



Office of the City Manager

ACTION CALENDAR  
January 18, 2011

To: Honorable Mayor and Members of the City Council  
From: *PK* Phil Kamlarz, City Manager  
Submitted by: Christine Daniel, Deputy City Manager  
Subject: Contract: Community Workforce Agreement with Building Trades Council, et. al. for Construction Projects Over \$1 Million

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with the Building Trades Council and twenty two labor organizations regarding the provision of labor to City construction projects in excess of \$1 million dollars for a term of three years.

FISCAL IMPACTS OF RECOMMENDATION

The proposed agreement applies to City construction projects of \$1 million and above for a period of three years. By mutual consent of the parties, the million dollar threshold may be reduced to an amount not below \$250,000 after one year from the effective date of the Agreement after an analysis and City Council review of: the number of local jobs created as a consequence of the agreement, the costs of implementing the agreement, and the impacts on small, Berkeley based businesses bidding on City projects.

To cover the expenses related to the implementation and management of the local hiring program each contractor and/or subcontractor shall contribute ten cents (\$0.10) per hour worked or paid to each construction person performing work on the projects. These local hire funds shall be deposited in a City account to be used by the City in its sole discretion for implementation and management of the Agreement.

CURRENT SITUATION AND ITS EFFECTS

The purpose of the Community Workforce Agreement is to support the efforts of the City to increase employment opportunities for workers who reside in Berkeley, 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 Berkeley and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thus promoting the public interest in assuring the timely and economical completion of the projects.

The Agreement would apply to any City construction projects whose value, as estimated by the City, exceeds \$1,000,000. Contracts will still be subject to competitive bidding and the requirement to pay prevailing wage, and the City still retains the absolute right to select the lowest responsive and responsible bidder. The term of the Agreement is proposed to be three years from its effective date and would apply to all Projects, until completion, that are advertised for bidding during the term.

#### *Covered Work*

The work covered by the Agreement includes: all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the projects that is within the craft jurisdiction of one of the Unions and that is part of the projects, including, without limitation, pipelines, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. The scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published. The Agreement also applies to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after work is complete unless it is a new contract and falls below the dollar threshold of the Agreement, or is performed by City employees

#### *No Work Stoppages, Picketing, Job Actions, etc.*

With respect to projects covered by the Agreement, the Unions agree that there will 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, 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. The Unions and the construction persons employed on the projects will not 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. There is an exception to this provision if a contractor fails to pay contributions to the Union trust funds. In that instance, the Unions may withhold labor from the project (but may not picket) after giving notice to the City and to the contractor.

#### *Union Hiring Hall*

Contractors working on covered projects must, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions who are signatory to the Agreement. This is commonly referred to as the Union hiring hall. Contractors retain the right to reject any applicant referred to them through the job referral system and in the event that the Union referral facilities are unable to fill the requisition of a contractor for employees within a seventy-two hour period after the requisition is made, the contractor is free to obtain employees from any source.

*Local Hire and Apprentices*

To the extent allowed by law and consistent with the non-discriminatory referral procedures of the Union hiring halls, the Agreement provides that Berkeley residents will perform a minimum of 30% of the hours worked, on a craft by craft basis on the projects. In the event that no Berkeley residents are available to fulfill the 30% local hire requirement, the next tier of residents will come from the Green Corridor. This includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland and San Leandro. Finally if no residents are available from Berkeley and or the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements. The contractors are required to make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures.

Contractors, and/or their sub-contractors, will be required to hire 1 Berkeley resident as a First Period Apprentice for every 1 million dollars or more of total bid amount. Thereafter, for every 5 million dollars of the total bid amount the Contractor and their sub-contractors will be required to hire one additional first period apprentice. In the event that no Berkeley residents are available to fulfill the First Period Apprentice requirement, the next tier of residents will come from the Green Corridor (as described above). Finally if no residents are available from Berkeley and or the Green Corridor to fulfill the First Period Apprentice requirement, then residents of Alameda County will be utilized to fulfill the First Period Apprentice requirements.

*Funding.*

To cover the expenses related to the implementation and management of the local hiring program each contractor and/or subcontractor shall contribute ten cents (\$0.10) per hour worked or paid to each construction person performing work on the projects. These local hire funds shall be deposited in a City account to be used by the City in its sole discretion for implementation and management of the Agreement.

*Consideration of Reduction of Dollar Threshold after One Year*

The initial threshold for projects covered by the Agreement is \$1million. However, the Agreement provides that after one year of experience, the parties will review that threshold and consider whether to reduce it. The following criteria will be considered in this analysis: (a) the number of jobs created for Berkeley and Green Corridor residents for covered projects; (b) whether the costs of implementing the Agreement exceeded 1% of the costs of construction contracts covered by the Agreement; and (c) whether there has been an impact on awarding contracts or subcontracts to small, Berkeley based businesses as a result of the Agreement.

The City Manager will present the results of the analysis to the City Council in a reasonable time after the parties have met and discussed the analysis and, based on the outcome of the analysis, will present a recommendation to the City Council as to whether the City should lower the \$1,000,000 threshold. The Agreement provides that in no event would the \$1,000,000 threshold be lowered below \$250,000.

### BACKGROUND

Berkeley Municipal Code (BMC) Chapter 13.26 currently provides that for contracts in excess of \$100,000, the contractor must enter into a "first source" agreement with the City. This agreement requires the contractor to make a good faith effort to utilize the City of Berkeley's first source employment program as the first place for recruitment and referral of applicants for new and replacement employment. The Chapter further provides that contractors must allow the City first source program a minimum of three days to refer applicants to contractors; and interview and consider qualified applicants referred by the first source program before interviewing others. The city no longer operates a "referral" program, permitting contractors to utilize their own methods for recruitment. Pre-apprenticeship training programs work directly with contractors for placement of graduates into construction jobs.

This Chapter of the BMC was adopted in 1988 and the program has seen varying degrees of success over the years. However, in an attempt to increase the number of local residents hired on Berkeley projects, City staff worked with the Alameda County Building & Construction Trades Council to determine if another mechanism might provide more reliable outcomes in terms of employment for local residents. The result of those discussions is the proposed Community Workforce Agreement. The existing BMC Chapter 13.26, will be updated later this year to align with the Community Workforce Agreement language, and also to reflect the overall changes that have occurred programmatically and operationally over the past few years.

### RATIONALE FOR RECOMMENDATION

The Community Workforce Agreement enhances the City's local hiring efforts by providing that a portion of the labor on certain City construction projects come from the local area, and also ensures that City projects will not be affected by work stoppages due to labor issues.

### ALTERNATIVE ACTIONS CONSIDERED

Take no action and continue with the existing provisions requiring a good faith effort on behalf of contractors on City of Berkeley projects to hire from the local work force. City staff was contacted by the Golden Gate Chapter of the Associated Builders and Contractors, Inc., (ABC) an association of contractors who are not signatory to labor union agreements, who would prefer that the City of Berkeley not enter into the proposed Community Workforce Agreement.

CONTACT PERSON

Christine Daniel, Deputy City Manager, 981-7000

Attachments:

1: Resolution

2: Community Workforce Agreement for the City of Berkeley

RESOLUTION NO. ##,### -N.S.

CONTRACT: COMMUNITY WORKFORCE AGREEMENT WITH BUILDING TRADES COUNCIL ET. AL. FOR CONSTRUCTION PROJECTS OVER \$1 MILLION

WHEREAS the Community Workforce Agreement will support the efforts of the City to increase employment opportunities for workers who reside in Berkeley, 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; and

WHEREAS, the Community Workforce Agreement will promote efficiency of construction operations performed for and within the City of Berkeley and provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thus promoting the public interest in assuring the timely and economical completion of the projects; and

WHEREAS, the Community Workforce Agreement will apply to any City construction projects whose value, as estimated by the City, exceeds \$1,000,000 but contracts will still be subject to competitive bidding and the requirement to pay prevailing wage, and the City still retains the absolute right to select the lowest responsive and responsible bidder; and

WHEREAS, to cover the expenses related to the implementation and management of the local hiring program provided for in the Community Workforce Agreement, each contractor and/or subcontractor will contribute ten cents (\$0.10) per hour worked or paid to each construction person performing work on the projects and the funds will be deposited in a City account to be used by the City in its sole discretion for implementation and management of the Agreement.

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract, and any amendments, with the Building Trades Council and twenty two labor organizations entitled "Community Workforce Agreement for the City of Berkeley" regarding the provision of labor to City construction projects in excess of \$1 million dollars for a term of three years.

BE IT FURTHER RESOLVED that the projects covered by the Community Workforce Agreement are considered to be in compliance with Berkeley Municipal Code Chapter 13.26 and shall not be further subject to those provisions.

**COMMUNITY WORKFORCE AGREEMENT  
For the  
City of Berkeley**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (“Effective Date”), by and between the City of Berkeley (“City”) together with other contractors and/or sub-contractors, who shall become parties to this Agreement by signing the “Agreement to be Bound” (Attachment A), and the Local Unions signatory hereto and the Alameda County Building & Construction Trades Council and its affiliated local unions who have executed this Agreement.

**PURPOSE**

The purpose of this Agreement is to support the efforts of the City to increase employment opportunities for workers who reside in Berkeley, 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 Berkeley 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 Berkeley; 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 Berkeley by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

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

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

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

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

**ARTICLE 1**  
**DEFINITIONS**

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Alameda County Residents" shall include any residents living in any city or unincorporated section of Alameda County.

1.3 "Berkeley Resident" means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resides within either the boundaries of the Berkeley Unified School District or the Berkeley City Limits.

1.4 "City" means the City of Berkeley.

1.5 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch list" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Projects may be completed in phases and Completion of any such phase may occur prior to Completion of the Projects.

1.6 "Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or other business entity, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the City or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Projects. As applicable depending on its context, "Contractor" shall refer to Contractor or Contractor and Subcontractor.

1.7 "Construction Contract(s)" means all of the contract(s) for construction of any of the Projects.

1.8 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.



1.9 "First Period Apprentice" is a first period apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program.

1.10 "Green Corridor Residents" shall include the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Oakland, Richmond and San Leandro.

1.12 "Projects" mean any construction projects of the City whose value as estimated by the City exceeds \$1,000,000 (one million). By mutual consent of the City and the Council, this threshold amount may be reduced to an amount not below \$250,000 (two hundred and fifty thousand) after one year from the Effective Date of this Agreement, based on the criteria established in Appendix B

1.13 "Union" or "Unions" means the Council and any other labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

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

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

## **ARTICLE 2**

### **SCOPE OF AGREEMENT**

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

2.2 Project Description: This Agreement shall govern the award of all of the Construction Contracts identified by the City as part of the Projects. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Projects. Should the City suspend or remove any contract from the Projects and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.5 of this Agreement.

2.3 Covered work:

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

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

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

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

2.3.4 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the

vendor or other companies where necessary to protect a manufacturer's warranty. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

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

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

2.4.2 This Agreement is not intended to, and shall not affect the current or anticipated operation, maintenance, access to or use of any of the City's buildings or facilities, whether or not such facilities are identified in Section 1.12 above.

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

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

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

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

2.6 Work covered by this Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms and conditions of the National

Agreement of the International Union of Elevator Constructors except that Articles 4, 8, 12 and 13 of this Agreement shall prevail and be applied to such work.

**ARTICLE 3**  
**EFFECT OF AGREEMENT/SUBCONTRACTORS**

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

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

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

3.4 It is understood that this Agreement, together with the referenced Schedule A Agreements, constitute an integrated, self-contained, stand-alone agreement, and that by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area, or national agreement as a condition of performing work within the scope of this Agreement. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the Schedule A Agreements, shall be resolved according to the procedures set forth in Article 12 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 12 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, from a list mutually requested by the parties from the CSMCS within thirty (30) days of the execution of this agreement.. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and be heard and decided within three (3) calendar days. Should the arbitrator hold that Article 12 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 12, or, absent mutual agreement, commence processing the dispute at Step 1 of that Article.

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

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

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

3.7 With regard to any Contractor or subcontractor that is independently signed to any Schedule A Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Schedule A Agreement, except as specifically set forth in section 3.7.1 of this 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, except as specifically set forth in section 3.7.1 in this 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

3.7.1 If a craft Union ("Aggrieved Union") believes that an assignment of work on this Project has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft Union's successful enforcement of the subcontracting clause in its Schedule A Agreement, as permitted by section 3.7 of this Agreement, the Aggrieved Union may submit a claim under the jurisdictional dispute resolution procedure contained in Article 13 of this Agreement and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft Union under the subcontracting clause of its Schedule A Agreement, as permitted under section 3.7 of this Agreement, shall be valid and fully enforceable by that craft Union unless it conflicts with a jurisdictional award made pursuant to Article 12 of this Agreement. If the award made under Schedule A Agreement conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio*.

#### **ARTICLE 4**

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

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

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

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

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

4.1.4 In the case of nonpayment of trust fund contributions on the Projects, the Union shall give the City and the Contractor 5 business days notice of the intent to withhold labor from the Contractor's or their subcontractor's workforce, during which time the Contractor shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor who has failed to pay its fringe benefit contributions shall not be considered a violation of this Article.

4.2 A party to this Agreement shall institute the following procedure, prior to invoking 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, by the most expeditious means available, with notice by facsimile, electronic mail or telephone to the City, to the party alleged to be in violation, to the Council and to the involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the arbitrator named in section 3.4.1 or his/her alternate shall attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The City shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

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

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

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

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

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

any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

**ARTICLE 5**  
**PRE-JOB CONFERENCE**

5.1 A pre-job conference shall be held after the award of the contract and prior to the commencement of each Construction Contract. Such conference shall be attended by a representative each from the participating Contractor(s), including all sub-contractors, and Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will be held at least 21 days before the work commences.

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

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

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

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

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

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

8.1 Referral

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



regulations, including those which require equal employment opportunities and nondiscrimination.

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

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

8.1.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a seventy-two (72) hour period after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain employees from any source. 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

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 Berkeley and Green Corridor Residents for Project work.

8.2.1 The parties also recognize and support the City's commitment to provide opportunities for participation on the Projects to Berkeley or Green Corridor Residents who are regular, experienced employees ("Core" employees) of contractors and subcontractors awarded work on the Projects and who do not traditionally work under a local collective bargaining agreement(s). In furtherance of this commitment, the parties agree that such contractors and subcontractors awarded work on the Projects may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

(1) possess any license required by state or federal law for the Project work to be performed;

(2) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;

(3) were on the Contractor's active payroll for at least sixty (60) out of the one hundred and eighty (180) calendar days prior to the contract award;

(4) have the ability to perform safely the basic functions of the applicable trade, and

(5) are Berkeley or Green Corridor 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.

8.2.2 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall before commencing Project work. If there is any question regarding an employee's eligibility under this Subsection 8.2.1, the City Representative, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

8.2.3 To the extent allowed by law and consistent with the non-discriminatory referral procedures of the Union hiring halls, the Parties agree to a goal that Berkeley Residents will perform a minimum of 30% of the hours worked, on a craft by craft basis on the Projects. In the event that no Berkeley residents are available to fulfill the 30% local hire requirement, the next tier of residents will come from the Green Corridor. This includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland and San Leandro. Finally if no residents are available from Berkeley and or the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements. 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 Berkeley Resident workers and in their hiring hall procedures to facilitate this 30% goal on the Projects. In the event that referral facilities maintained by the Union(s) are unable to fulfill the 30% local hire requirement, paragraph 8.2.4 of this Article shall not apply.

8.2.4 Should any of the contractors performing work on the Projects fail to meet this 30% goal and fail to demonstrate "good faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract's 10% retention will be held until such time that this failure is remedied, but not longer than sixty (60) days after the date of substantial completion of the Projects or as required by law, in addition to the breach of contract remedies available to the parties for non-performance under this Agreement.

8.2.5 Should any Contractor performing work on the Projects exceed the 30%

local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, televised City Council meeting for their efforts at the completion of their contract scope.

### 8.3 Apprenticeship Provision

8.3.1 Consistent with the requirements of California Labor Code §§ 1776, 1777.5 and 1777.6, Prime Contractor(s), and or their sub-contractors will be required to hire 1 Berkeley resident as a First Period Apprentice for every 1 million dollars or more of total bid amount. Thereafter, for every 5 million dollars of the total bid amount the Prime Contractor and their Sub-contractors will be required to hire one additional first period apprentice.

In the event that no Berkeley residents are available to fulfill the First Period Apprentice requirement, the next tier of residents will come from the Green Corridor. This includes the cities of Albany, Alameda, Berkeley, EI Cerrito, Emeryville, Richmond, Oakland and San Leandro. Finally if no residents are available from Berkeley and or the Green Corridor to fulfill the First Period Apprentice requirement, then residents of Alameda County will be utilized to fulfill the first period apprentice requirements.

8.3.2 There can be no more than 2 entry-level apprentices for each craft, provided said crafts have apprenticeship openings and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The City, upon request, will refer names of graduates of workforce development programs to the Union and Contractors and the Unions will agree to cooperate with Contractor(s) in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements and or the unions agreements with the division of apprenticeship standards, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements.

8.3.4 The intent of this provision is to utilize Berkeley 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 Funding.

To cover the expenses related to the implementation and management of the Local Hiring Program each Contractor and/or subcontractor shall contribute ten cents (\$0.10) per hour worked or paid to each construction person performing work on the Projects. These local hire funds shall be deposited in a City account

to be used by the City in its sole discretion for implementation and management of this Community Workforce Agreement.

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

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

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

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

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

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

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

11.2 Grievances shall be settled according to the following procedures:

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

Step 2: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step 1, either involved party may submit it within three (3) calendar days to a subcommittee of the Joint Administrative Committee consisting of one (1) person selected by the City and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to resolve the grievance. If 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 by submitting a request for a panel of 7 arbitrators to the California State Mediation and Conciliation Service within 7 days of notice of the Committee's decision. The parties shall flip a coin to determine who shall strike the first name and shall then alternatively strike names from the list and the last remaining name shall be the neutral third party arbitrator who shall have the power to resolve the dispute in a final and binding manner. The costs of the arbitration shall be evenly split by the parties with each bearing the cost of their own legal counsel. Upon mutual agreement of the parties, the matter may be heard on an expedited basis, by telephone or other electronic means, and the arbitrator may render a "bench decision".

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

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

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

## **ARTICLE 12**

### **JURISDICTIONAL DISPUTES**

12.1 There will be no strikes, no work stoppages, no picketing, sympathy strikes, slow downs or other interference's with the work because of jurisdictional disputes between signatory Unions.

12.2 In the event of a jurisdictional dispute between any signatory Unions, it is agreed that the following procedures shall be taken in an attempt to resolve the matter:

Step 1: The appropriate Union Representatives of the involved Crafts shall meet with the affected Contractor in an attempt to resolve the dispute within twenty four (24) hours.

Step 2: If no settlement is reached, the appropriate International Union Representatives from each affected Craft will meet with the affected Contractor within five (5) calendar days.

Step 3: If no settlement is reached within five (5) calendar days, such dispute shall be referred to and settled by the procedure established by the Building and Construction Trades Department of the American Federation of Labor – Congress of the Industrial Organization (“AFL-CIO”). In any event, the parties hereto agree that there will be no slowdown or stoppage of work, no picketing or other interferences and each agrees that the decisions of the authorities stipulated herein shall be final and binding upon them.

12.3 If any Union or Contractor fails to immediately and fully comply with a final decision rendered in any jurisdictional dispute, the City, the Contractor or the Union shall have the immediate right to seek full legal redress for such conduct including, but not limited to, injunctive relief and/or damages.

12.4 If there is a strike, sympathy strike, work stoppage, slowdown, picketing or otherwise advising the public that a labor dispute exists or interference with the progress of the Projects by reason of a jurisdictional dispute, the City and/or the Contractor affected by said Union conduct, shall have the right to seek full legal redress in the Courts of California, including injunctive relief and damages, after complying with the emergency arbitration provisions of Article 4 but need not first comply with or exhaust the procedures set forth in this Article and/or Article 10 for the resolution of such jurisdictional dispute.

## **ARTICLE 13**

## **APPRENTICES**

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

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

## **ARTICLE 14 MANAGEMENT RIGHTS**

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

## **ARTICLE 15 WAGES/BENEFITS**

15.1 Wages. All construction persons covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in the applicable Schedule A Agreement for such craft work and in compliance with the applicable prevailing wage rate determination.

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

## **ARTICLE 16**

## **MODIFIED SCHEDULE A AGREEMENTS**

16.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified Schedule A Agreements which are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Article 12 hereof.

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

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

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

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

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

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



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

**ARTICLE 19**  
**TERM**

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

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

**ARTICLE 20**  
**COMPLIANCE**

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

**City of Berkeley**

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**

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

**Iron Workers, Local 378**

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

**Laborers, Local 67**

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

**Laborers, Local 304**

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

**Operating Engineers, Local 3**

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

**Plasterers, Local 66**

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

**Roofers, Local 81**

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

**Sheet Metal Workers, Local 104**

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

**Sign Display, Local 510**

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

**Sprinkler Fitters, Local 483**

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

**Teamsters, Local 853**

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

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

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

**United Association of Steamfitters, Ironworkers City and the RDA Council of  
Pipefitters, Plumbers, & Gas  
Fitters, Local 342**

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

**California**

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

**Northern California District Council of Laborers**

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

**Council No. 16 Northern California International Union 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: \_\_\_\_\_

## **AGREEMENT TO BE BOUND**

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

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

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

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

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

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

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

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

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

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

Motor Carrier Permit (CA) #: \_\_\_\_\_

**APPENDIX A**  
**Schedule A Agreements**

**APPENDIX B**  
**Letter Agreement**

January \_\_, 2011

Building and Construction Trades Council of Alameda County

RE: Letter of Understanding re: Threshold Dollar Value for Community Workforce Agreement

Dear \_\_\_\_\_:

Over the last year, representatives of the City and the Building and Construction Trades Council of Alameda (collectively, the "Parties") met to negotiate the terms of a Community Workforce Agreement ("CWA"). The last significant term to negotiate is the threshold dollar amount of a project that would be governed by the CWA in the future. This Letter of Understanding sets forth the agreement reached by the City and the Trades Council regarding lower the threshold amount for projects to be covered by the CWA.

The Parties agree:

1. Initially, only construction projects whose value as estimated by the City exceeds \$1,000,000 (one million) will be covered by the CWA;
2. No later than 14 months after the effective date of the original CWA, the Parties will meet to discuss and analyze whether to lower the \$1,000,000 threshold amount by using the following criteria: (a) the number of jobs created for Berkeley and Green Corridor residents for CWA covered projects; (b) whether the costs of implementing the CWA exceeded 1% of the costs of construction contracts covered by the CWA; and (c) whether there has an impact on awarding contracts or subcontracts to small, Berkeley based businesses as a result of the CWA.
3. The City Manager will present the results of the analysis to the City Council in a reasonable time after the Parties have met and discussed the analysis and, based on the outcome of the analysis, will present a recommendation to the City Council as to whether the City should lower the \$1,000,000 threshold.
4. In no event will the \$1,000,000 threshold be lowered below \$250,000.

Very Truly Yours,

Phil Kamlarz  
City Manager

Acknowledged and agreed to on behalf of all Unions that are party to the CWA this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Building and Construction Trades Council of Alameda County