

AGENDA CITY OF WATSONVILLE CITY COUNCIL MEETING

Motto: "Opportunity Through Diversity; Unity Through Cooperation."



Mission Statement: "The City of Watsonville is dedicated to improving the economic vitality, safety & living environment for the culturally rich Watsonville community, by providing leadership for the achievement of community goals & high quality, responsive public services."

Mayor Karina Cervantez, District 2
Mayor Pro Tempore Felipe Hernandez, District 1

Lowell Hurst, Council Member, District 3
Eduardo Montesino, Council Member, District 4
Daniel Dodge, Council Member, District 5
Trina Coffman-Gomez, Council Member, District 6
Dr. Nancy A. Bilicich, Council Member, District 7

Carlos J. Palacios, City Manager
Alan J. Smith, City Attorney
Beatriz Vázquez Flores, City Clerk

CIVIC PLAZA COUNCIL CHAMBERS
275 MAIN STREET, 4th FLOOR, 6th LEVEL PARKING
WATSONVILLE, CALIFORNIA

INTERPRETATION SERVICES
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Americans with Disabilities Act



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- (e) Appellant Rebuttal
- (f) City Council Deliberation
- (g) Resolution Denying Appeal Filed by Juan Yépez García & Upholding Revocation of Special Use Permit (PP2013-223) Prohibiting Sale of Beer & Wine in Conjunction with the Restaurant, Bar, & Billiard Hall for El Miramar Sports Bar Located at 522 Main Street (APN: 018-241-36)

6.2 STATE-MANDATED EMERGENCY LANDSCAPE WATERING RESTRICTIONS & PILOT TURF REPLACEMENT REBATE PROGRAM (Recommended by Public Works & Utilities Director Palmisano)

- (a) Staff Report
- (b) City Council Questions
- (c) Public Hearing
- (d) City Council Discussion
- (e) Resolution Adopting State Water Resources Control Board Resolution No. 2014-0038 Limiting Overhead Watering to Two Days per Week & Setting Schedule of Fines Consistent with State Order
- (f) Resolution Establishing a Pilot Turf Replacement Rebate Program to Encourage the Replacement of High Water Use Lawn Areas

7.0 UNFINISHED BUSINESS

7.1 APPROVAL OF MASTER PROJECT LABOR AGREEMENT IN CITY CONSTRUCTION PROJECTS & MEMORANDUM OF UNDERSTANDING

(Recommended by Public Works & Utilities Director Palmisano)

- (a) Staff Report
- (b) City Council Questions
- (c) Public Input
- (d) City Council Discussion
- (e) Resolution Approving Master Project Labor Agreement for City of Watsonville for City Construction Projects Exceeding \$600,000 & Involving three or More Trades
- (f) Resolution Approving Memorandum of Understanding with Monterey/Santa Cruz Counties Building & Construction Trades Council

10.1 EMERGENCY ITEMS ADDED TO AGENDA

10.2 INFORMATION ITEMS—Written Report(s) Only

- (a) Report of Disbursements
- (b) Miscellaneous Documents

11.0 ADJOURNMENT

Pursuant to Section 54954.2(a)(1) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day and on the City of Watsonville website at www.cityofwatsonville.org.

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office (275 Main Street, 4th Floor) during normal business hours. Such documents are also available on the City of Watsonville website at www.cityofwatsonville.org subject to staff's ability to post the document before the meeting.

**City of Watsonville
Public Works and Utilities**

M E M O R A N D U M



DATE: August 21, 2014 *Carlos J. Palacios*

TO: Carlos J. Palacios, City Manager

FROM: Steve Palmisano, Director of Public Works and Utilities
Maria Esther Rodriguez, Assistant Director of Public Works and Utilities

SUBJECT: Approval of a Master Project Labor Agreement for City Construction Projects and Approval of a Memorandum of Understanding with the Building Trades Council

AGENDA ITEM: August 26, 2014 **City Council**

APPROVED
By Steve Palmisano at 7:54 am, Aug 21, 2014

RECOMMENDATION:

It is recommended that City Council:

- a. Adopt a resolution approving a Master Project Labor Agreement for City Construction Projects and direct the City Manager to sign on the City's behalf.
- b. Adopt a resolution approving the Memorandum of Understanding between the City of Watsonville and the Monterey / Santa Cruz Counties Building and Construction Trades Council and direct the City Manager to sign on the City's behalf.

DISCUSSION:**Project Labor Agreement**

City Council adopted Ordinance 1295-13 (CM), effective November 7, 2013. The ordinance added Chapter 17 (Project Labor Agreements for Public Works Construction Projects) of Title 7 (Public Works) of the Watsonville Municipal Code requiring the use of Project Labor Agreements for City construction Projects with a projected construction cost of \$600,000 or more.

City staff collaborated with the Monterey and Santa Cruz Counties Building and Construction Trades Council to develop a Master Project Labor Agreement (attached). The Master Project Labor Agreement will be included in the contract documents of all City-funded projects that are expected to exceed \$600,000 and involve 3 or more trades. The agreement, when signed by the parties, is between the Trades Council (unions) and the contractor. It discusses the working relationship between the contractor and the Trades Council (unions).

Memorandum of Understanding

City Council directed staff to develop a Memorandum of Understanding (MOU) between the City and the Monterey / Santa Cruz Counties Building and Construction Trades Council. The proposed MOU (attached) establishes methods to increase apprenticeship and job opportunities for local residents. It identifies tasks for both the City and the Building Trades Council to carry out that will facilitate the entry of community members into the construction industry.

Recent discussions with staff from the Monterey and Santa Cruz Counties Building and Construction Trades Council included a focus on developing more workforce training programs in Watsonville. Staff explored potential strategies to increase training and employment opportunities for Watsonville residents in the construction trades through apprenticeship and pre-apprenticeship programs.

Representatives of the Trades Council indicated their willingness to begin development of pre-apprenticeship training programs in the Watsonville area, and expressed a commitment to this through the creation of a Memorandum of Understanding with the City. The proposed MOU provides a framework for how the Trades Council and the City will work together towards the goal of establishment of a pre-apprenticeship program. The focus includes community outreach and training for Watsonville residents, including:

- Working to identify community groups that have interest in career development within the construction industry;
- Meet with these community groups to establish cooperation. Inform groups of the process that will be used in the program;
- Identify, test, recruit, and educate community members about the construction industry and trades. Extra effort will be placed on identifying those from disadvantaged backgrounds, women, and veterans;
- Mentor participants as to how to enter the trades through apprenticeship and other avenues;
- Create a “Local Hire” list to be used by contractors and programs seeking apprentices.
- Track progress and report to the City, annually;
- Work toward establishing a pre-apprenticeship program in Watsonville

The City of Watsonville will be the first jurisdiction in the County to implement this type of MOU with the Trades Council.

STRATEGIC PLAN:

The recommendation supports the strategic goal of improving infrastructure.

FINANCIAL IMPACT:

There is no anticipated cost to the City

ALTERNATIVES:

The alternative is not adopting the Project Labor Agreement or the Memorandum of Understanding.

ATTACHMENTS:

None

cc: City Attorney

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING FORM OF MASTER PROJECT LABOR AGREEMENT FOR THE CITY OF WATSONVILLE FOR CITY CONSTRUCTION PROJECTS EXCEEDING \$600,000 AND INVOLVING THREE OR MORE TRADES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

1. That the form of Master Project Labor Agreement for the City of Watsonville for City construction projects exceeding \$600,000 and involving three (3) or more trades, a copy of which Agreement is attached hereto and incorporated herein by this reference, is hereby approved.

2. That the City Manager be and is hereby authorized and directed to execute such Agreements for and on behalf of the City of Watsonville.

MASTER PROJECT LABOR AGREEMENT FOR THE CITY OF WATSONVILLE

INTRODUCTION / FINDINGS

This Agreement is entered into this ____ day of _____, 2014, by and between the City of Watsonville (hereinafter, the "City"), together with contractors and/or subcontractors, who become signatory to this Agreement by signing the "AGREEMENT TO BE BOUND" (ATTACHMENT A) (all of whom are referred to herein as "Contractors/Employers"), and the Monterey/Santa Cruz Building and Construction Trades Council ("Council") and its affiliated local Unions that have executed this Agreement (all of whom are referred to collectively as "Union" or "Unions").

The purpose of this Agreement is to promote efficiency of construction operations on City Projects ("the Project") as defined herein, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project. The City and the Council may mutually agree in writing to add additional components to the Project's Scope of Work to be covered under this PLA.

WHEREAS, the timely and successful completion of the Project is of the utmost importance to the City to avoid increased costs resulting from delays in construction; 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 signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, it is recognized that on a Project of this magnitude with multiple contractors and bargaining units on the job site 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, the City, the Unions and Contractor/Employers would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractor/Employer(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this agreement is to avoid the tensions that might arise on the Project if Union and nonunion workers of different employers were to work side by side on the Project, thereby leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor/Employer(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the Public Contract Code and other applicable California law; and

WHEREAS, the City has the absolute right to select the lowest responsive and responsible bidder for the award of construction contract(s) on the Project; and

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

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

ARTICLE I DEFINITIONS

1.1 “Agreement” means this Project Labor Agreement.

1.2 “City” means the City of Watsonville and its public employees, including managerial personnel.

1.3 “Contractor/Employer(s)” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and has entered into a contract with the City, or with any contractor or subcontractor of any tier, with respect to the construction of any part of the Project, under contract terms and conditions approved by the City and which incorporate this Agreement.

1.4 “Construction Contract” means the public works or improvement contracts, executed by the City, and all contracts and subcontracts executed thereunder, that are necessary to complete the Project.

1.5 “Council” means the Monterey/Santa Cruz Building and Construction Trades Council.

1.6 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto, copies of which shall be provided to the City upon request.

1.7 “Project” means all public works or improvement projects paid for in whole or in part by City of Watsonville funds with a projected construction cost of \$600,000 or more and employing workers in three or more crafts. The City and the Council may mutually agree in writing to add additional components to the Project’s Scope of Work to be covered under this PLA.

1.8 “Project Manager” means the person(s) or business entity(ies) designated by the City to oversee all phases of construction on the Project and to oversee the implementation of this Agreement and who works under the guidance of the City’s Authorized Representative.

1.9 “Union’ or “Unions” means the Monterey/Santa Cruz Building and Construction Trades Council, AFL-CIO (“the Council”) and its affiliated local Unions 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 (“Signatory Unions”).

1.10 “PVWMA Residents” shall mean persons who have lived within the boundaries of the Pajaro Valley Water Management Agency for a period of not less than one year immediately preceding the date of the award of the contract to perform labor.

1.11 “Tri-County Residents” shall mean persons who maintain a permanent residence for not less than one year immediately preceding the date of the award of the contract to perform labor in Santa Cruz, Monterey, and/or San Benito counties.

ARTICLE II SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to all Contractors/Employer(s) performing work on the Project (including subcontractors at any tier), the City, the Council and the Unions 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 (“Signatory Unions”).

2.2 Project Description: The Agreement shall govern the award of all Construction Contracts for public works, improvement or construction projects, paid for in whole or in part by City of Watsonville funds with a projected construction cost of \$600,000 (six hundred thousand dollars) or more and employing workers in three or more crafts. The City and the Council may mutually agree in writing to add additional components to the Project’s Scope of Work to be covered under this PLA.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, painting or repair of buildings, structures and other works, and related activities for the Project, including

landscaping and temporary fencing that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, temporary HVAC and modular furniture installation to be performed to complete the Project. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.4 This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion unless it is performed by City employees.

2.5 This Agreement covers all on-site fabrication work over which the City, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union that is in effect as of the execution date of this Agreement.

2.6 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. Contractor/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by bid specifications.

2.7 Work covered by the Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: National Agreement of Elevator Constructors, National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, except that Articles IV, XII, and XIII of this Agreement shall prevail and be applied to such work.

2.8 Exclusions

- (1) The Agreement shall be limited to construction work on the Project.

- (2) The Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City which are not included in the Project.
- (3) The Agreement shall not apply to a Contractor/Employer's non construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative and management.
- (4) This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city or other governmental bodies or their contractors; or by public or private utilities or their contractors.
- (5) This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.9 Award of Contracts: It is understood and agreed that the City has the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement.

ARTICLE III EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the City 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, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the AGREEMENT TO BE BOUND in the form attached hereto as Attachment A.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of a construction contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a precondition 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. The obligations of a contractor may not be evaded by subcontracting.

3.4 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. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between

the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including Schedules A's, which are the local Master Agreements of the Signatory Unions having jurisdiction over the work on the Project, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Schedule A shall prevail.

ARTICLE IV WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, City and Contractor/Employers agree that for the duration of the Project:

- (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 employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, handbilling, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor/Employer on any other project. It shall not be considered a violation of this Article if labor is withheld by a Union due to lack of payments to a Trust Fund or failure to make payroll on the Project. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor/Employers on projects other than the Project.
- (2) As to employees employed on the Project, there shall be no lockout of any kind by a Contactor/Employer covered by the Agreement.
- (3) If a Master Agreement between a Contractor/Employer and the Union expires before the Contractor/Employer completes the

performance of a construction contract for work covered under this Agreement and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union and Contractor/Employer. If the new or modified Master Agreement reached between the Union and Contractor/Employer provides that any terms of the Master Agreement shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on the project within seven (7) days after the effective date of the new or modified Master Agreement.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating 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 Robert Hirsch as the permanent arbitrator, or Barry Winograd as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article 12.2. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile or telephone to the party alleged to be in violation and to the Council and involved local Union if a Union is alleged to be in violation.
- (2) Upon receipt of said notice, the City will contact the designated arbitrator or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.
- (3) The arbitrator 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 twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.
- (4) 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 may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

- (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, 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.
- (7) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.
- (8) Should either the permanent or the alternate arbitrator listed above in subsection (1) no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

ARTICLE V PRECONSTRUCTION CONFERENCE

5.1 A preconstruction conference shall be held prior to the commencement of each construction phase. Such conference shall be attended by a representative each from the participating Contractor/Employers and Union(s) and the Project Manager.

5.2 Review Meetings - In order to ensure the terms of the PLA are being fulfilled and all concerns pertaining to the City, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and CEO of the Council or

designated representatives thereof shall meet on a periodic basis during the term of construction.

ARTICLE VI NO DISCRIMINATION

6.1 The Contractor/Employers and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII UNION SECURITY

7.1 The Contractor/Employers recognize the signatory Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by Contractor/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before 8 days of consecutive or cumulative employment on the Project. Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by the law.

7.3 Authorized representatives of the Unions shall have access to the Projects whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII REFERRAL

8.1 Contractor/Employers performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

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

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s). Recognizing the potential shortage of skilled craftspeople, the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

8.5 Employment of City residents. Unless preempted by state or federal law, and in compliance with the hiring hall procedures of the applicable Union, the Contractors shall comply with City Code 7-15.03, Local Hiring Requirement. In recognition of the City's mission to serve the City and Tri-County residents, the Unions and Contractors agree that, to the extent allowed by law and the hiring hall procedures of the applicable Union, and as long as the Residents possess the requisite skills and qualifications, the Contractors shall make good faith efforts to hire qualified Tri-County and PVWMA Residents.

ARTICLE IX BENEFITS

9.1 All Contractor/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions. The Contractor/Employers shall not be required to pay contributions to any other trust funds that are not contained in the published prevailing wage determination to satisfy their obligation under this Article, except that those Contractor/Employers who are signatory to the Master Agreements with the respective trades shall continue to pay all trust fund contributions as outlined in such Master Agreements.

9.2 By signing this Agreement, the Contractor/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds.

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

9.4 Holidays: The only recognized holidays on the Project shall be New Year's Day, Presidents' Day, Martin Luther King Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the Day After Thanksgiving and Christmas Day. If a holiday falls on a Saturday, it shall be recognized on the preceding Friday. If a holiday falls on a Sunday, it shall be recognized on the following Monday. Under no

circumstances shall work be performed on Labor Day, except in the case of an emergency that could result in physical harm or destruction of property.

ARTICLE X
EMPLOYEE GRIEVANCE PROCEDURE

10.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

ARTICLE XI
COMPLIANCE

11.1 It shall be the responsibility of the Contractor/Employers 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 Employers on the Project. The City shall monitor and enforce compliance with the prevailing wage requirements of the state and Contractors/Employers' compliance with this Agreement.

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, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or City 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 five (5) 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 written agreement of the parties.

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, or the representative of the employee, and the representative of the involved Contractor/Employer 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, within five (5) business days thereafter, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Employer(s) or the Manager's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance proceeding, prior to

a Step 2 meeting, the Union(s) shall notify its international union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting. The Project Manager and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not settled in Step 2 within five (5) business days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. The parties agree that if the permanent arbitrator or his alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. William Riker
2. Barry Winogard
3. William Engler
4. Robert Hirsch
5. Morris Davis

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 presiding arbitrator.

The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 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 an agreed upon 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.

Should any of the arbitrators listed above no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

ARTICLE XIII
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

13.1 The assignment of Covered 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 the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

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

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and City will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XIV
APPRENTICES

14.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor/Employer(s) shall employ apprentices of a California State-approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

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

14.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

ARTICLE XV
MANAGEMENT RIGHTS

15.1 The Contractor/Employer(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. 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 provisions in the Master Agreement shall be recognized.

ARTICLE XVI
HELMETS TO HARDHATS

16.1 The Contractor/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 Contractor/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 Contractor/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 XVII
DRUG & ALCOHOL TESTING

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

17.2 The Parties agree to recognize and use the Substance Abuse Prevention Programs and testing procedures contained in each applicable Union's Schedule A.

ARTICLE XVIII
SAVINGS CLAUSE

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

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

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

**ARTICLE XIX
TERM**

19.1 The Agreement shall be included as a condition of the award of construction contracts for the Project.

19.2 The Agreement shall become effective upon execution by the City and the Council.

19.3 The term of any individual Project is from date of award of construction contract to recording of Notice of Completion (inclusive).

CITY OF WATSONVILLE

By _____ Date _____

MONTEREY/SANTA CRUZ BUILDING AND
CONSTRUCTION TRADES COUNCIL, AFL-CIO (COUNCIL)

By _____ Date _____

UNIONS

BRICKLAYERS, TILESETTERS AND ALLIED CRAFTWORKERS LOCAL 3	
By:	Title:
DISTRICT COUNCIL 16 INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES On behalf of: CARPET, LINOLEUM AND SOFT TILE WORKERS, LOCAL 12; GLAZIERS, ARCHITECTURAL METAL, AND GLASSWORKERS LOCAL 1621; PAINTERS & TAPERS LOCAL 272	
By:	Title:
GENERAL TEAMSTERS UNION LOCAL 912	
By:	Title:
HEAT & FROST INSULATORS & ALLIED WORKERS LOCAL 16	
By:	Title:
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, LOCAL LODGE 549	
By:	Title:
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 234	
By:	Title:
INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS LOCAL 8	
By:	Title:
IRONWORKERS LOCAL 377	
By:	Title:
LABORERS LOCAL 270	
By:	Title:

NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL ON BEHALF OF
ITSELF AND ITS AFFILIATED LOCAL CRAFTS

By: Title:

OPERATING ENGINEERS LOCAL 3

By: Title:

OPERATIVE PLASTERERS' AND CEMENT MASONS'
LOCAL 300 OF NORTHERN CALIFORNIA

By: Title:

PLUMBERS AND STEAMFITTERS LOCAL 62

By: Title:

ROAD SPRINKLER FITTERS LOCAL 669

By: Title:

ROOFERS AND WATERPROOFERS UNION LOCAL 95

By: Title:

SHEET METAL WORKERS LOCAL 104

By: Title:

ATTACHMENT A
AGREEMENT TO BE BOUND

[Date]

[Addressee]

[Address]

Re: City of Watsonville Project Labor Agreement -- Agreement To Be Bound

Dear Mr./Ms. _____:

The undersigned party confirms that it agrees to be a party to and bound by the City of Watsonville 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 Agreement To Be Bound, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1 specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a Subscription Agreement(s) for Trust Funds when such Trust Fund(s) require(s) such document(s).

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 City of Watsonville 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 Agreement To Be Bound.

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

CONTRACTOR/SUBCONTRACTOR: _____

Contractor State License No. or Motor Carrier (CA) Permit No.: _____

Name of Authorized Person: (print) _____

Signature of Authorized Person _____

Title of Authorized Person _____

Telephone # of Authorized Person: _____

Address of Authorized Person: _____

RESOLUTION NO. _____ (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WATSONVILLE AND THE MONTEREY/SANTA CRUZ COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL AND DIRECTING THE CITY MANAGER TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

1. That the Memorandum of Understanding between the City of Watsonville and the Monterey/Santa Cruz Counties Building and Construction Trades Council, which Memorandum of Understanding is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the City Manager be and is hereby authorized and directed to execute such Memorandum of Understanding for and on behalf of the City of Watsonville.



Memorandum of Understanding between the City of Watsonville and the Monterey/Santa Cruz Counties Building and Construction Trades Council

WHEREAS, State of California, Department of Apprentice Standards' (DAS) data demonstrate that community members within and around the City of Watsonville show a significant interest in entering the construction trades through apprenticeship; and

WHEREAS, DAS has found apprenticeship training to be an efficient and cost effective path to construction careers because it eliminates the need for expensive recruitment programs; creates a diversified, flexible, and highly-motivated pool of employees with specific desired skills; and reduces costs associated with high labor turnover; and

WHEREAS, DAS has found that employees develop high morale and company loyalty while participating in apprenticeship programs that offer upward mobility through career development, and apprentices adapt to include training of new skills in demand by industry; and

WHEREAS, this year marks the 75th anniversary of the enactment of the Shelley-Maloney Act in California, formalizing the structure and public policy of the State of California to foster and promote apprenticeship by requiring the employment of apprentices on public works jobs constructed with the use of public funds; and

Now, therefore, be it resolved, that the parties agree to take the following initial steps to facilitate the entry of community members, including City residents, into the Construction Industry, and its respective Trades, and to remain and prosper in the trades, with the ultimate goal of developing a pre-apprentice program within the vicinity of the City, thereby benefitting themselves, their families, the community, and the industry.

The City of Watsonville shall:

- 1) **Provide** the BTC with contact information for community groups (civic, education, church, etc.) that advocate for training in careers to better one's life.

- 2) **Work** with the BTC to identify and provide a meeting place from which to carry out the mission of pre-apprenticeship.
- 3) **Advertise** the program throughout the City to the greatest extent possible.

The Monterey/Santa Cruz Counties Building and Construction Trades Council shall:

- 1) **Outreach** into the community to inform community groups as to our mission and their role in its success.
- 2) **Identify**, with the help of the community groups, individuals who may be interested in a construction career.
- 3) **Work** with the individuals to determine their strengths, weaknesses, and probability of success.
- 4) **Educate** individuals as to the nature of the Industry, its Trades, requirements, and opportunities in the area through both presentations and site visits.
- 5) **Recruit** qualified individuals who want to move forward into the Industry by helping with actual job placement and/or entry into an apprenticeship program or Trade.
- 6) **Maintain** a list of individuals who have gone through the program for use toward meeting the City's Local Hire goal. Once a year the Council will give a report to the City as to how the program has performed.

CITY OF WATSONVILLE

MONTEREY/SANTA CRUZ BUILDING AND
CONSTRUCTION TRADES COUNCIL, AFL-CIO
(COUNCIL)

By _____
Carlos J. Palacios, City Manager

By _____

Date _____

Date _____

ATTEST:

By _____
Beatriz Vazquez Flores, City Clerk

APPROVED AS TO FORM:

By _____
Alan J. Smith, City Attorney