



Job No. 7222

CC: «CC»

B/A No.

Vendor No.

SUBCONTRACT AGREEMENT

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**SUBCONTRACT AGREEMENT
(CALIFORNIA)**

This Subcontract Agreement ("Subcontract") is made as of the _____ day of _____, _____ by and between **Hunt Construction Group, Inc., an Indiana Corporation ("Hunt")**, and _____ ("**Subcontractor**").

WITNESSETH THAT:

Hunt and Subcontractor expressly desire to contract with respect to a specific portion of the work for the construction project hereinafter described.

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, Hunt and Subcontractor agree as follows:

**SECTION 1
Definitions**

- 1.1 Project:** San Jose McEnery Convention Center Expansion and Renovation
150 West San Carlos Street
San Jose, California 95110
- 1.2 The Owner:** City of San Jose
Department of Public Works
200 East Santa Clara Street
San Jose, California 95113
- 1.3 The Designer:** POPULOUS
300 Wyandotte, Suite 200
Kansas City, Missouri 64105
- 1.4 Hunt:** Hunt Construction Group, Inc.
426 N 44th Street, Suite 410
Phoenix, Arizona 85008

California License No. 136502
- 1.5 The Subcontractor:** «Company_Name»
«Address_Line_1»
«Address_Line_2»
«City», «State» «ZIP_Code»

California License No. _____
- 1.6 The Subcontract Price:** \$«amount»

(DOLLAR)

SECTION 2 Contract Documents

- 2.1 Enumeration of the Contract Documents:** The plans, specifications, general conditions, special conditions and addenda prepared by the Owner and/or Designer for the Project and the general contract between the Owner and Hunt dated July 7, 2011 (the "General Contract"), together with all Change Orders and modifications thereto through the date of this Subcontract, are available for examination by the Subcontractor at all reasonable times at Hunt's office. All of the aforesaid documents, (and any amendments thereto), which are more specifically described and enumerated in Attachment III are hereinafter referred to collectively as the "Contract Documents."
- 2.2 Contract Documents to be Complementary:** This Subcontract and the Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision granting greater rights or remedies to Hunt, or imposing the greater duty, standard, responsibility or obligation on the Subcontractor, as solely determined by Hunt, shall govern.
- 2.3 Documents Incorporated by Reference:** Attachment I (Authorized Representatives); Attachment II (Subcontractor's Scope of Work); Attachment III (Contract Documents); Attachment IV (Modifications and Additions to Subcontract); Attachment V (Insurance Requirements); Attachment VI (Bond Requirements), Attachment VII (W-9 Request for Taxpayer Identification Number); Attachment VIII (California Labor Code Requirement), Attachment IX (Appendix II, Section 7, of the General Contract); and Attachment X (Draft Project Labor Agreement); are incorporated into this Subcontract by this reference. Subcontractor is bound thereby as if the text of these documents were written verbatim into this Subcontract. Provided, however, notwithstanding anything in the foregoing to the contrary, it is expressly acknowledged and agreed by the parties that all payment terms between Owner and Hunt set forth in the Contract Documents are not incorporated by reference and are expressly excluded from this Subcontract.

SECTION 3 Scope of Subcontractor's Work and Subcontractor's Representations as to the Contract Documents and the Project Site

- 3.1 Subcontractor's Work:** Subcontractor, as an independent contractor, shall perform the Work specified in Attachments I through X in strict accordance with this Subcontract, the Contract Documents, the Project Schedule and all applicable laws.
- 3.2 Scope of Work:** The scope of Subcontractor's Work includes, without limitation, all materials, labor, supervision, services, inspection, testing, tools, equipment, supplies, fuel, transportation, installation, temporary facilities, clean up and all items or services of any kind whatsoever necessary to fully perform and complete Subcontractor's Work. Subcontractor shall pay for all costs of the performance of all its obligations under this Subcontract, even if those costs exceed the Subcontract Price.
- 3.3 Performance Specifications:** If the Contract Documents applicable to Subcontractor's Work contain Performance Specifications, then Subcontractor agrees and represents that:
- (a) The performance requirements are achievable by Subcontractor;

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PROJECT LABOR AGREEMENT For the San Jose Convention Center Expansion and Renovation

This Agreement is made and entered into this ____ day of _____, 2011, by and between Hunt Construction Group, Inc.(hereinafter “HGC”) who is the Design Build entity for the Project 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 Santa Clara-San Benito Counties Building & Construction Trades Council and its affiliated local unions who have executed this Agreement.

PURPOSE

The purpose of this Agreement is to promote efficiency of construction operations during the Project and 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 Project.

RECITALS

The Convention Center Project (the Project) is an expansion and renovation of the existing San Jose Convention Center. The existing convention center encompasses 1.2 million square feet (sf) and includes 143,000 sf of exhibition space, a 22,000 sf ballroom, 27,500 sf of meeting rooms, and 426,000 sf of underground parking. The Project will include the demolition of the existing Martin Luther King Library. Expanding the Existing facility to include 35,000sf of new ballroom and 25,000sf of meeting room space. New Pre-function space, restrooms and kitchen to support the new ballrooms and meeting rooms. The Project will also include a new central utility plant including chillers, boilers, process piping, pumps, cooling towers and related electrical upgrades. A new fire alarm system for the entire Center and a new direct digital controlled building management system. The Renovation will consist of upgrades both cosmetic and functional to the existing Ballrooms, exhibit halls, and restrooms, as well as ADA improvements needed.

This Agreement is intended to cover all phases of the Project.

WHEREAS, the successful completion of the Project is of the utmost importance to the general public and the City of San Jose; 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 Santa Clara-San Benito Counties Building and Construction Trades Council and any other Union which is signatory to this Agreement employed by contractors and subcontractors who are signatory to agreements with the Unions; and

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WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, HGC, 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 interferences with work; and

WHEREAS, HGC, the Contractors and the Unions 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 Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor and the affected Unions; and

WHEREAS, the contracts for the construction of the Project will be awarded in accordance with the applicable provisions of the California Public Contract Code and applicable Federal, State and local requirements; and

WHEREAS, HGC desires to provide opportunities for local residents to participate in the Project; and

WHEREAS, HGC has the absolute right to select as its sub contractors the entities offering the best value to HGC; and

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

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

ARTICLE 1 **DEFINITIONS**

1.1 “Agreement” means this Project Labor Agreement.

1.2 ”HGC” means Hunt Construction Group, Inc. who is the Design Build Entity for the Project

1.3 “Completion” means that point at which all work has been completed as covered by Article 2. It is understood by the parties that portions of the Project may be completed in phases and Completion of any such phase may occur prior to Completion of the entire Project.

1.4 “Contractor(s)” and/or “Subcontractor(s)” means any individual, firm,
Convention Ctr. PLA.5.16.11.V1

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partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with HGC or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Project.

1.5 “Construction Contract(s)” means all of the contract(s) for construction of this Project.

1.6 “Council” means the Santa Clara-San Benito Counties Building and Construction Trades Council, AFL-CIO.

1.7 “Project” means the City of San Jose’s expansion and renovation of its Convention Center as generally described in the Recitals section of this Agreement and Article 2.2.

1.8 “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.

1.9 “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 Project, HGC and the Council and any other labor organization signatory to this Agreement, acting in their own behalf and 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 of San Jose and HGC as part of the Project. HGC has the absolute right to combine, consolidate or cancel contract(s) or portions of contract(s) identified as part of the Project. Should HGC remove any contract from the Project 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 HGC. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.3 of this Agreement.

2.3 Covered Work

2.3.1 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 Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation, pipelines, site preparation,

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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 as to which a prevailing wage determination has been published.

2.3.2 The Project includes work necessary for the Project and/or in temporary yards or areas adjacent to and dedicated to the Project, and at any on-site batch plant constructed solely to supply materials to the Project, when those sites are dedicated exclusively to the Project. This Agreement covers all on-site fabrication work over which HGC, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.) This Agreement also covers all off-site fabrication work traditionally performed by the Unions that is part of the Project, 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). Further, any and all construction of any and all reinforced concrete support structures designed and specially fabricated for this Project, shall be considered on-site work and shall be covered by this Agreement. All of the work described in this paragraph is within the scope of the Project and 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 of San Jose 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; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), work may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. In such instances all provisions of this Agreement shall apply. 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 the Project:

2.4.1 This Agreement shall be limited to construction work necessary for the Project and is not intended to, and shall not govern other construction work performed by HGC at anytime prior to the effective date, during or after the expiration or termination of this Agreement.

2.4.2 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City of San Jose which are outside the approved scope of the Project.

2.4.3 This Agreement is not intended to, and shall not affect the operation or

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maintenance of any of the City of San Jose's facilities.

2.4.4 This Agreement shall not apply to a Contractor'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.

2.4.5 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

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

2.4.7 This Agreement shall not apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion.

2.5 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, , 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 HGC agree to be bound by each and every provision of this Agreement.

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

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33 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.

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 arbitrator William Riker or, if William Riker is unavailable, arbitrator _____, for resolution as to the applicable procedure. 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 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.

35 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.

35.1 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. 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 Project. 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.

3.7 With regard to any Contractor or subcontractor that is independently signed to any Schedule A Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Schedule A Agreement. Any such subcontracting clause in a Schedule A Agreement shall remain and be fully

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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.

ARTICLE 4 WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, Agency and Contractor agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling 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 Project, at the job site of the Project or at any other project of HGC because of a dispute on the Project. The withholding of labor, but not picketing, because of a Contractor's or Subcontractor's failure to make fringe benefit Trust Fund payments or failure to meet its weekly payroll shall not be considered a violation of this Section 4.1.1. Disputes arising between the Unions and Contractors on other HGC projects are not governed by the terms of this Agreement.

4.1.2 As to construction persons employed on the Project, 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 during the interim period on the Project within seven (7) days.

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

4.2.1 A party invoking this procedure shall notify William Riker whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, _____ shall be the alternate arbitrator. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to HGC, 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 above or his alternate shall

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convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said hearing shall be completed in one (1) session, which, with appropriate recesses at the arbitrator's discretion, 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 or Section 4.1.2 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 registered mail upon issuance.

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 delivered by certified mail.

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 paid by the losing party.

4.3 Liquidated Damages. If the arbitrator determines that a violation of Section 4.1 or Section 4.1.2 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 HGC 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.

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ARTICLE 5 PRE-JOB CONFERENCE

5.1 A Pre-Job Conference shall be held as soon as practicable, however the parties shall endeavor to have such conference at least twenty-one (21) days prior to the commencement of each Construction Contract and in all cases prior to commencement of work on such Construction Contract. The Pre-Job Conference shall be attended by a representative each from the participating Contractors, the Union(s) and HGC. The Pre-Job Conference may be held at the offices of the Santa Clara-San Benito Counties Building and Construction Trades Council.

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 Project.

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 Project, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union construction persons from joining the local union.

7.3 Union representatives shall have access to the Project(s) at all times when work is being, has been or will be performed. Union representatives shall comply with all reasonable access rules of HGC and access shall not be unreasonably denied.

ARTICLE 8 LOCAL HIRE PROGRAM

8.1 The objective of the Unions and HGC in creating a Local Hiring Program is to enhance and encourage employment opportunities for residents of Santa Clara County ("Local Area Residents"), by creating new and effective pathways into the construction industry and into Union Apprenticeship programs. To that end, as part of the Agreement, the parties support the development of increased numbers of skilled construction workers from the residents of Santa Clara County to meet the needs of the Program and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures, of qualified Santa Clara County residents as journeymen and apprentices on this Program and entrance into such apprenticeship and training programs as

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may be operated by the signatory Unions.

8.2. Subject to any legal restrictions, the parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft hours worked on the Project unless an applicable Schedule A Agreement provides for a greater percentage. The Unions agree to cooperate with the Contractors in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with the provisions of the applicable Schedule A Agreement.

8.3 The parties agree to a goal that at least fifty percent (50%) of Local Area Residents as defined in this section shall be utilized as apprentices. The Contractors shall make good faith efforts to reach this goal through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the Contractors and community based organizations to achieve these goals. All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs.

8.3.1 The Contractor or subcontractor shall use the "Name Call", "Rehire" or other available hiring hall procedures to reach the goals of this Article 8.

8.3.2 The Contractor or subcontractor shall use local community-based organizations working in collaboration with the Union apprentice programs for recruiting Local Area Residents to apprentice programs specified in this Article 8, if a Union cannot provide Local Area Residents as requested and in conformity with the Union hiring hall rules.

ARTICLE 9

EMPLOYEE DISCIPLINE GRIEVANCE PROCEDURE

9.1 All employee grievances concerning the imposition of discipline shall be governed by the grievance and arbitration provisions of the applicable Schedule A agreement. Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which has 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 HGC; two (2) representatives of the signatory Unions and Santa Clara-San Benito Counties

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Building and Construction Trades Council; and one (1) representative selected by the City of San Jose from within its organization; provided, however, such representative selected shall be subject to the approval of HGC and the Santa Clara-San Benito Counties Building and Construction Trades Council and such approval shall not be unreasonably withheld. 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 Project including, but not limited to, compliance with prevailing wage, Local Hire Program, 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 limits in this Section 11.1 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 Business Representative of the involved Local Union or District Council, or his/her designee, or representative of the construction person, 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 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 HGC 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: Within seven (7) seven calendar days after referral of a dispute to Step 3, the representatives shall choose an arbitrator for final and binding arbitration. The parties agree that an arbitrator shall be selected by the alternate striking method from the following list. The party who shall strike the first name shall be selected by the toss of a coin.

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1. John Kagel
2. Robert Hirsh
3. William Riker
4. Barbara Kong-Brown
5. Thomas Angelo

11.3 In the event that any of the above listed Arbitrators are unable or unavailable to serve, the parties shall immediately meet and confer to select a replacement arbitrator.

11.4 The Arbitrator shall arrange for a hearing no later than fourteen days (14) calendar days 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 option may be requested by a party from the presiding 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.

11.5 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.

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

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

12.3 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/Employer 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 shall meet with the affected Contractor/Employer within five (5) calendar days.

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Step 3: If no settlement is reached within five (5) calendar days, such dispute shall be referred to and settled by the present Plan established by the Building and Construction Trades Department of the AFL-CIO, or any other method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding, and conclusive on the contractors and Unions party to this Agreement. In any event, the parties hereto agree that there will be no slowdown or stoppage of work, no picketing or other interferences pending final resolution of the dispute and the work shall continue during this period as originally assigned by the Contractor/Employer.

If any Union or Contractor/Employer fails to immediately and fully comply with a final decision rendered in any jurisdictional dispute, the Contractor/Employer 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.

The time limits in this section may be extended by mutual written agreement of the affected Contractor/Employer and the affected crafts.

ARTICLE 13 **MANAGEMENT RIGHTS**

13.1 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 the 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 14 **WAGES, BENEFITS, HOURS & HOLIDAYS**

14.1 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 rate determination.

14.2 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 this Project 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

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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 or benefits, HGC agrees to honor a properly submitted, legally enforceable Stop Notice. Nothing in this Agreement, however, shall be construed to limit or prevent the Unions or Trust Funds from asserting or enforcing legal rights to collect delinquent wages or benefit contributions.

14.3 Hours and Holidays. The hours of work and designated holidays shall be governed by the applicable Schedule A agreement.

ARTICLE 15 **MODIFIED SCHEDULE A AGREEMENTS**

15.1 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 Section 12 hereof.

ARTICLE 16 **HELMETS TO HARDHATS**

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

16.2 The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

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

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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 all Construction Contracts on the Project.

19.2 The Agreement shall continue in full force and effect until the Completion of the Project as defined in Section 1.3 of this Agreement.

Hunt Construction Group, Inc.

By: _____ Date:

**Santa Clara-San Benito Counties Building & Construction
Trades Council, AFL-CIO**

By: _____ Date:

ATTACHMENT X

Neil Struthers, Executive Officer

Signatory Unions

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ATTACHMENT X

ATTACHMENT A AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor ("Contractor") on the San Jose Convention Center expansion & renovation 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 Labor 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. Employer 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 the Project Agreement.

Date _____

Company Name
Address, Telephone No: and FAX No:

Name of Prime Contractor _____

Higher Level Subcontractor _____

Signature: _____ Print Name: _____

Title: _____ Contractor's License #: _____

Motor Carrier Permit (CA) #: _____

ATTACHMENT X

APPENDIX A
Schedule A Agreements

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