

PROJECT LABOR AGREEMENT
FOR
THE OAKLAND UNIFIED SCHOOL DISTRICT

Entered into between
Parsons Constructors, Inc.
and the
Building and Construction Trades Council of Alameda County, AFL-CIO
and
The Unions and Councils Signatory Hereto

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INTRODUCTION AND FINDINGS

The purposes of this Project Labor Agreement (“Agreement”) between the Parsons Constructors, Inc. (“Administrator”), acting on behalf of the Oakland Unified School District (“District”), and the Building & Construction Trades Council of Alameda County, AFL-CIO (“Council”) and the various Union Organizations signatory to the Agreement (collectively referred to as the “Unions”) are to promote efficiency of construction operations during the performance of all construction work covered by this Project Labor Agreement (“the Project”), to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts or other workplace disruption, to promote the public interest in assuring the timely and economical completion of the Project, to support the efforts of the District to prepare its students for careers in the construction trades through its construction academies and pre-apprentice programs, and to promote the employment of Oakland residents and the use of Oakland-based businesses, especially small and disadvantaged businesses, on the District’s Project.

WHEREAS, the successful, economical and timely completion of the Project is of the utmost importance to the District; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the Unions affiliated with the Council and employed by Contractors (including subcontractors) that are signatory to this and other agreements with these Unions; and

WHEREAS, it is recognized that on a project of this magnitude – which has multiple contractors and bargaining units on the job site at the same time and over an extended period of time, the potential for work disruption is substantial without a binding commitment to maintain continuity of work and refrain from work stoppages; and

WHEREAS, the interests of the general public, the District, the Administrator, the Unions

and Contractors 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 interference with work; and

WHEREAS the District has always attempted to maintain positive labor-management relations with the unions that represent district employees, including those Unions affiliated with the Council, as well as the Unions that represent signatory contractors in the construction industry, in part and successfully to avoid such work stoppages; and

WHEREAS, the Parties desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractors, and further, to encourage close cooperation among the Contractors and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the provisions of this Agreement prevail over, to the extent they are inconsistent with, the provisions of any legally binding Schedule A Agreement between a Contractor and the signatory Unions for work on the Project and they are not otherwise intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project; and

WHEREAS, contracts for work within the Project will be awarded in accordance with the applicable provisions of the California State Public Contract Code; and

WHEREAS, the District has the absolute right to select the lowest reliable and responsible bidder for the award of the construction contract on the Project; and

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

WHEREAS, the parties to the Agreement understand that if the District finds the Agreement acceptable, the District will include the Agreement in the bid documents, contract specifications and other contract documents for all work covered by this Agreement.

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

ARTICLE I
DEFINITIONS

- 1.1 “Administrator” means Parsons Constructors, Inc., and its successors and assigns.
- 1.2 “Agreement” means this Project Labor Agreement, which includes the Schedule A Agreements that are identified and agreed to by the Administrator and the Unions.
- 1.3 “District” means the Oakland Unified School District and the administrative staff under its direction.
- 1.4 “Contractor” means any individual, firm, partnership or corporation, or combination thereof including joint ventures, which is an independent business enterprise and enters into a contract with the District or any of its Contractors, including subcontractors of any tier and trucking contractors performing work at the site of construction, with respect to the construction of any part of the Project under contract terms and conditions approved by the District and which incorporate this Agreement.
- 1.5 “Construction contract” or “contract” means the public works contract which the District will sign and which is necessary to complete the Project.
- 1.6 “Project” is defined to include all phases of the construction of new facilities and upgrading and repair to all existing facilities covered in construction contracts executed by the District and that are covered by this Agreement in Section 2.3. This work includes testing and inspection where such testing and inspection is work performed at the site of construction and is a classification on which a prevailing wage determination has been published, and on-site trucking and hauling.
- 1.7 “Union” or “Unions” means the Building and Construction Trades Council of Alameda

County, AFL-CIO (“Council”) and any other 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.

- 1.8 “Project Manager” means any persons or business entities designated by the District to oversee phases of construction on the Project.
- 1.9 “Schedule A(s) or Schedule A Agreement(s)” means the local Master Collective Bargaining Agreement of each craft Union signatory hereto, as identified and agreed to between the Unions and the Administrator.
- 1.10 “Parties” means the Administrator, the Unions and the Contractors that have executed a Letter of Assent, and it includes, only where designated in this Agreement, the District.
- 1.11 “Student” means any person who is a student, former student or graduate of the District.

ARTICLE II
SCOPE OF AGREEMENT

- 2.1 Parties: The Agreement shall apply and is limited to all Contractors performing construction contracts on the Project, the District and the Council and any other 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 When a subject is covered by both the Schedule A Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail. Where a subject is covered by the Schedule A and not covered in this Agreement, the Schedule A Agreement will prevail.
- 2.3 Project Description: The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District for the Project, which are those construction contracts funded in whole or in part by Measure A General Obligation bonds,

any next subsequent locally adopted general obligation bond and/or any State of California bond funding applied to a District construction project during the period of time when these two local bond funds remain available and which were let for bid, or for which RFQ's or RFP's were issued, after the date of this Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities. However, the Parties acknowledge that the District may utilize \$400,000 of Measure A bond proceeds in, and such additional funds as would be agreed to under, a special program set out in Section 6.11 to facilitate a transition for small businesses, as defined by State Law, to succeed in performing work under the Project and to assist the District in moving successfully into the utilization of the Agreement.

- 2.4 For the purposes of this Agreement, the construction contract shall be considered completed, and all rights and obligations pursuant to the Agreement will cease, upon publication of a Notice of Completion.
- 2.5 Project Labor Disputes: All disputes relating to the interpretation or application of the Project Labor Agreement, including the Schedule A Agreements that will be considered a part of this Agreement shall be subject to resolution by the dispute-resolution procedures established in this Agreement. However, a Contractor and the Union that are signatory to a Schedule A Agreement may choose to utilize the grievance procedures established in that Schedule A Agreement to resolve any dispute involving the application or interpretation of a provision of that Schedule A Agreement. However, an interpretation of a Schedule A Agreement provision by an arbitrator interpreting such a provision under the grievance procedure set out in this Agreement will not have a precedential effect beyond the administration of this Agreement. The Administrator and the Unions will agree as to the applicable Schedule A Agreement's that will be incorporated into this Agreement, and for their replacement as new Schedule A Agreements are negotiated.

2.6 Work covered by the Project Labor Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors, except that Articles IV, XIII, and XIV of the Project Labor Agreement shall prevail and be applied to such work.

2.7 Exclusions:

The Agreement shall not apply to a Contractor's executives, managerial employees, engineering employees, supervisors, (except those covered by a Schedule A Agreement), office and clerical employees, or to work performed by employees of the District.

ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions, the Administrator and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of a Construction contract for the Project, whether as contractor or subcontractor at any tier, the Contractor agrees to be bound by each and every provision of the Agreement, including the Schedule A Agreements made part of this Agreement, and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as Addendum A.

3.3 No Contractor is required to sign any other agreement with a signatory union as a condition of performing work within the scope of the Agreement, and the Union will agree to dispatch workers to any Contractor that executes a Letter of Assent to perform work on the project.

3.4 No practice, custom, understanding or agreement between a Contractor and a Union party that is not specifically set forth in this Agreement, or in its appended Schedule A Agreements will be binding on any other party unless agreed to in writing by the Parties.

3.5 At the time that any Contractor enters into a subcontract with any subcontractor providing for the performance of the construction contract, the Contractor(s) shall provide a copy of this

Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work through execution of the Letter of Assent set out in this Agreement as Addendum A.

- 3.6 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.
- 3.7 The Unions hereby agree to work cooperatively with any Contractor or subcontractor awarded work covered by this Agreement that has signed a Letter of Assent, and will do so despite any other dispute the Unions may have with that Contractor or subcontractor, including over trust or benefit payments. In consideration of the Unions' waiver of their right to withhold labor from a Contractor delinquent in the payment of Trust Fund contributions, should a Contractor performing work on this Project be delinquent in the payment of Trust Fund contributions required under this Agreement with respect to employees represented by the Union, the Union may request, pursuant to the conditions and prerequisites contained in the attached letter of understanding between the District and the Unions, that the Owner issue joint checks payable to the Contractor and the appropriate employee benefit Trust Fund(s) until such delinquencies are satisfied. It is agreed, however, with respect to contractors delinquent in trust or benefit contribution payments, that nothing in this Agreement shall affect normal contract remedies available under the local collective bargaining agreements against general contractors or upper-tier subcontractors signatory to those agreements for recovery of subcontractor delinquencies.
- 3.8 All contractors are required to employ apprentices in the ratio required by Article VI of this Agreement. Moreover, each contractor or subcontractor performing work on this project shall, for each apprentice it employs on the project, employ only those apprentices that are

enrolled in an Apprenticeship program approved by the Division of Apprenticeship Standards, State of California, on its regular workforce at least one employee who is enrolled and participating in an Apprenticeship Program that has graduated apprentices annually for at least the past five years. This requirement applies to any craft for which the Department of Industrial Relations, Division of Apprenticeship Standards, has approved an apprenticeship program. The graduation requirement for each of the preceding five years shall not apply to any trade or craft not recognized by the Division of Apprenticeship Standards as an apprenticeable occupation for more than nine years immediately prior to the effective date of the publication of this bid package.

- 3.9 Prior to commencing work on a project, each contractor or subcontractor must file with the District and the Administrator a certificate of compliance with this requirement and must identify the Apprenticeship Programs from which it will obtain apprentices for work on the project.

ARTICLE IV

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS PROHIBITED

- 4.1 The Unions, District and Contractors agree that for the duration of the Project:
- 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 employees employed on the Project, at the job site of the Project or at any other facility of the District because of a dispute on the Project. Disputes arising between the Unions and Contractor on other District projects not covered by this Agreement are not governed by the terms of the Agreement, except that no picketing or other disruption may occur at the actual site of work that is covered under this Agreement.
 - 2) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor covered by the Agreement.

3) If a Schedule A Agreement between a Contractor and the Union expires before the Contractor completes the performance of the construction contract and the Union or Contractor gives notice of demands for a new or modified Schedule A Agreement, the Union agrees that it will not engage in any 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. The Contractor on said contract for work covered under this Agreement and the Union 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 the Contractor. If the new or modified Schedule A Agreement reached between the Union and the Contractor provides that any terms of the 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 employees employed on the project within seven (7) days, except that with regard to wage and benefit provisions, those provisions will become effective to the degree that they are published as the Prevailing Wage and Benefits for workers in the area performing work in their respective classifications.

4) The Parties recognize that Presidential Executive Order 13202 prohibits the District from requiring Contractors to execute a Letter of Assent to work that contains federal grant or other assistance. To the degree that this prohibition will result in the issuing of contracts for work that would otherwise be covered by this Agreement but to which this Agreement cannot be applied, the parties agree to work collaboratively to develop dispute resolution procedures to be utilized on work excluded from coverage of this Agreement. In addition, the Parties acknowledge that the effect of any dispute between the Unions and a Contractor performing work that is excluded from coverage by virtue of Executive Order 13202 may not result in disruption that affects Project work, including strikes, sympathy strikes, work stoppages,

picketing, hand billing or other activities the effect of which is to disrupt work covered by this Agreement. The Parties acknowledge that the District will make the language attached at Addendum E a part of any construction contract that would, but for Executive Order 13202, have been covered by this Agreement.

4.2 If any employees should engage in 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, the Unions will use their best efforts to instruct and order the employees to return to work and cease the disruptive activity. Failure of an employee to report to work due to a labor dispute constitutes grounds for discipline up to and including discharge.

4.3 Any 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 is alleged to have occurred:

1) A party invoking this procedure shall notify, by facsimile or telephone, the party alleged to be in violation, the Administrator, and the Building and Construction Trades Council of Alameda County, AFL-CIO and the involved local Union if a Union is alleged to be in violation.

2) Upon receipt of said notice, the Administrator will contact the designated permanent arbitrator, (or if s/he is unavailable, the alternate), to attempt to schedule an arbitrator to convene a hearing within 24 hours, or sooner if the Arbitrator and the parties to the dispute are available. The permanent Arbitrator is Gerald McKay and the alternate is Barbara Kong-Brown.

3) The Administrator shall notify the parties by facsimile 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 12 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) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the 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) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator will order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or facsimile, with a copy delivered by hand or registered mail upon issuance. If the Union does not return to work or the Contractor does not allow its workers to return to work by the next regularly scheduled shift (unless the Arbitrator determines it should be sooner), the party failing to abide by the return to work order of the Arbitrator will be fined \$10,000 per shift as liquidated damages for the failure to return.

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. A copy of the award received and served by any method set out above is sufficient upon which to seek judicial enforcement. 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, 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 delivered by certified mail.

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. The fees

and expenses of the arbitrator shall be divided equally between the parties.

7) The Administrator and the District are considered parties to any proceeding under this Article.

ARTICLE V
PRE-JOB CONFERENCE

A pre-job conference shall be held prior to the commencement of the Construction contract. Such conference shall be attended by a representative each from the participating Contractor(s) and Union(s), the Administrator and the Project Manager. The pre-construction conference shall be held at the offices of the Council. All efforts will be made to hold the pre-job conference in sufficient time to insure 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 VI
NON-DISCRIMINATION, SOCIAL JUSTICE AND ENVIRONMENTAL PROTECTION

- 6.1 The Contractor(s) and Union(s) 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, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), against any employee, or applicant for employment, on the Project.
- 6.2 No employee working on the Project shall be disciplined or dismissed without just cause.
- 6.3 (a) The Parties recognize the importance to the community and the District of recruiting and qualifying Oakland residents for employment on Project work. The Parties further recognize the importance of enrolling qualified and qualifiable applicants in pre-apprentice training and formal apprenticeship and other programs that will lead to their employment on Project work. The Parties therefore agree that they will assist the District in preparing its students for work in the construction trades by participating in construction academies and advisory committees the District might establish to pursue this goal, and by cooperating in providing mentors and other support for the District's effort and supporting the District's efforts to

secure placement of its students in pre-apprentice and other training programs with which the Unions and Contractors may be associated, and by setting up a program within the District to assist in the training of District students to become apprentices and succeed in careers in the construction industry. Further the Unions agree that they will provide at least 20 volunteers per year to assist the District in these undertakings.

(b) Further, to this end the Parties agree to an initial goal that Oakland residents, especially District students, will perform a minimum of 50% of the hours worked, on a craft by craft basis. In addition, the Parties agree to a goal that Oakland residents, especially District students, will perform 100% of Project apprentice hours, and that apprentices will perform 20% of the total hours or the ratio permitted under the State-approved apprenticeship Standards of the Joint Apprenticeship Program, by craft, on the Project (unless the State standard is higher, or for reasons of safety the work cannot be performed with that percentage of apprentices), with an additional goal that of the 50% at least 60 such students will perform work on the Project. The Unions and Contractors pledge to make good faith efforts to these goals in accordance with the lawful hiring-hall rules of the Union. A Contractor may qualify for half of the hours required on the Project by employing area residents or students on Non-District work.

6.4 The Parties agree to establish a Social Justice Committee. The Committee will be comprised of four Union members appointed by the Unions, four Contractor members (including the Administrator as one of these) appointed by the Administrator, and four community members appointed by the District, with the concurrence of the Unions. (The Parties also recognize that such a committee exists under the Maritime and Aviation Project Labor Agreement (MAPLA) and that they may mutually agree to recognize the Social Justice Subcommittee established under the MAPLA for this purpose.) The Unions and Contractors also agree to participate in the Social Justice Committee established in this Article.

- 6.5 The Social Justice Committee will periodically review whether the local hire and local apprentice hire goals are appropriate, and will recommend changes to the Parties to raise or lower those goals as the Committee deems appropriate based on the availability of the local work force. The Parties agree to make a good faith consideration of the recommendation.
- 6.6 The Social Justice Committee will have the right to refer a Party to Step 3 of the Grievance procedure of this Agreement if it determines that the Party has failed to make a good faith effort to achieve the goals set out in Section 6.3 of this Agreement.
- 6.7 The Parties recognize the continuing effect of discrimination and agree to cooperate in seeking to implement goals established by the District to achieve employment of a diverse workforce on District projects, as the District may periodically alter those goals.
- 6.8 The Parties recognize that the Apprenticeship training programs administered by the Joint Apprenticeship Training Committees require diversity and sensitivity training for race and gender bias elimination in their programs and that if these programs no longer provide those training activities that they will agree to work with any such program requirement that might be adopted by the Social Justice Committee established by this Agreement.
- 6.9 The Parties recognize that the expansion of employment opportunities in the Oakland area is mutually beneficial and that financial investment is the key to expanding construction opportunities. To the degree that it is consistent with law and fiduciary obligations, the Unions—agree that they will seek to secure trust fund investments in local development activities that will enhance the lives and well-being of their members and expand the opportunities for employment in the community, as well as the opportunities for local small businesses to undertake development and construction activities in partnership with the Unions.
- 6.10 All employees working under this Agreement will adhere to all requirements for training and procedures promulgated to ensure compliance with environmental mandates to which the

Project work is subject. Failure to adhere to such requirements may be grounds for discipline, including termination.

- 6.11 The Parties acknowledge that the District may use up to \$400,000 of Measure A funds covered under this Agreement for small contracts that may be issued without making this Agreement a contract specification for construction work that would otherwise be covered. The purpose of this provision is to assist the District in making a transition to utilization of the Agreement and to assist small contractors in developing their contracting relationship with the District. In addition, the Parties agree that the Social Justice Committee may consider placing additional funds from the next local bond measure into this program. If the Committee cannot reach a decision on this issue, then the matter will be submitted to binding arbitration under Step 3 of the Grievance procedures in Article XII, with the Council and the District submitting their positions to the Arbitrator in writing. If the matter is not resolved prior to the availability of funds from the next local bond measure, the Parties agree that up to \$400,000 of these funds will be available until these procedures are completed. The Parties further agree that either chair of the Social Justice Committee may call a meeting to discuss the issue of bringing these additional funds to the program set out in this section, and that, in any event, the process of the Committee deliberating on this issue will commence no later than within 30 days of the passage by the voters of the authorizing the next local bond measure. The District will ensure that not more than 20% of the work of any craft be executed under this provision and the Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision and, when applicable, work under this program will be subject to the Labor Harmony requirements set out in Addendum E.

ARTICLE VII
UNION SECURITY

- 7.1 The Contractor(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement. For non-signatory contractors the Parties acknowledge that the collective bargaining relationship so established through this agreement is a pre-hire relationship permitted by Section 8(f) of the National Labor Relations Act.
- 7.2 No employee covered by this Agreement can be required to join any Union as a condition of being first employed on the Project; provided, however, that an employee who is a member of the referring Union at the time of the referral shall maintain that membership while employed under the Agreement. All employees must, however, comply with the Union security provision of the applicable Schedule A Agreement for the period during which they perform Project work, except as modified by this Agreement.
- 7.3 The Unions will offer individuals referred through the social justice program to the Union's Apprenticeship Programs the most liberal time payment and organizing entry fees and dues otherwise available for new member applicants.
- 7.4 Authorized representatives of the Union(s) shall have access to the Project whenever work covered by this Agreement is being, has been or will be performed on the Project.
- 7.5 To the extent permitted by law, and in accordance with the established procedure of the Local Unions or Joint Apprenticeship Training Councils, the Unions will give credit for bona fide, provable past experience to applicants, including workers for non-union contractors that become signatory to this Agreement and individuals referred from the social justice program, and agree that those workers will be placed at the appropriate stage of apprenticeship or at the journey level as their experience may warrant.

ARTICLE VIII
REFERRAL

8.1 The Union(s) shall be the primary source of all craft labor employed on the Project. However, in the event that a Contractor has his/her own core workforce, the Contractor 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 (100) calendar days prior to the contract award; and
- (4) have the ability to perform safely the basic functions of the applicable trade.

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 ten (10) "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. Contractors signatory to a Local, Regional, and/or National collective bargaining agreements with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the Schedule A Agreement of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supercede the local hiring hall provisions of the Schedule A Agreement(s) as they relate to such contractors.

- 8.2 Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions when such procedures are not in violation of Federal law.
- 8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor for employees within a forty-eight (48) hour period after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain work persons from any source. However, in this event the Contractor will, as a first source, use the social justice program established by this Agreement's to identify qualified and qualifiable Oakland resident applicants for employment, with special emphasis on identifying District students who are qualified or qualifiable for employment as apprentices or journeypersons. The identity of any such employees hired by the Contractor shall be immediately transmitted to the appropriate Local Union and such employees shall be bound by the Union Security provisions of this Agreement.
- 8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craftspersons to fulfill the requirements of the Contractor(s). The parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the City of Oakland to meet the needs of the Project and the requirements of the industry generally.

ARTICLE IX
WAGES, BENEFITS AND WORKING CONDITIONS

- 9.1 All Contractor(s) agree to pay contributions to the established vacation, pension or other form of deferred compensation plan, apprenticeship, and health benefit funds for each hour worked on the Project in the amounts designated in the applicable Schedule A, except that the Contractor is not required to pay contributions to any trust funds that are not contained in the published prevailing wage determination to satisfy their obligation under this Article.

However, this Agreement does not relieve Contractors that are signatory to Schedule A Agreements with the respective trades from their obligation to pay all trust fund contributions as outlined in the Schedule A Agreements.

- 9.2 By signing this Agreement and its Letter of Assent, the Contractors adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds.
- 9.3 Hours, Terms and Conditions of Employment: The hours and other terms and conditions of employment on the Project shall be governed by the Schedule A Agreement of the respective crafts, copies of which shall be on file with the District, to the extent such Schedule A Agreement is not inconsistent with this Agreement.
- 9.4 Wages and benefits: The wages and benefits paid on the Project shall be as established by the applicable Prevailing Wage determinations of the DIR. If a Schedule A negotiated wage or benefit increase becomes the applicable prevailing wage, the Contractor will pay that new rate retroactively to the date that it went into effect as a result of the Schedule A upon which the prevailing wage determination is based.
- 9.5 Because of the constraints sometimes imposed when performing work at an operational school site or because of the schedule established to complete time-sensitive projects, the Parties recognize that the Contractor may need to establish shift start times, continuous shifts, four-by-ten shifts or a five-day work week (at 40 hours) for all crafts. However, this provision does not relieve the Contractor from paying wages (including over-time pay) according to the prevailing wage requirements. Once such a schedule is established, it may not be changed without the concurrence of the Unions involved and upon five working days notice of the proposed change.
- 9.6 The Parties agree to recognize the uniform drug and alcohol abuse prevention programs,

including testing for drug or alcohol contained within the Schedule A's of the signatory Unions.

ARTICLE X
COMPLIANCE

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 IX. 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 District shall monitor and enforce the Contractors' compliance with this Project Labor Agreement in a manner consistent with law.

ARTICLE XI
JOINT ADMINISTRATIVE COMMITTEE

- 11.1 The parties to this Agreement intend to ensure the best possible harmony in labor-management relations on the Project and recognize that the Administrator shall strive to encourage the Parties toward that end.
- 11.2 In an effort to achieve that labor-management harmony the Parties shall establish a six (6) person Joint Administrative Committee. This Committee shall be comprised of three representatives selected by the Administrator and three from the Unions, one of whom will be a representative from the Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. The Committee will be co-chaired by the Administrator and the representative from the Council.
- 11.3 The Joint Administrative Committee shall meet as required but not less than once each 3 months to review the implementation of the Agreement and the progress of the Project and resolve problems and/or grievances by majority vote with such resolutions to be binding on all signatories of the Agreement as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to

the Joint Administrative Committee for resolution. The Joint Administrative Committee will meet upon the call of either co-chair, upon provision of sufficient notice of the issue to be discussed.

ARTICLE XII
GRIEVANCE ARBITRATION PROCEDURE

12.1 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, including the Schedule A Agreements that are a part of it, the same shall be settled by means of the procedures set out herein. Any decisions rendered by an arbitrator under the PLA will not have precedential effect on any other job or collective bargaining agreement. No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a contractor on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within ten (10) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 12.1 may be extended by mutual agreement (oral or written) of the parties. All notices must be sent as well to the Administrator.

12.2 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, and 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 the five (5) business days after its referral to Step 1, either involved party may submit it within five (5) business days to the Joint Administrative Committee, which shall meet within five (5)

business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Joint Administrative Committee), to confer in an attempt to resolve the grievance. If the dispute is not resolved within such time (five (5) business days after its referral or such longer time as mutually agreed upon) it may be referred within five (5) business days by either party to Step 3.

Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties agree that an Arbitrator who will hear the grievance will be selected from among a list of arbitrators to be maintained by the Administrator by rotation, unless the parties to the dispute agree to break rotation in order to have the case heard more expeditiously. The Parties agree that they will utilize the list of arbitrators that has been agreed to under the Port of Oakland Maritime and Aviation Project Labor Agreement.

The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. 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 13.2 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 a 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.

In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this

Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE XIII
JURISDICTIONAL DISPUTES

13.1 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.

In the event of a jurisdictional dispute between any signatory Unions, it is agreed that the procedures of this section shall be the exclusive process to be taken in an attempt to resolve the matter of the disputed assignment of work:

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.

In any event, the parties hereto agree that there will be no slowdown or stoppage of work, no picketing or other interference's and each agrees that the decisions of the authorities stipulated herein shall be final and binding upon them.

13.2 Enforcement of the award will be subject to the Plan established by the Department.

ARTICLE XIV
MANAGEMENT RIGHTS

14.1 The Contractor(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion, including the hiring, promotion, transfer, layoff, discipline or discharge for just cause of employees. No rules, customs or practices shall be permitted or observed which limit or restrict production,

or limit or restrict the working efforts of employees except that lawful manning provision in the Schedule A Agreement shall be recognized (provided that such provisions will not be recognized if they unduly restrict the productivity or efficiency of the work and the full utilization of the workforce).

14.2 There will be no limitation or restriction upon a Contractor's choice of materials, design or manufacture, nor upon the full use and utilization of equipment, machinery, packaging, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools or other labor saving devices provided that such use is safe. The lawful fabrication provisions of a national or local collective bargaining agreement will be recognized.

ARTICLE XV
SAVINGS CLAUSE

The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law or regulation, or materially altered in a way that does not defeat the intent of the parties in undertaking this Agreement, by a court, agency or administrator 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.

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

If a court of competent jurisdiction, or an agency or administrator, determines that all or part of the

Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XVI
TERM AND METHOD OF APPLICATION

- 16.1 The Agreement shall be included as a condition of the award of the construction contract for the agreed upon work to be performed under this Agreement as set out in Section 2.3.
- 16.2 The Agreement shall continue in full force and effective until the completion of the Project, but shall cease to be applied to those elements of the Project for which a Notice of Completion has been published.

Agreed to this date: _____, 2003

For the Unions

For the Administrator

“Addendum A: Agreed To Letter of Assent

[Date]

[Addressee]

[Address]

[City and State]

Re: Oakland Unified School District,
Project Labor Agreement -- Letter of Assent

Dear Mr./Ms. _____:

The undersigned party confirms that it agrees to be a party to and bound by the Oakland Unified School District, Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements 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.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the Oakland Unified School District Project. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

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

CONTRACTOR/SUBCONTRACTOR: _____

California State License Number: _____

Job Name and Number: _____

Name and Signature of
Authorized Person: _____

(Print Name)

(Title)

(Signature)

(Telephone Number)

(Facsimile Number)”

Addendum B: Letter regarding Fund Contribution Delinquencies

Mr. Barry Luboviski, Secretary-Treasurer
Building and Construction Trades Council of Alameda, AFL-CIO
8400 Enterprise Way, Room 205
Oakland, CA 94621

RE: Project Labor Agreement For The Oakland Unified School District
Contractor Fringe Benefit Fund Contribution Delinquencies

Dear Mr. Luboviski:

In our negotiations for the captioned Project Labor Agreement, the Unions expressed concerns about their ability to recover unpaid fringe benefit contributions from delinquent contractors if they agreed, as part of the general commitment not to strike or otherwise disrupt the project or the work of a Contractor, to waive the right reserved in some local collective bargaining agreements to withdraw labor from a delinquent contractor. We emphasized the importance of an unqualified no-strike clause and the removal of any basis for economic action against any Contractor or the Project generally.

In consideration of the Unions' agreement to the commitments contained in Article X of the Project Labor Agreement and their waiver of the right to withhold labor in delinquency circumstances on this Project, the District will agree to a procedure to assist in the recovery of delinquent payments. The District agrees, consistent with the General Conditions of its contract with the Contractor, to hold retainage monies owed to a delinquent Contractor and to issue joint checks to the applicable trust funds to cover demonstrated delinquencies under the following conditions. This commitment is independent of and does not interfere with the contractual remedies that may otherwise be available to the Unions against such Contractors or the general contractor of a delinquent subcontractor under the applicable Schedule As.

Any trust fund claiming that a Contractor is delinquent in its fringe benefit contributions to the fund will provide written notice of the alleged delinquency to the affected Contractor, with copies to DSI/PCI and the District. The notice will indicate the amount of delinquency asserted and the period that the delinquency covers.

Upon request by the District, the trust fund or the involved Union will provide documentation of the delinquency sufficient to establish the fact and amount of the delinquency. If the Contractor acknowledges the delinquency and agrees that the payment may be made from retained funds, or if the delinquency is disputed but has not been satisfactorily resolved by the parties within thirty days following the notice required above, a joint check (or checks) payable to the Contractor and the applicable trust fund(s) will be issued. The checks to be issued by the District will not exceed the value of any retainage held by the District for the delinquent contractor.

I trust that this procedure is consistent with the understanding reached by the parties in the negotiations. If the terms of this letter and the procedure it contains are agreeable to the signatory Unions, please indicate your acceptance in the space provided below.

Sincerely,

On behalf of the Parsons Constructors, Inc.

AGREED and ACCEPTED on behalf of the Building and Construction Trades Council of Alameda, AFL-CIO and the local unions signatory to the Project Labor Agreement for the Oakland Unified School District this _____ day of _____, 2003

Barry Luboviski, Secretary-Treasurer

Addendum C: Letter regarding Understanding on Trucking (2 Pages)

Mr. Barry Luboviski, Secretary Treasurer
Building & Construction Trades Council of Alameda County
8400 Enterprise Way
Oakland, CA 94621

Dear Mr. Luboviski:

During the negotiations, you sought coverage under the Agreement of trucking involving hauling of materials to and from the site of construction. We took the position that such coverage was not permissible. Consequently, the Parties have not agreed to coverage under the Agreement for such trucking.

Notwithstanding, we discussed and agreed that hauling of materials to and from the site of construction is subject to the prevailing wage laws of the State of California to the extent required by the Division of Industrial Relations (DIR). The District acknowledges that its contractors must comply with the prevailing wage laws, including payment of prevailing wages for trucking as required by the DIR. Further the District acknowledges that it will be subject to any new coverage determinations issued by the DIR and agrees to be bound by any new determinations, until and unless the implementation or promulgation of a determination is stayed by a court of competent jurisdiction.

The Unions have stated their belief that both prevailing wage and project labor agreement coverage is frustrated by ignorance or active avoidance. The Unions contend that the use of Owner Operators contributes to this frustration.

In response, the District acknowledges that trucking at and on the site of construction is covered work and that Owner Operators are covered under this Agreement for such work, and, further, that Owner Operators are required to meet the Union security provisions contained in the applicable Schedule A. The Unions acknowledge that under the applicable Schedule A, an Owner Operator may elect either to have the employing contractor pay benefits into the jointly administered trust funds or the Owner Operator may elect to take those payments as wages as provided in the Schedule A. Moreover, the District agrees to undertake the preparation of reporting forms concerning Owner Operators, disseminate those forms to Contractors, and require they be utilized in the normal course of reporting their hours and wages. The District also shall monitor, and assist the Unions in monitoring, the proper reporting and payment of wages and hours of all workers employed in the execution of contracts covered by the Agreement.

For their part, the Unions understand that the intermittent nature of the on-site work covered under this Agreement may cause special concerns for Owner Operators. Therefore, Teamster Union Local 853 has agreed to establish a special initiation fee and dues schedule for Owner Operators who are performing work on the site of construction who are not already members: For contracts funded in part with Measure A bond proceeds, the initiation fee will be not more than \$100 (payable over three months) and monthly dues will not be more than \$25. For other project work, the rates will be set at the lowest rates and Owner Operators will enjoy the most liberal time payment available to new member applicants in the Construction Division. Once an Owner Operator has paid an initiation fee, that Owner Operator will not have to pay such a fee again in the future for work to be performed on the District's projects under this Agreement, as long as he or she complies with the active member and withdrawal card policies of Local 853. It is agreed that nothing in this Agreement relieves an Owner Operator who is a member of Teamster Local 853 from his or her obligations, including meeting the Union security provisions of the Schedule A Agreement.

If you agree that this constitutes a fair summation of our negotiations on this issue and the terms of this letter are agreeable to the signatory Unions, please countersign the letter below.

Sincerely,

Ed Manning
Parsons Constructors, Inc.

Barry Luboviski, Secretary Treasurer
Building & Construction Trades Council of Alameda County, AFL-CIO

(Addendum C: Letter regarding Understanding on Trucking – second page)

Addendum D: Letter regarding Understanding on Trust Fund Investments

Sandra Rae Benson, Esq.
Weinberg, Roger & Rosenfeld
180 Grand Avenue, 14th Floor
Oakland, CA 94612

Dear Ms. Benson:

During the course of negotiations on the Oakland Unified School District project labor agreement, you expressed concern that Parsons was negotiating for a position that might not be consistent with the fiduciary obligations owed by trustees of jointly administered benefit trust funds. Specifically, Parsons sought on behalf of the District a commitment from the Union members that they would be advocates for investment of trust fund resources into development projects in the Oakland area that might provide community benefits as an incident of the investment decision.

You asked that I clarify, and I am by this letter, that our intention in this matter is that the Trustees would make any investment decisions in a manner entirely consistent with their obligations under federal and state law, and the general principles of fiduciary responsibility. We further clarify that we understand that any such decision that might be made would be undertaken only if it were deemed to be to the benefit of the trust's beneficiaries in all respects.

I trust that this will suffice for the purposes of clarification on this matter.

Sincerely,

H. Lee Halterman

Addendum E: Labor Harmony provision for work out of scope

OUSD LABOR HARMONY CLAUSE

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Section 1. The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work under this contract. Without limiting the generality of the foregoing, “harmony” includes the provision of labor that will not cause, cause to be threatened, engage in, or give rise to, either directly or indirectly, any work disruption, slowdowns, or stoppages, or any violence or harm to any persons or property while performing contract work, or activities incidental thereto, including but not limited to: (i) transporting construction workers to and from the project site; (ii) otherwise performing the work of the contract at the project site; and (iii) any non-working time associated with the above while employees are on site or other District facilities (e.g., lunch hours, breaks).

Section 2. The Contractor agrees that it must require every subcontractor, of every tier, to provide labor that can work in harmony with all other elements of labor employed or to be employed in the work, and will include the provision contained in Section 1 above in every subcontract let for work under this contract.

Section 3. Contractor shall submit a written plan detailing the procedures it will follow to comply with the above. Such plan will become part of the contract documents. Receipt of the plan by the District and inclusion in the contract documents will not be deemed to be approval by District of the plan or of its sufficiency, and will in no event relieve the Contractor of its responsibility to provide labor that can work in harmony with all other elements of labor employed or to be employed on the work. One of the methods the Contractor may employ, at its option, to provide labor harmony, is to voluntarily agree to comply with and be bound by the Project Labor Agreement for the Oakland Unified School District as executed by and between Parsons Constructors, Inc. (on behalf of the District) and the Building and Construction Trades Council of Alameda County, AFL-CIO. A copy of the Agreement will be provided to Contractor upon request. If the Contractor chooses this method to satisfy the labor harmony requirements, such agreement to comply will be incorporated in the contract documents, and will be deemed sufficient to satisfy the requirements of these provisions.

Section 4. The requirement to provide labor that can work in harmony with all other elements of labor employed or to be employed in the work is a material element of the contract. Failure by the Contractor or any of its subcontractors to comply with this requirement shall be deemed a material breach of the contract that will subject the Contractor to all rights and remedies the District may have, including without limitation, the right to terminate the contract and draw upon the performance bond. A finding of imminent danger of a labor dispute by the Administrative Committee because of the presence of a contractor or subcontractor on the jobsite who has failed to comply with these Labor Harmony requirements will trigger implementation of the District’s right to invoke the remedies provided for under this Labor Harmony policy. If the District does not take steps to prevent the imminent danger of a labor dispute, those provisions of the no-strike clause providing for penalties against the Union(s) shall become null and void. The Contractor will be liable for all damages occasioned by a breach of this provision.

Board Office Use: Legislative File Info.	
File ID Number	10-0409
Introduction Date	3/2/10
Enactment Number	10-0525
Enactment Date	4-14-10 <i>87</i>



every student. every classroom. every day.

Memo

To Board of Education

From Tony Smith, Ph.D, Superintendent
Timothy E. White, Assistant Superintendent, Facilities, Planning and Management.

Board Meeting Date April 14, 2010

Subject **Project Labor Agreement / Review and Approval of Side Letter of Agreement**

Action Requested Approval of the Side Letter of Agreement between the District and the Building Trades Council regarding the threshold dollar amount of Measure B proceeds to be exempted from the Project Labor Agreement

Background Under the Project Labor Agreement ("PLA") the District was allowed to "utilize \$400,000 of Measure A (and Measure B) bond proceeds. . . .to facilitate a transition for small businesses....to succeed in performing work under the Project and to assist the District in moving successfully into the utilization of the Agreement."

Since the Board of Education's adoption of the District's Local / Small Local / Small Local Resident Business Policy (S/SL/SLRBE) in December of 2008, Facilities Staff has petitioned the Building & Construction Trades Council of Alameda County, AFL-CIO ("Building Trades") to expand the dollar amount permitted to be excepted from the PLA in order to further enhance small local business participation on District bond projects.

Facilities Staff and the Building Trades have met and conferred and reached, subject to Board of Education review and approval, an agreement on the increased dollar amount to be excepted from the PLA so as to assist local and emerging contractors in developing their contracting relationship with the District. A Side Letter of Agreement ("Side Letter") to the Project Labor Agreement has been prepared by respective legal counsel to the District and the Building Trades to memorialize the recent negotiations and to clarify the terms under which future OUSD projects may be exempted from inclusion in PLA.

Discussion
One paragraph summary of the scope of work.

Under the Side Letter, the language of the PLA is "clarified" as follows:

- In addition to the \$400,000 exemption allowed under Measure A, the District may use and exempt from the PLA 5% (five percent) of the total of Measure B proceeds, or approximately \$22,000,000 (Twenty-Two Million Dollars), to facilitate a transition for emerging Oakland businesses, as defined by the District's L/SL/SLRBE.



OAKLAND UNIFIED
SCHOOL DISTRICT

expect Success

every student. every classroom. every day.

- The number of "core" employees is clarified to be five (5), rather than ten (10), the net effect being that non-local contractors will only be allowed to keep up to 5 core employees when working on District PLA projects.

Recommendation

Approval of the SIDE LETTER OF AGREEMENT, exempting an additional \$21,850,000 of Measure B proceeds from the PLA and reducing the core employee exception for non-local contractors from 10 to 5.

Fiscal Impact

N/A

Attachments

SIDE LETTER OF AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, AFL-CIO INCLUDING UNIONS AND COUNCILS SIGNATORY HERETO.

**SIDE LETTER OF AGREEMENT
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND THE
BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY,
AFL-CIO
INCLUDING UNIONS AND COUNCILS SIGNATORY HERETO**

The Oakland Unified School District ("OUSD" and/or "District") and the Building & Construction Trades Council of Alameda County, AFL-CIO ("Council") and the various Union Organizations signatory to the Agreement (collectively referred to as the "Unions") have met and conferred and reached agreement on this Side Letter of Agreement to the Project Labor Agreement dated 2/13/2004 ("PLA" and/or "Agreement") to clarify Section(s) regarding certain OUSD projects to be exempted from inclusion under the terms of the PLA.

This Side Letter of Agreement is intended to memorialize the agreement reached between the parties and is intended to clarify, not to supersede any of the terms and conditions contained in the PLA.

The language in Article II, Section 2.3 is clarified as follows:

**ARTICLE II
SCOPE OF AGREEMENT**

2.3 Project Description: The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District for the Project, which are those construction contracts funded in whole or in part by Measure A and Measure B General Obligation bonds, OUSD Project Labor Agreement any next subsequent locally adopted general obligation bond and/or any State of California bond funding applied to a District construction project during the period of time when these two local bond funds remain available and which were let for bid, or for which RFQ's or RFP's were issued, after the date of the Project Labor Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities. However, the Parties acknowledge that the District may utilize \$400,000 of Measure A bond proceeds and 5% (five percent) of Measure B proceeds in, and such additional funds as would be agreed to under, a special program set out in Section 6.11 to facilitate a transition for emerging Oakland businesses, as defined by OUSD's Local/Small Local/ Small Local Resident Business Enterprise Policy, to succeed in performing work under the Project and to assist the District in moving successfully into the utilization of the Agreement.

The language in Article VI, Section 6.11 is clarified as follows:

**ARTICLE VI
NON-DISCRIMINATION, SOCIAL JUSTICE AND ENVIRONMENTAL PROTECTION**

6.11 The Parties acknowledge that the District may use up to \$400,000 of Measure A funds and a total of 5% (five percent) of Measure B funds for contracts that may be issued without making this Agreement a contract specification for construction work that would otherwise be covered

("the Agreed Upon Exemption"). The purpose of this provision is to assist the District in making a transition to utilization of the Agreement and to assist local and emerging contractors in developing their contracting relationship with the District. In addition, the Parties agree that the Social Justice Committee may consider placing additional funds from any subsequent local bond measure into this Agreed Upon Exemption program. If the Committee cannot reach a decision on this issue, then the matter will be submitted to binding arbitration under Step 3 of the Grievance procedures in Article XII, with the Council and the District submitting their positions to the Arbitrator in writing. If the matter is not resolved prior to the availability of funds from any local bond measure, the Parties agree that up to \$400,000 of Measure A funds and up to 5% (five percent) of the total amount of Measure B funds will be available until these procedures are completed. The Parties further agree that either chair of the Social Justice Committee may call a meeting to discuss the issue of bringing these additional funds to the program set out in this section, and that, in any event, the process of the Committee deliberating on this issue will commence no later than within 30 days of the passage by the voters of the authorizing the next local bond measure. The District will ensure that no more than 10% (10 percent) of the work of any craft be executed under this Agreed Upon Exemption program, and the Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision and, when applicable, work under this program will be subject to the Labor Harmony requirements set out in Addendum E.

The following language provides further clarification:

The parties agree that the following terms of the PLA shall not be exempted as a result of any particular Project or scope of work being covered by the terms of the Agreed Upon Exemption. OUSD will include the following language in any contract specification to the award of construction contracts identified by the District for a project identified as exempt from the PLA as a result of the application of the Agreed Upon Exemption:

- a. The Contractor(s) agree not to engage in any form of discrimination based on race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), or any other distinction prohibited by State and/or Federal Law, against any employee, or applicant for employment, on the Project.
- b. No employee working on this Project shall be disciplined or dismissed without just cause.
- c. The Contractor(s) acknowledge the importance to the community and the District of recruiting and qualifying Oakland residents for employment on this Project. The Contractor(s) further acknowledge the importance of enrolling qualified applicants in pre-apprentice training and formal apprenticeship and other programs that will lead to their employment on future OUSD projects work.
- d. The Contractor(s) therefore agree that they will assist the District in preparing its students for work in the construction trades by participating in construction academies and advisory committees the District might establish to pursue this goal.

APC

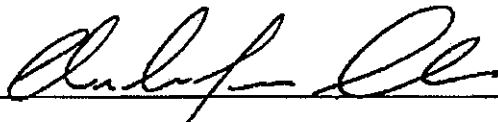
- e. As a condition of any work being covered by this Agreed Upon Exemption program, Contractor(s) shall insure that, whenever feasible, Oakland residents, especially former District students, will perform a minimum of 50% of the hours worked, on a craft by craft basis on the Project. Failure to adhere to such requirements may be grounds for discipline of said contractor, including termination.

At Section 8.1, the number of "core" employees is clarified to be five (5), rather than ten (10).

This Side Letter of Agreement is executed this 12 day of April, 2010, by the

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

**BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY,
AFL-CIO**



Andreas F. Cluver, Secretary-Treasurer


4-12-10
Date

OAKLAND UNIFIED SCHOOL DISTRICT



Gary Yee, President, Board of Education


4/15/10
Date



Edgar Rakestraw, Jr., Secretary, Board of Education

4/15/10
Date

APPROVED AS TO FORM:



Jacqueline Minor, OUSD General Counsel

4/12/2010
Date