



City of San Leandro

Meeting Date: December 17, 2018

Staff Report

File Number: 18-478

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution of the City of San Leandro City Council Authorizing the City Manager to Execute a Side Agreement to Extend the Term of the Community Workforce Agreement with the Alameda County Building and Construction Trades Council and Its Affiliated Local Unions and for a Resolution Approving a Consulting Services Agreement with Bay Area Business Roundtable for Workforce Development and Local Business Inclusion Services

SUMMARY AND RECOMMENDATIONS

On June 15, 2015, the City Council adopted a Community Workforce Agreement (CWA) that was negotiated with the Alameda County Building and Construction Trades Council (BTC) and its affiliated local unions to govern labor procedures for City construction projects above \$1,000,000. Further, the Agreement set in place policies and goals related to the hiring of San Leandro residents to work on City construction projects and the hiring of San Leandro residents into the signatory unions' apprenticeship programs. The three-year term of the CWA began on January 1, 2016 and will conclude on December 31, 2018. To support efforts to implement both the CWA and the City's 2014 Local Business Preference policy, the City hired Bay Area Business Roundtable to conduct workforce development, marketing, data and trend analysis, and outreach.

Staff recommends that the City Council take the following actions:

- Authorize the City Manager to execute a side agreement to extend the current term of the CWA with the BTC through December 31, 2019; and
- Direct staff to begin negotiations with BTC for the next term of the CWA; and
- Approve a Consulting Services Agreement (CSA) with Bay Area Business Roundtable in the amount of \$60,000 for workforce development and local business inclusion consulting services.

BACKGROUND

The basic provisions of the CWA agreement with BTC are as follows:

Covered Work: The work covered under the 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 jurisdictions of one of the signatory unions and that is part of the projects, including, pipelines, site preparation, survey work, and demolition.

The agreement does not apply to projects for which there is a prohibition, exclusion or other limitation imposed because of a grant, funding, or other agreement that creates a risk to the City of any repayment or return to source of any funds received. Per Section 2.4.5 of the Agreement, the City Council will have final authority to make amendments to the Agreement in the unlikely event that City staff and the BTC are unable to reach agreement on amendments to the CWA for a particular project's funding restrictions.

Construction contracts that are governed by the CWA are still subject to competitive bidding laws, the payment of prevailing wages, and the City is still required by law and its own ordinances to select the lowest responsive and responsible bidder.

Minimum Cost Threshold: The CWA applies to City construction projects with total costs that meet or exceed \$1,000,000.

Labor Peace: For all projects covered by the CWA, the Unions agreed 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 project job site, or at any other facility of the City.

Union Hiring Hall and Impact on Non-Union Contractors: Contractors working on covered projects are required, when filling craft job requirements, to utilize and be bound by the registration facilities and referral systems authorized by the signatory unions, commonly referred to as the union hiring hall.

The agreement does not prohibit non-union contractors from bidding on projects. However, the CWA allows non-union contractors to use no more than five of their own employees and only if those workers are San Leandro residents and an equal number of union workers are also retained by the contractor. This is known as the "Core Worker" provision. Non-union "core" workers hired under this provision are still required to register with the union hiring hall and the non-union contractor is required to pay into the union trust fund, covering health and pension benefits for these workers.

Local Hire and Apprentices: The current CWA has a goal of 10% participation by San Leandro residents as apprentices on construction projects that are covered by the CWA. Contractors are required to make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. 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. For San Leandro journeymen-level workers, the CWA sets a 30% goal of total project hours. After the

contractor uses the Unions’ hiring hall procedures and if qualified workers from San Leandro are not available, workers who reside in Alameda County can be hired to meet the apprentice goal of 10% and the journeymen goal of 30%.

Joint Administrative Committee: This Committee is comprised of two representatives selected by the City; two representatives of the signatory Unions and Alameda County Building and Construction Trades Council; and one industry representative, mutually selected by the City and the Alameda County Building and Construction Trades Council. The Joint Administrative Committee meets monthly, but not less than once each quarter, to review Agreement implementation, and the progress of the CWA projects including, but not limited to, compliance with Article 8, prevailing wage, safety, craft workforce levels, and construction progress. City staff coordinates the activities of the five person Joint Administrative Committee.

Analysis

Since commencement of the CWA on January 1, 2016, nine projects were awarded that have been governed by the agreement and the City Council has accepted the work as completed for three of those projects. Combined, these projects comprise an investment in the City’s infrastructure of almost \$35 million. The nine awarded projects are:

<u>Award Date:</u>	<u>Project Name</u>	<u>Award Amount</u>
2016:	Citywide Energy and Water Efficiency Upgrades Project (Climatec)	- \$5.2m
2016:	Annual Overlay / Rehabilitation 2015-16 Project	- \$3.5m
2017:	Annual Street Overlay / Rehabilitation 2016-17 Project (Phase I)	- \$3.395m
2017:	Sanitary Sewer Line Replacement/Repair 2017 Project	- \$1.16m
2018:	Water Pollution Control Plant Asphalt Replacement Project	- \$1.605m
2018:	Annual Overlay / Rehabilitation 2016-2017 Project (Phase II)	- \$1.754m
2018:	Annual Street Sealing 2017-18 Project	- \$1.894m
2018:	Annual Overlay / Rehabilitation 2017-18 Project	- \$10.163m
	<u>2018: Police Building and South Offices Modification Project</u>	<u>- \$6.268m</u>
	Total Value Projects Awarded	\$34.94m

Local Hire Participation Rates

For the three accepted projects, achievement toward the local hire goals (10% of the total project work hours worked by San Leandro apprentices and 30% of the total project work hours worked by San Leandro journeymen) is as follows:

Annual Overlay / Rehabilitation 2015-16 Project, Project No. 2016.0050

	Total	San	San	Alameda	Alameda
	Hours	Leandro	Leandro	County	County
	Worked	Resident	Resident	Resident	Resident
		Hours	(%)	Hours	(%)
Journeyman	7494	565	6.4%	4761	54%
Apprentice	1393	0	0%	899	10%

Annual Street Overlay / Rehabilitation 2016-17; Project No. 2017.0050 (Phase I)

	Total	San	San	Alameda	Alameda
	Hours	Leandro	Leandro	County	County
	Worked	Resident	Resident	Resident	Resident
		Hours	(%)	Hours	(%)
Journeyman	6933	574	8.3%	2915	42%
Apprentice	1109	0	0%	653	13%

Sanitary Sewer Line Replacement/Repair 2017 Project, Project No. 2015.0120

	Total	San	San	Alameda	Alameda
	Hours	Leandro	Leandro	County	County
	Worked	Resident	Resident	Resident	Resident
		Hours	(%)	Hours	(%)
Journeyman	5094	250	4.9%	2599	51%
Apprentice	5094	0	0%	772	16%

As approximately 60% of the projects awarded are for street reconstruction, rehabilitation and sealing, similar trades, such as operator/engineers, laborers, cement masons and electricians, are used for the majority of current CWA projects. For those projects accepted by the City Council thus far, there has been zero participation by San Leandro apprentices and significantly low participation rates for San Leandro journeymen. Staff noticed this trend early on at the close of the first year of the CWA and began working with the Joint Administrative Committee union representatives as well as pre-apprenticeship and training programs to identify solutions to address the low rates of resident participation.

Staff Level of Effort & Bay Area Business Roundtable

Implementation of the CWA has impacted staff's ability to deliver projects as there is increased amount of time spent on pre-bid activities and compliance as well as technical assistance efforts. In the first year of the CWA, approximately 0.25 full-time equivalents (FTE) were spent on CWA administration. With the increase in the number of CWA projects as well as the broader scope of these projects and attendant increase in types of trades used, the percentage of an FTE currently spent on administration, compliance, and technical assistance is approximately 0.5.

This level of effort does not include consultant hours spent by Bay Area Business Roundtable (BABRT), the consultant the City hired for workforce development, marketing, data and trend analysis, and outreach to support both the implementation of the CWA and the City's Local Business Preference policy. BABRT is a regional leader in workforce and business development and has been key in creating strategic partnerships for the City with local agencies. This consultant has provided data and trend analysis that are valuable for evaluating the CWA's impact in and on the community. Factoring staff and consultant time, the total FTE spent on CWA administration would be at a minimum approximately 1.0 FTE. As noted in 2015 as a comparison, the City of Berkeley devotes a significant share of one full-time position in its Health, Housing, and Community Services Department for implementation and monitoring of all contracts governed by its project labor agreement.

Because the goals for the use of San Leandro residents as apprentices and journeymen have not been reached, additional time is recommended to allow for future development. Therefore, staff recommends that that City Council authorize the City Manager to execute a side agreement to extend the current term of the CWA with the BTC through December 31, 2019, and direct staff to begin negotiations with BTC for the potential future terms of the CWA. BABRT support has been valuable, effective, and supportive of the CWA and the local business inclusion program. Therefore, staff recommends approval of a one-year consulting services contract with BABRT, with an option to extend, for continued provision of workforce development and local business inclusion consulting services. Both actions are recommended because staff believes they will result in a more robust and effective CWA in the long run.

Current Agency Policies

- 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.
- Maintain and enhance San Leandro's infrastructure.

Previous Actions

- On February 10, 2015, the City Council held a Work Session to review options related to the adoption of a potential CWA and receive feedback from stakeholders.
- On April 20, 2015, the City Council adopted Resolution No. 2015-086, appropriating \$100,000 in one-time funding for outreach and implementation of a CWA.
- On June 15, 2015, the City Council approved the Community Workforce Agreement that was negotiated with the Alameda County Building and Construction Trades Council (BTC) and its affiliated local unions to govern labor procedures for City construction projects valued above \$1,000,000.
- On May 16, 2016, staff provided an update on implementation of the CWA.
- On December 5, 2016, staff provided an update on the first year of projects constructed under the CWA.

Committee Review and Actions

- At meetings on March 17, 2015 and April 21, 2015, the City Council Finance Committee discussed the CWA and indicated support for bringing the item back to the City Council for adoption.
- On March 7, 2017, staff updated the City Council Finance Committee on the implementation of the CWA and subsequent impact on City projects.
- On December 3, 2018, staff updated the City Council Facilities and Transportation Committee on the nine projects awarded under the first term of the CWA.

Applicable General Plan Policies

- Policy CSF-6.8: Maintenance: Ensure that sufficient funding is provided for the ongoing maintenance of City owned facilities, including streets, street lights, traffic signals, landscaping, street trees, storm drains, public buildings and other infrastructure.
- Policy ED-6.6: Job Training: Support job training initiatives which prepare local residents for local jobs.
- Policy ED-6.7: Job Opportunities for Residents: Support programs that encourage San Leandro employers to hire local residents.
- Policy ED-6.8: Labor: Engage organized labor, labor unions, and labor advocates in the economic development process.
- Policy ED-6.11: Career Ladders: Encourage career advancement programs to provide opportunities for upward mobility among the city's workforce. Support the growth of businesses that provide career advancement or "ladder" opportunities for employees.

Summary of Public Outreach Efforts

2016

On March 24, 2016, staff hosted an expo where it, alongside representatives from local unions and public agencies, educated over seventy San Leandro and Alameda County participants on contracting with the City and how to navigate the provisions of the Local Business Preference policy as well as the CWA.

On May 9, 2016, June 4, 2016 and July 11, 2016, staff educated community members about CWA at District Town Halls and the Cherry Festival.

On October 13, 2016, staff held a meeting with region partners Alameda County General Services Administration, BART, Port of Oakland as well as other local agencies to discuss strategies for CWA contract goal achievement and compliance.

2017

During 2017, to achieve a high level of awareness and further understand how the goals of the CWA could be realized, staff met throughout the year with both the local business community and residents who could potentially benefit from the CWA. Additionally, staff discussed opportunities and identified barriers to accessing employment created by the CWA's local hire goals with key stakeholder groups such as veterans, organizations advocating for homeless and marginally housed individuals and survivors of domestic violence as well as pre-apprenticeship and training programs and local school and community college districts.

2018

Throughout this year, staff continued discussion of local hire statistics, trends as well as regional strategies to overcome barriers to entry into trades with partners such as Alameda County, Port of Oakland, BART, AC Transit and the cities of Berkeley, Hayward and Oakland. Staff analyzed overall local hire participation in San Leandro's CWA contracts and prepared staffing forecasts for probable CWA projects over the next four fiscal years.

Legal Analysis

The City Attorney's Office reviewed the proposed side agreement and approved it as to form.

Fiscal Impacts

The total estimated cost for administration, compliance and consulting services for workforce development and local business inclusion is \$90,750 as detailed below:

BABRT Consulting Contract	\$60,000
<u>CWA Administration & Compliance</u>	<u>\$30,750</u>
Total	\$90,750

Budget Authority

Funding for administration, compliance, and consulting services for workforce development and local business inclusion will use funds set aside for Local Preference Policy Implementation as follows:

<u>Account No.</u>	<u>Source</u>	<u>Fiscal Year</u>	<u>Amount</u>
010-14-010	<u>General Fund-Community Investment</u>	<u>2018/19</u>	<u>\$90,750</u>
Total Appropriation			\$90,750

ATTACHMENTS

Attachments to Staff Report

- Community Workforce Agreement approved June 15, 2015

Attachments to Related Legislative Files

- CSA - Bay Area Business Roundtable Workforce Development and Local Business Inclusion Services

PREPARED BY: Kirsten Foley, Administrative Services Manager, Engineering and Transportation Department

COMMUNITY WORKFORCE AGREEMENT

For the City of San Leandro

This Agreement is made and entered into this ____ day of _____, by and between the City of San Leandro ("City") together with contractors and sub-contractors of all tiers, who shall become parties to this Agreement by signing the "**Agreement to be Bound (Attachment A)**", 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, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, thereby leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor(s)/Employer(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; 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 competitive bidding and payment of 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 for 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 "Agreement to be Bound" means the agreement (attached hereto and incorporated herein as Exhibit A) which shall be executed by each and every Contractor(s)/Employer(s) as a condition of performing Project Work.
- 1.3 "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.
- 1.4 "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.
- 1.5 "City" means the City of San Leandro.
- 1.6 "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 Council has accepted the work.
- 1.7 "Contractor(s)" or "Contractor(s)/Employer(s)" means any individual, firm, partnership or corporation, or other business entity, or combination thereof, including joint ventures that is an independent business enterprise, and their successors and assigns that has entered into a contract with the City with respect to the construction work necessary for any part of a Project, under contract terms and conditions approved by the City and which incorporate this Agreement, and any of its contractors or subcontractors of any tier.
- 1.8 "Construction Contract(s)" means all of the contract(s) for construction of any Project.
- 1.9 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.

1.10 “New Apprentice” means a San Leandro Resident who is indentured in a State of California approved apprenticeship program that is a joint labor-management apprentice program for no more than twenty-four months.

1.11 “Project” means any construction project awarded by the City, by and through its City Council, and paid for in whole or in part out of City General Fund or City Enterprise Fund monies, the value of which, either estimated by the City or bid by the Contractor, exceeds \$1,000,000.00. The City and the Council may mutually agree in writing to add additional components to a Project’s Scope of Work that is covered under this Community Workforce Agreement.

1.12 “Union” or “Unions” means the Council and any affiliated 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.

1.13 “Project Manager” means the person or persons or business entity designated by the City to oversee all phases of construction on the Projects.

1.14 “Schedule A Agreement” or “Master Labor Agreement” means the local master labor agreement of a Union signatory to this Agreement.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 Parties: This Agreement shall apply and is limited to all Contractors/Employers (including subcontractors at any tier) performing work under Construction Contracts necessary for the Projects, the City, the Council and any affiliated 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 individual project from the Projects and thereafter authorize that construction work be commenced on such project, then such project 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 This Agreement covers, without limitation, all on-site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft

jurisdiction of one of the Unions and which is directly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. Covered 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.

2.3.2 This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems performed after Completion unless it is a new contract and falls below the threshold identified in section 1.11, or is performed by City Employees.

2.3.3 This Agreement covers all on-site fabrication work over which the City or Contractor(s)/ Employer(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by 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.

2.3.2 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, 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. 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.

2.3.3 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), work 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 that are outside the identified scope of work of the Projects.

2.4.2 This Agreement shall not apply to a Contractor or subcontractor's non-craft executives, managerial employees, engineering employees, design employees, supervisors (except those

covered by existing building and construction trades collective bargaining agreements), office and clerical employees.

2.4.3 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 Project sites for any purposes deemed necessary or appropriate by the City.

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

2.4.5 In the event that the City becomes aware or is made aware that this Agreement or portions thereof are inconsistent with the terms and conditions of any grant, loan, or contract with any Federal, State, or regional agency or with the instructions or directions of an authorized representative of a Federal, State or regional agency to which the City is applying for or has received grant funds, the City shall notify the Council. Within 24 hours of notification, the parties shall meet and confer to attempt to modify the Agreement to avoid the forfeiture of any funding or to otherwise resolve the issue. Should the parties be unable to come to an accord, this Agreement or any inconsistent provision shall be modified, subject to the approval of the City Council, to remain in compliance with the requirements of the applicable funding source.

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 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 effects of the ongoing Projects' work on the businesses and residents in the neighborhoods of the Project sites; and/or require such other operational or schedule changes that 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 immediate 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 IV, XI and XII of this Agreement shall apply to such work.

2.7 The parties are hereby notified that any Projects funded in whole or in part by HUD Section 3 financial assistance must provide employment, registered apprenticeship, training, contracting, or other economic opportunities to Section 3 residents and businesses in a manner that is consistent with Section 3 of the Housing and Urban Development Act of 1968.

The parties shall meet and confer to modify this agreement when and where necessary to comply with HUD regulations.

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 a Project, whether as contractor or subcontractor at any tier thereunder, 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, their successors and assigns, 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 The provisions of this Agreement, including the Schedule A agreements, which are incorporated herein by reference and which are the local Master Agreements of the Signatory Unions having jurisdiction over the work on the Project, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. 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. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

3.5 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. 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 1 of that Article.

3.6 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.

3.6.1 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 **Exhibit A**. A copy of the Agreement To Be Bound executed by the Contractors and Subcontractors shall be submitted to the Council and 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.

3.6.2 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. Any dispute between the Union(s) and the Contractor/Employer respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s)/Employer(s) and the other Union(s) party to this Agreement. 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.

3.6.3 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 lock out 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. If the new or modified Schedule A Agreement 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 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 seventy-two (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 twenty-four (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.

4.1.5 If the City contends that any Union has violated this Article, it will notify in writing (including email) the Secretary-Treasurer/Business Manager/Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately notify the membership of its obligations under this Article.

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, then the arbitrator shall be chosen from the list provided in Article XI. 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 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's 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 decision 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 of 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 Construction Contract and prior to the commencement of work. Such conference shall be attended by a

representative 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 ten (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 based on any protected class, including but not limited to race, color, creed, religion, 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.

7.3 Authorized representatives of the Unions shall have access to the Projects whenever work covered by this Agreement is being performed on the Project.

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. Contractor(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:

8.2.1 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 residents and if no San Leandro residents are available, then Alameda County Residents, for Project work.

8.2.2 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 twenty (120) 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.

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

8.2.4 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 shall 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 shall 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.

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 by the City Council for their efforts.

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 shall hire 1 San Leandro resident as a New Apprentice for the first 1 million dollars of the 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 employ the apprentice on a different 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 Payrolls must reflect the hours worked by persons that fall under this Subsection.**

8.3.2 There shall be no more than 1 entry-level apprentice for each craft, provided said crafts have apprenticeship openings and the general contractor is able to include entry-level apprentices hired by their subcontractors to meet this requirement. The City, upon request, will refer names of graduates of workforce development programs to the Unions and Contractors and the Unions will agree to cooperate with Contractor(s) to furnish apprentices as requested. The hiring of apprentices will be in accordance with the Apprenticeship provisions of the applicable Master Agreements and the standards and procedures of the applicable JATC program approved by the division of apprenticeship standards. 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.

8.4 Should any of the contractors performing work on the Projects fail to meet this 30% local goal and the apprenticeship requirements set forth in this article or fail to demonstrate "good

faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the City reserves the right to withhold the 5% retention on current progress payments 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. However, Enforcement of this Article will be through the Grievance Procedure set forth in Article 11.

ARTICLE 9

GRIEVANCE PROCEDURE

9.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed 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) representatives 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 payrolls from the Joint Labor/Management Committee to which the Union(s) signatory to this Agreement are a party shall be provided as required 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 forth 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 causing 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 the 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 1, either involved party may submit the dispute 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. The Union(s) shall notify its International Union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting. 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. The parties shall provide a list to each other of their preferred arbitrators. 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 (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 upon all parties. The Arbitrator shall not have authority to change, amend, add, or detract from any of the provisions of the Agreement. The expenses 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

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

12.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) performing the work involved. However, 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.

12.2 All jurisdictional disputes on the Projects between or among the Union(s) 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.

12.2.1 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.

12.3 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.

12.4 Each Contractor/Employer(s) shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. Pre-job conferences for different Contractor(s) may be held together.

ARTICLE 13

APPRENTICES

13.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor/Employer(s) shall employ apprentices from California State-approved Joint Apprenticeship Programs 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 Contractors shall at all times comply with the applicable provisions of the California Labor Code, the payment of prevailing wages, the registration of contractors and subcontractors, and the hiring of apprentices, in addition to the requirements of Article 8.

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

13.4 HELMETS TO HARDHATS:

13.4.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor(s)/ Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center) and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

13.4.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Projects and of apprenticeship and employment opportunities for the Projects. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 14

MANAGEMENT RIGHTS

14.1 The Contractor shall retain full and exclusive authority for the management of its operations, including the right to direct its work force in its 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 that limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful provisions of the Schedule A Agreements shall be recognized.

ARTICLE 15

WAGES/BENEFITS

15.1 All Contractor(s)/Employer(s) agree to pay contributions to the vacation, pension and other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions.

15.2 By signing this Agreement, the Contractor(s)/Employer(s) adopt and agree to be bound by the written terms of the legally established trust agreements and which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits

paid out of, such Trust Funds. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). The Contractor(s) agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

15.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

15.4 Holidays: Holidays shall be established as set forth in the applicable Schedule A.

15.5 If a contractor fails to pay wages, the City agrees to honor a properly submitted, legally enforceable Stop Notice.

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 predominantly 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 a 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, together with the referenced Schedule A Agreements, 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-law, 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 a 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 subjects 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 and PDF signature pages transmitted to the 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 be effective as of January 1, 2016 ("Effective Date").

19.3 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 bid during the term until completion.

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 this 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. The City shall monitor compliance with the prevailing wage requirements of the state, and the Contractors/Employers' compliance with this Agreement.

20.2 DRUG & ALCOHOL TESTING:

20.2.1 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.

20.2.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies set forth in each applicable Schedule A.

City of San Leandro

By: _____ Date: _____

Alameda County Building & Construction Trades Council, AFL-CIO

By: _____ Date: _____

Signatory Unions

Asbestos Workers, Local 16

Boilermakers, Local 549

By: _____

By: _____

Bricklayers & Allied Craftsmen,

Local 3 Cement Masons, Local 300

By: _____

By: _____

Electrical Workers, Local 595

Elevator Constructors, Local 8

By: _____

By: _____

Hod Carriers, Local 166

Iron Workers, Local 378

By: _____

By: _____

Laborers, Local 67

Laborers, Local 304

By: _____

By: _____

Operating Engineers,

Local 3 Plasterers, Local 66

By: _____

By: _____

Roofers, Local 81

Sheet Metal Workers, Local 104

By: _____

By: _____

Sign Display, Local 510

Sprinkler Fitters, Local 483

By: _____

By: _____

Teamsters, Local 853

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

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: _____

**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

City of San Leandro Community Workforce Agreement

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's Schedule "A" Agreement as set forth in Article 15, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned party agrees to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

Date: _____

Company Name: _____

Name of Prime Contractor or Higher Level Subcontractor:

Name of Project: _____

Signature: _____

Print Name: _____

Title: _____

Contractor's License # or Motor Carrier (CA) Permit Number: _____



City of San Leandro

Meeting Date: December 17, 2018

Resolution - Council

File Number: 18-480

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council Authorizing the City Manager to Execute a Side Agreement to Extend the Term of the Community Workforce Agreement with the Alameda County Building and Construction Trades Council and Its Affiliated Local Unions

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

WHEREAS, on June 15, 2015 the City of San Leandro entered into a Community Workforce Agreement with the Alameda County Building and Construction Trades Council; and

WHEREAS, the Community Workforce Agreement was implemented in order to promote the efficiency of construction operations performed for and within the City of San Leandro and provide for peaceful settlement of labor disputes without strikes or lockouts; and

WHEREAS, the Community Workforce Agreement was intended to support the efforts of the City to increase training and employment opportunities for workers who reside in San Leandro; and

WHEREAS, the Community Workforce Agreement has applied to nine projects during the first term of the Agreement; and

WHEREAS, during the three-year term of the Community Workforce Agreement San Leandro residents have worked 1,389 hours on three Capital Improvement projects; and

WHEREAS, the City of San Leandro and the Alameda County Building and Construction Trades Council would like to continue to collaborate in order to improve the effectiveness of the Community Workforce Agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does **RESOLVE** as follows:

That the City Manager is authorized to execute a side agreement to extend the term of the Community Workforce Agreement with the Alameda County Building and Construction Trades Council through December 31, 2019.



City of San Leandro

Meeting Date: December 17, 2018

Resolution - Council

File Number: 18-625

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Keith Cooke
Engineering & Transportation Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve a \$60,000 Consulting Services Agreement with Bay Area Business Roundtable for Workforce Development and Local Business Inclusion Services

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

WHEREAS, on June 15, 2015 the City of San Leandro entered into a Community Workforce Agreement with the Alameda County Building and Construction Trades Council; and

WHEREAS, the Community Workforce Agreement was intended to support the efforts of the City to increase training and employment opportunities for workers who reside in San Leandro; and

WHEREAS, on March 17, 2014, the City Council amended Section 1-6-225 of Article 2 of Chapter 1-6 of the San Leandro Municipal Code, related to purchasing by competitive bid which expanded preference to local businesses in City purchasing and contracts which encourages large contractors to engage with local businesses and which helps keep local tax revenues within San Leandro; and

WHEREAS, the Bay Area Business Roundtable is a regional leader in workforce and business development and has been key in creating strategic partnerships that support both the implementation of the Community Workforce Agreement and the City's Local Business Inclusion Policy; and

WHEREAS, during the three-year term of the Community Workforce Agreement, the Bay Area Business Roundtable provided critical services to the City, identified opportunities for local businesses, and worked to overcome employment barriers for San Leandro residents; and

WHEREAS, this service is needed during the one year extension of the Community Workforce Agreement; and

WHEREAS, this agreement shall be funded using the budget originally specified for the Local Inclusion Policy Implementation in Account No. 010-14-010-5120; and

WHEREAS, an agreement between the City of San Leandro and Bay Area Business Roundtable, a copy of which is attached, was presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does **RESOLVE** as follows:

That said agreement between the City of San Leandro and Bay Area Business Roundtable for \$60,000 is hereby approved and execution by the City Manager is hereby authorized.

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
The Bay Area Business Roundtable
FOR
WORKFORCE DEVELOPMENT AND LOCAL BUSINESS INCLUSION SERVICES
FOR THE CITY OF SAN LEANDRO'S LOCAL INCLUSION PROGRAM AND COMMUNITY
WORKFORCE AGREEMENT

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and The Bay Area Business Roundtable ("Consultant") (together sometimes referred to as the "Parties") as of January 1, 2019 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2019, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.
- 1.5 Reserved
- 1.6 City of San Leandro Living Wage Rates. This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

1.7 Reserved

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$60,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than quarterly during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- For each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall

include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

- 2.2 Payment. City shall make payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Reserved.
- 2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses. There shall be no reimbursable expenses.
- 2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000.00 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agendas, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
and

- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
 - a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
 - c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
 - d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees,

or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000.00 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

- 4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- 4.4 All Policies Requirements.
- 4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant’s services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant’s failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

- 7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a

written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that

Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 et seq.

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 et seq., and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration. This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices. Any written notice to Consultant shall be sent to:

Bay Area Business Roundtable
Bernard Ashcraft, CEO
8517 Earhart Road

Oakland, CA 94621

Any written notice to City shall be sent to:

City Manager
City of San Leandro
City Hall
835 East 14th Street
San Leandro, CA 94577

With a copy to:

City of San Leandro
Department of Finance
835 East 14th Street
San Leandro, CA 94577

10.11 Reserved

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	Indemnification

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

BAY AREA BUSINESS ROUNDTABLE

Jeff Kay, City Manager

Bernard Ashcraft, CEO

Attest:

Leticia Miguel, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

010-14-010-5120

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:

- Form 700 Not Required
- Form 700 Required

Keith Cooke, Engineering and Transportation Director

EXHIBIT A

SCOPE OF SERVICES

Outreach Services

1. Conduct marketing and outreach services to promote and market the City's Local Inclusion Policy (LIP), and Community Workforce Agreement (CWA). Outreach deliverables shall include but are not limited to:
 - a. Attendance and participation at each of the City's pre-bid meetings during which resources and assistance shall be offered to bidders, potential bidders, and agents and representatives of firms towards successful achievement of the LIP and adherence by bidders to the provisions of the CWA
 - b. Organization and production of an annual employment fair that provides comprehensive information on how to compete successfully for City contracts. This event shall specifically outreach to prime and sub-contractors as well as businesses owned by women, people of color and San Leandro small businesses. Education and resource materials shall be provided in multiple languages and the City's translation services shall be made available for the fair
 - c. Involvement in creation and administration of the CWA Joint Administrative Committee which will review and assess awarded contracts that are governed by the CWA
 - d. Compilation of lists of San Leandro residents who are employed in building, infrastructure and industrial construction and are union and non-union to enable effective outreach pursuant to the CWA
2. Provide quarterly reports on marketing and outreach services conducted, and results of each outreach deliverable. Reports should reflect qualitative and quantitative data on marketing and outreach services in the reporting period (i.e. identification of pre-bid meeting participants, manner of resources or assistance offered, outcome).

Tracking and Assessment

1. Using data on past and present bids available on the City's website create an assessment of the impact of the LIP that includes:
 - a. Share of contracts, in terms of number of contracts and contract amounts, awarded to San Leandro businesses prior to adoption of the policy
 - b. Share of contracts, in terms of number of contracts and contract amounts, awarded to San Leandro businesses since adoption of the policy, and on an annual basis
 - c. Number of instances in which the LIP rating incentive was used and number of instances in which the incentive was sufficient to shift the determination of low bidder
 - d. Number of instances in which the contract was awarded to businesses owned by women, people of color and San Leandro small businesses
2. Using data provided by the City and the Building and Construction Trades Council of Alameda County, evaluate compliance per the provisions of the CWA and provide regular reports to the Joint Administrative Committee. Reports shall include but are not limited to:

- a. Share of contracts governed by the CWA that are awarded to union and non-union contractors
- b. Percentage of workers on CWA projects that are San Leandro residents
- c. Number of San Leandro residents hired to work as apprentices on CWA projects
- d. Number of San Leandro residents who are women and/or people of color hired for CWA projects

EXHIBIT C

INDEMNIFICATION

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence or willful misconduct of City.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

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