for any new hires beyond their own "core work force" (defined as persons on the contractor's or subcontractor's active payroll for 60 of the 100 days preceding the award). The contractor and subcontractors are allowed to use their own core work force before resorting to the union hiring hall.

8.2.2 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall before commencing Project work. If there is any question regarding an employee's eligibility under

this Subsection 8.2.1, the City Representative, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

8.2.3 To the extent allowed by law and consistent with the non-discriminatory referral procedures of the Union hiring halls, the Parties agree to a goal that San Leandro Residents will perform a minimum of 30% of the hours worked, on a craft by craft basis on the Projects. In the event that no San Leandro residents are available to fulfill the 30% local hire requirement, the next tier of residents will come from anywhere in Alameda County. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of San Leandro Resident workers and in their hiring hall procedures to facilitate this 30% goal on the Projects. In the event that referral facilities maintained by the Union(s) are unable to fulfill the 30% local hire requirement, paragraph 8.2.4 of this Article shall not apply.

8.2.4 Should any of the contractors performing work on the Projects fail to meet this 30% goal and fail to demonstrate "good faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract's 5% retention will be held until such time that this failure is remedied, but not longer than ninety (90) days after the date of substantial completion of the Projects or as required by law, in addition to the breach of contract remedies available to the parties for non-performance under this Agreement.

8.2.5 Should any Contractor performing work on the Projects exceed the 30% local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, City Council meeting for their efforts at the completion of their contract scope.

### 8.3 Apprenticeship Provision

8.3.1 Consistent with the requirements of California Labor Code §§ 1776, 1777.5 and 1777.6, Prime Contractor(s), and or their sub-contractors will be required to hire 1 San Leandro resident as a New Apprentice for the first 1 million dollars of total bid amount. Thereafter, for every 5 million dollars of the total bid amount the Prime Contractor and their Sub-contractors will be required to hire one additional New Apprentice. The New Apprentice(s) must work a minimum of 10% of the project's work hours. The contractor may deploy the apprentice to work on another concurrent project in order to meet the minimum hours, and those hours will be counted towards the total hours of the craft on the San Leandro project. Certified Payroll must reflect the hours worked.

8.3.2 There can be no more than 1 entry -level apprentices for each craft, provided said crafts have apprenticeship openings and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The City, upon request, will refer names of graduates of workforce development programs to the Union and Contractors and the Unions will agree to cooperate with Contractor(s) in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements and or the unions agreements with the division of apprenticeship standards, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements.

8.3.4 The intent of this provision is to utilize San Leandro Resident First Period Apprentices to the fullest extent permissible by state law and the Master Agreements.

Failure of Contractor(s) and their subcontractors to maintain qualified apprentices on the job will be subject to Division of Apprenticeship Standards penalties, and further penalties as determined by the Joint Administrative Committee.

**ARTICLE 9**  
**GRIEVANCE PROCEDURE**

9.1 Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which confers jurisdiction to consider and resolve disputes over the imposition of discipline or dismissal of its construction persons working on this Project shall be bound to the grievance procedure contained in the Schedule A Agreement of the craft representing the employee(s) involved in the dispute. For the purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered by this Agreement without just cause.

**ARTICLE 10**  
**JOINT ADMINISTRATIVE COMMITTEE**

10.1 The parties to this Agreement shall establish a five (5) person Joint Administrative Committee. This Committee shall be comprised of two (2) representative selected by the City; two (2) representatives of the signatory Unions and Alameda County Building and Construction Trades Council; and one (1) industry representative, mutually selected by the City and the Alameda County Building and Construction Trades Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

10.2 The Joint Administrative Committee shall meet as required, but not less than once each quarter, to review the implementation of the Agreement and the progress of the Projects including, but not limited to, compliance with Article 8, prevailing wage, safety, craft workforce levels and construction progress. Requests for certified payroll made by a Joint Labor/Management Committee to which the Union(s) signatory to this Agreement are a party shall be provided as allowed by law.

**ARTICLE 11**  
**GRIEVANCE ARBITRATION PROCEDURE**

11.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party provides notice in writing to the signatory party with whom it has a dispute within seven (7) calendar days after becoming aware of the dispute, but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving to the dispute. The time limits in this Article 11 may be extended by mutual written agreement of the parties.

11.2 Grievances shall be settled according to the following procedures:

Step 1: Within seven (7) calendar days after the receipt of the written notice of grievance, the necessary parties to the grievance, including but not limited to the Business Representative of the involved Local Union, or the City's authorized representative or his/her designee, or representative of the construction person, or the representative of the involved Contractor shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step I, either involved party may submit it within three (3) calendar days to a subcommittee of the Joint Administrative Committee consisting of one (1) person selected by the City and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to resolve the grievance. If there is a unanimous decision by the subcommittee, the decision will be binding on all parties. If the dispute is not resolved within such time (seven (7) calendar days after its referral or such longer time as mutually agreed upon) it may be referred within seven (7) calendar days by either party to Step 3.

Step 3: In the event the matter is not settled or otherwise resolved in a final and binding manner by the Committee, either party may demand arbitration (to Discuss)The parties shall flip a coin to determine who shall strike the first name and shall then alternatively strike names from the list and the last remaining name shall be the neutral third party arbitrator who shall have the power to resolve the dispute in a final and binding manner. The costs of the arbitration shall be evenly split by the parties with each bearing the cost of their own legal counsel. Upon mutual agreement of the parties, the matter may be heard on an expedited basis, by telephone or other electronic means, and the arbitrator may render a "bench decision".

11.3 The Arbitrator shall arrange for a hearing no later than fourteen days (14) calendar days after the matter has been submitted to arbitration. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 11.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without the request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

11.4 The decision of the Arbitrator shall be binding by all parties. The Arbitrator shall not have authority to change, amend, add, or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

11.5 In order to encourage the resolution of disputes and grievances at Step 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

11.6 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the City withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by

the City until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

## **ARTICLE 12 JURISDICTIONAL DISPUTES**

14.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the Union(s) and the Contractor/Employer(s), parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractor/Employer(s) and Union(s) parties to this Agreement.

14.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) calendar days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor/Employer(s)' assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

14.4 Each Contractor/Employer(s) shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the District will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractor(s) may be held together.

## **ARTICLE 13 APPRENTICES**

13.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor(s) shall employ and utilize apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

13.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

**ARTICLE 14**  
**MANAGEMENT RIGHTS**

14.1 The Contractor shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion except as otherwise limited by the terms of this agreement and/or Schedule A Agreements. No roles, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful manning provisions of the Schedule A Agreements shall be recognized.

**ARTICLE 15**  
**WAGES/BENEFITS**

15.1 Wages. All construction persons covered by this Agreement shall be classified and paid in compliance with and according to California prevailing wage laws.

15.2 Benefits. Contractor agrees to pay contributions into established construction person benefit funds in the amounts designated in the appropriate Schedule A Agreement; provided, however, that each Contractor and Union agree that only such bona fide construction person benefits as included in the prevailing wage determination shall be included in this requirement and required to be paid by the Contractor under this Agreement; provided further, however, that this provision does not relieve Contractors signatory to a local collective bargaining agreement with a signatory Union which would be applicable to the Projects from making any other fund contributions (including, but not limited to, those for contract administration), required by such local agreement. Contractor shall not be required to pay contributions to any other trust funds to satisfy their obligation under this Article. By signing this Agreement, the Contractors adopt and agree to be bound by the written terms of the legally established Trust Agreements, specifying the detailed basis on which the payments are to be made into, and the benefits paid out of, such Trust Funds. If a contractor fails to pay wages, the City agrees to honor a properly submitted, legally enforceable Stop Notice.

ARTICLE \_\_\_\_  
**DRUG & ALCOHOL TESTING**

X.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

X.2 The Parties agree to recognize and use the Substance Abuse Prevention Program contained in each applicable Union's Schedule A.

**ARTICLE 16**  
**MODIFIED SCHEDULE A AGREEMENTS**

16.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified Schedule A Agreements which are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or

which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Article 12 hereof.

**ARTICLE 17**  
**SAVINGS CLAUSE**

17.1 The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by the court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

17.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

**ARTICLE 18**  
**ENTIRE AGREEMENT**

18.1 This Agreement represents the complete understanding of the parties: The provisions of this Agreement, including the Schedule A Agreements, shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A Agreement and is not covered by this Agreement, the provisions of the Schedule A Agreement shall prevail. Nothing contained in a Schedule A Agreement, working rule, by-laws, constitution or other similar document of the Unions shall in any way affect, modify or add to this Agreement unless otherwise specifically set forth in this Agreement or mutually agreed to in writing executed by the parties.

18.2 The parties agree that this Agreement covers all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

18.3 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

**ARTICLE 19**  
**TERM**

19.1 The Agreement shall be included as a condition of the award of the Construction Contracts.

19.2 The Agreement shall continue in full force and effect for a term of three years from the Effective Date and shall be applicable to all Projects until completion that are advertised for bidding during the term .

**ARTICLE 20**  
**COMPLIANCE**

20.1 It shall be the responsibility of the Contractor(s) and Unions to investigate and monitor compliance with the provisions of the agreement contained in Article 15. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors on the Project.

City of San Leandro

By: \_\_\_\_\_ Date: \_\_\_\_\_



**Alameda County Building & Construction Trades Council, AFL-CIO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Signatory Unions**

**Asbestos Workers, Local 16**

By: \_\_\_\_\_

**Boilermakers, Local 549**

By: \_\_\_\_\_

**Bricklayers & Allied Craftsmen,**

By: \_\_\_\_\_

**Local 3 Cement Masons, Local 300**

By: \_\_\_\_\_

**Electrical Workers, Local 595**

By: \_\_\_\_\_

**Elevator Constructors, Local 8**

By: \_\_\_\_\_

**Hod Carriers, Local 166**

By: \_\_\_\_\_

**Iron Workers, Local 378**

By: \_\_\_\_\_

**Laborers, Local 67**

By: \_\_\_\_\_

**Laborers, Local 304**

By: \_\_\_\_\_

**Operating Engineers,**

By: \_\_\_\_\_

**Local 3 Plasterers, Local 66**

By: \_\_\_\_\_

**Roofers, Local 81**

By: \_\_\_\_\_

**Sheet Metal Workers, Local 104**

By: \_\_\_\_\_

**Sign Display, Local 510**

By: \_\_\_\_\_

**Sprinkler Fitters, Local 483**

By: \_\_\_\_\_

**Teamsters, Local 853**

By: \_\_\_\_\_

**United Association of Journeymen and  
Apprentices Fitting Industry, Underground  
Utility & Landscape, Local 355**

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

**United Association of Steamfitters, , Plumbers, & Gas Fitters, Local 342**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Council No. 16 Northern California  
Painters & Allied Trades** (On behalf  
of Painters, Local 3; Carpet & Linoleum  
Layers, Local 12; Glass Workers, Local  
169; Auto& Marine Painters, Local 1176)

By: \_\_\_\_\_ By: \_\_\_\_\_

**Northern California Carpenters  
Regional Council** (on behalf of Carpenters,  
Local 713; Carpenters, Local 2236; Lathers,  
Local 68L; Millwrights, Local 102; Pile  
Drivers, Local 34)  
By: \_\_\_\_\_

EXHIBIT A

**AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Project's Community Workforce Agreement ("Agreement"), a copy of which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;
3. Agrees to secure from any Contractor (as defined in said Agreement) which is or becomes a subcontractor (of any tier) to it, and from any successors, a duly executed Agreement to be bound in form identical to this document.
4. Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft agreement contained in Schedule "A" of Agreement.

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Name of Prime Contractor or Higher Level Subcontractor:  
\_\_\_\_\_

Name of Project: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor's License #: \_\_\_\_\_

2390369.1

*Draft – 1-28-15*

**City of San Leandro**

**I. Local Inclusion Policy**

**II. Open Hiring Policy Addendum**

**I. Purpose**

For the purpose of encouraging and supporting the training and hiring of San Leandro residents, this addendum to the City of San Leandro Local Inclusion Policy (SLLIP) sets forth the key elements of an Open Hiring Policy that embodies the principles of honoring all local professionally operated businesses as set forth in the SLLIP as quoted at the end of this document.

As the title implies, this Open Hiring Policy Addendum establishes the framework for an open local resident training and hiring system, whether with or without union participation on the part of the contractor.

**II. Performance**

- A. Under this open policy the contractor may perform its work as a professional independent enterprise, paying prevailing wages and treating its employees with due respect for their work.
- B. Should an agreement with a union be in the best interest of the City, the contractor and the union(s), for all or a portion of the work, the following conditions for such an agreement shall apply:

**DEFINITIONS**

- 1.1 "City" means San Leandro, California.
- 1.2 "Contractor(s)" means any individual, firm partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise or any of its subcontractors or subcontractors of any tier, who may construct any part of the Project under contract terms and conditions incorporated in this Agreement. "General Contractor" means the Contractor awarded the Project by the County.
- 1.3 "Construction contract" means all City-initiated public works or improvement contracts.

## **1. Scope**

Construction contracts awarded to contractors valued at or above One Million Dollars (\$1,000,000.00).

## **2. Workforce**

Contractors/Employers shall be free to obtain and retain its core workforce and work persons from any source.

For purposes of this Agreement, an employee shall be considered a member of a Contractor's core workforce if the employee:

- i. possesses any license required by state or federal law, if any, for the Project work to be performed;
- ii. has been on the Contractor's payroll for at least 120 of the 200 working days prior to the date the Notice to Proceed or equivalent authorization granted by the County to begin work on the Project; and
- iii. has the ability to safely perform the basic functions of the applicable trade.

## **3. Optional Dues and Fees Requirement**

Any requirement for the payment of dues and fees shall be optional. No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of City of San Leandro work.

## **4. Fringe Benefits**

Contractors/Employers shall compensate its workforce for benefits in excess of the basic hourly wage rate in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to the California Labor Code. Contractors/Employers may: (1) directly compensate its workforce, or (2) contribute to Contractor/Employer's benefit plans on behalf of the workforce, or (3) contribute to the Union's established employee benefit plans on behalf its workforce.

## **5. Apprenticeship**

Any contractor performing work for the City of San Leandro shall have the right to employ apprentices enrolled in any State-approved apprenticeship program serving Alameda County.

Because the San Leandro building trades labor pool is quite small, there is no formal quota for engaging apprentices because. That said, it is incumbent upon both the City and the contractor/subcontractor to work together to secure *available* apprentices from State-approved programs; and for the City to work with appropriate agencies to encourage residents to enter apprenticeship programs.

## **6. Veterans**

Any contractor working for the City of San Leandro agrees to make a good faith effort to hire qualified individuals who are veterans, particularly recent veterans of military service in Afghanistan and Iraq.

A bidder or contractor shall be deemed to have made a “good faith effort” to hire sufficient numbers of veterans if, prior to execution of the contract at least two of the following veteran employee recruitment activities have been undertaken and documented:

1. Written and oral communication indicating an interest in hiring veterans for the project with a Veterans Representative at the closest Workforce Services Office of the California Employment Development Department.
2. Written and oral communication indicating an interest in hiring veterans for the project with the Alameda County agency responsible for job placement of veterans.
3. Written and oral communication indicating an interest in hiring veterans for the project with a veterans employment service, administered by a legitimate veterans advocacy organization placing veterans in employment in Alameda County.
4. Written and oral communication indicating an interest in hiring veterans for the project with a private non-profit organization dedicated to finding employment for veterans in Alameda County.

## **7. Local Hire**

These sample provisions are meant to ensure that local residents will benefit from a project in terms of employment opportunities, without imposing restrictions on where and how contractors can obtain local workers. These provisions will encourage contractors to provide job opportunities to local residents, expand the local employment base, and reduce the impact on the environment caused by long commuting times to jobs outside the area.

### **A. LOCAL HIRING**

It is the intent of the City of San Leandro to provide job opportunities for local workers in the construction of its facilities. The City of San Leandro has set a goal that XX percent (this percent to be based on a labor pool availability study by the City) of work hours for contractors on construction contracts will be performed by permanent residents of the City of San Leandro. To confirm that the City of San Leandro is achieving this goal, contractors will provide weekly payroll records that indicate the permanent home address of each worker, the trade of the worker, and the number of hours worked.

A “permanent home address” refers to the legal domicile of the worker immediately preceding the date of the Notice of Solicitation or bid advertisement. Each worker will be expected to verify his or her domicile upon request of the contractor or city by producing documentation such as a rent/lease agreement, telephone and utility bills or payment bills, a valid California driver's license or identification card, and/or any other similar, reliable evidence that verifies the legal domicile of the worker.

Contractors will agree to make a good faith effort to hire qualified individuals who are local residents in sufficient numbers so that local residents comprise no less than (see above)percent of the contractor's total work force on the project. The contractor's total work force shall include employees of all subcontractors performing one half of one percent of the work or more, measured in labor work hours for the project.

A bidder or contractor who fails to meet the goal of having XX percent of its workforce as current local residents shall, nevertheless, be deemed to have made a “good faith effort” to hire sufficient numbers of local residents if, prior to execution of the contract at least XX of the following employee recruitment activities have been undertaken and documented:

1. Placing a valid job order for existing and projected position vacancies with the local office of the California Employment Development Department, for no less than ten (10) consecutive calendar days.
2. Placing a valid job order for existing and projected position vacancies with (such as Alameda County Hire, WIB as chosen by the City), for no less than ten (10) consecutive calendar days.
3. Advertising existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in conspicuous local authorized public places, including but not limited to the local city hall, schools, post offices, libraries, and senior citizens centers.
4. Conducting a job informational meeting to inform the community of employment opportunities of the contractor, to be held at a local facility in the City of San Leandro. This meeting may be hosted by multiple contractors.
5. Providing ongoing assistance to local residents in completing job application forms.
6. Conducting a job application workshop to assist the community in applying and interviewing for jobs in the contracting industry, to be held at a local facility in the City of San Leandro. This meeting may be hosted by multiple contractors.
7. Establishing a job application center located in the City of San Leandro, where job applications may be obtained, delivered to and collected.
8. Conducting job interviews within XX miles of the location designated for contract performance.
9. Advertising valid existing and projected position vacancies through the local media, such as a community television network, local newspapers of general circulation, and trade papers or minority focus newspapers.
10. Telephone solicitation of known potential local subcontractors or employees.



11. Obtaining employees who are local residents by any other means which are reasonably calculated to comply with the goal in this Agreement.

Upon submission of the bid or price quotation, the bidder or contractor shall submit a statement explaining how it and its subcontractors propose to meet these requirements. Alternatively, if the bidder or contractor cannot provide such proof, it shall provide proof of good-faith effort as outlined above.

During the term of the contract, the contractor shall keep an accurate record on a standardized form, showing the name, place of residence, trade classification or description of work to be performed, hours employed, per diem wages and benefits, of each person employed by the contractor, and the contractor's subcontractors, to perform any work on the project pursuant to the contract with the City of San Leandro, including full-time, part-time, permanent and temporary employees, and make such records available to the City of San Leandro upon request, within XX working days. The contractor shall also keep a copy of the records submitted by the employee as evidence of local residency. The Public Works Payroll Reporting Form required by the City of San Leandro for Public Works projects with the evidence of residency documents attached will satisfy the requirements of this section.

### **8. Assessing Financial Liability for Work Stoppages and Slowdowns**

In the event a work stoppage or slowdown affects work covered by this Agreement and said stoppage or slowdown involves or is caused by a Union signatory to this Agreement, an affected signatory party may seek redress under the grievance procedure of this Agreement which shall include, but not be limited to, liquidated damages of \$10,000 [depending on size/scope of project] per day and any other remedies available under applicable law.

### **9. No Discrimination**

The Contractor/Employers and Unions agree not to engage in any form of discrimination based on race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, political affiliation, disability, or membership in a labor organization against any employee, or applicant for employment on the Project.

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As referenced above, quoting from the ***City of San Leandro Local Inclusion Policy***, page 1:

**“Findings**

The City Council of the City of San Leandro hereby finds that it is in the City’s interest to have a healthy local business community. The City Council also finds that San Leandro businesses, particularly small and nonprofit organizations, often encounter obstacles to participating in City projects and procurements, obtaining financing and credit, and bonding and insurance, which affects the economic viability and growth of these businesses and organizations.

**Declaration of Policy and Purpose**

(a) It shall be a policy of the City of San Leandro that San Leandro business enterprises, including small and nonprofit businesses, should be encouraged to participate as contractors and suppliers in the provision of goods and services to the City. Policies and programs that enhance opportunities and utilize the skills and expertise of San Leandro businesses, including small businesses and nonprofit organizations, serve the public interest, primarily because the growth and development of such businesses have a significant positive impact on the economic health of the City of San Leandro. A City ordinance that grants a preference for awarding contracts for projects and procurements to businesses located or operating within the City serves the public interest by encouraging businesses, including small and nonprofit businesses, to locate, hire residents and remain in San Leandro.”