



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

**SUBJECT: CWA/PLA TASK FORCE
COMMITTEE
RECOMMENDATIONS**

DATE: October 23, 2017

Approved

Date

10-23-17

RECOMMENDATION

Approve recommendations outlined in the Community Workforce Agreement (CWA)/Project Labor Agreement (PLA) Task Force memorandum, dated September 22, 2017, and the supplemental memorandums dated October 12, 2017 and October 20, 2017 with the following changes:

- A. Allow the first sixty (60) workers employed by non-signatory Contractor/Employer to come from its own core workforce, prior to the imposition of any requirement to hiring workers from the union hall.
 - a. To minimize risk of malfeasance, staff may consider measures to ensure accurate designation of "core" employees, such as by requiring non-signatory subcontractors to identify their core workforce at the time of bidding.
 - b. "Core" employees of non-signatory employers shall not be required to pay union dues and fees.
- B. Permit signatory and non-signatory Contractors/Employers to select and directly hire all supervisors above general foreman.
- C. A non-signatory Contractor/Employer shall compensate any workers for benefits in excess of the basic hourly wage in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to California Labor Code and the City's Prevailing Wage Policy. Contractor/Employer shall either:
 - a. Directly compensate the core worker, or
 - b. Contribute to Contractor/Employer's sponsored benefit plans on behalf of the worker, or
 - c. Contribute to the Union's established employee benefit plan on behalf of the worker.
- D. Exempt small business employers having a subcontract of \$250,000 or less in value.
- E. Direct the City Manager to develop metrics for annual reporting that measure the effectiveness of this Program.
- F. Apply a \$10 million threshold for applicability of CWA/ PLA mandates.

BACKGROUND

I thank the CWA/PLA Task Force for their hard work and efforts to collaborate on a traditionally divisive issue. I appreciate the well-reasoned views of all the participants in this important debate.

We all agree on many important issues here. People working on public projects should receive a fair wage—and prevailing wage protections should apply to all capital projects constructed with taxpayer money. We also share a conviction to broaden opportunities for disconnected youth, the homeless, and adults re-entering the workforce from incarceration, through apprenticeships and other pathways for well-paying construction jobs.

Impacts on Taxpayers

There's more to this decision, however. Last year the Council endorsed—and asked our residents to support—three successful local tax measures. We promised residents that by paying more of their hard-earned dollars to the City, we would address critical infrastructure needs, such as repaving our rapidly-deteriorating streets. We cannot consider the question of whether to enact a public sector PLA mandate in a vacuum, ignoring our responsibility to deliver on the promises we made to our residents who pay the bills.

Ample studies demonstrate that PLAs add to the cost of construction projects, and the research below suggests a margin on the order of approximately 15% higher costs. Beyond our obligation to diligently steward our taxpayers' money, we must also consider whether we our residents must tolerate getting 15% fewer road miles of repaving, seeing 15% fewer parks rehabilitated with capital dollars, or paying 15% more in sewer fees to rebuild our 60-year-old plant. We must ask these questions against a backdrop of a citywide need of more than \$1 billion for capital replacement and repair.

Why do PLA's make costs rise? Because they typically impose mandates on non-union contractors that make public projects uniquely onerous—and therefore financially unappealing—for them. By discouraging bids from non-signatory contractors, cities get fewer bidders on public projects—and specifically lose the very bidders most likely to drive price competition. With fewer cost-competitive bidders, bid prices rise, and cities pay more for the same project.

Economists can identify the additional cost burden of PLA's by using regression analysis, which enables them to control for the variations between projects (e.g., size, macroeconomic environment, uniquely costly construction features, geography, etc.) to isolate the portion of the cost variability attributable to the decision to require PLA's. The econometric research from pools of public projects studied in California, Ohio, Massachusetts, New Jersey, and other states generally affirms the conclusion of the 2017 Beacon Hill Institute study, which “found final construction costs to be significantly higher when a school construction project was executed under a PLA”¹:

¹ Paul Bachman, David G. Tuerck, *Project Labor Agreements and the Cost of School Construction in Ohio*, May 2017

Year	Author	Title	Findings
2001	Ernst & Young	Erie County Construction Projects: Project Labor Agreement Study	Bidder participation has been diminished and will likely effect construction costs in the future. ²
2006	The Beacon Hill Institute	Project Labor Agreements and Financing Public School Construction in Massachusetts	PLAs raise winning bids for school construction by 14% ³
2009	US Government Accountability Office (GAO)	U.S. Department of Energy Idaho Laboratory Project	Labor costs under PLA projects were 17% to 21% above non-PLA projects. ⁴
2009	The Beacon Hill Institute	Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem	PLA raised cost of bidding by 18% in Connecticut, and by 20% in New York ⁵
2010	New Jersey Department of Labor and Workforce Development	Use of Project Labor Agreements in Public Works Building Projects in FY 2008	Cost of PLA projects remain higher than non-PLA projects ⁶
2011	National University System Institute for Policy Research	Measuring the Cost of Project Labor Agreements on School Construction in California	Costs are 13% to 15% higher when PLA is in place ⁷
2017	The Beacon Hill Institute	Project Labor Agreements and the Cost of School Construction in Ohio	PLA raise the base construction cost of building school by 13% ⁸

² Ernst & Young LLP, *Erie County Courthouse Construction Projects: Project Labor Agreement Study*, September 2001

³ David G. Tuerck, Paul Bachman, *Project Labor Agreements and Financing Public School Construction in Massachusetts*, December 2006

⁴ United State Government Accountability Office (GAO), *U.S. Department of Energy Idaho Laboratory Project*, 2009

⁵ David G. Tuerck, Sarah Glassman, Paul Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem*, August 2009

⁶ New Jersey Department of Labor and Workforce Development, *Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008*, October 2010

⁷ Vince Vasquez, Dr. Gale Glaser, Erik Bruvold, *Measuring the Cost of Project Agreements on School Construction in California*, July 2011

⁸ Paul Bachman, David G. Tuerck, *Project Labor Agreements and the Cost of School Construction in Ohio*, May 2017

What Problems Do PLA's Solve?

It appears worthwhile asking ourselves, then, whether PLA's provide a solution to problems that justifies their additional cost. A review of the issues purportedly addressed by PLA's provides some clarity:

- **Fair Wages:** PLA's don't appear necessary to ensure good wages, because City policy already uniformly requires prevailing wage on all public projects, and city staff ably enforces wage violations. For skilled trades such as electrical and mechanical, according to local labor leaders, prevailing wage mandates already provide wages and benefits in excess of \$90/hour.
- **Local Employment:** If it's about ensuring that we fully employ local workers, that hasn't been a problem for the past half-decade, when union halls have been empty. Indeed, the very scarcity of local construction workers has already driven the cost of public construction projects to unprecedented levels—for example, escalation on the recently-approved storm water pump project in Alviso recently cost taxpayers another \$6.8 million on an \$18 million project. Further constraining the potential labor pool will only cost taxpayers more.
- **Labor Peace:** PLA's certainly provide the benefit of avoiding work stoppages, an advantage that appears particularly important in larger, more complex capital projects. Staff's October 19, 2017 Supplemental Memorandum (p. 1) clarifies, however, that the City of San Jose hasn't had problems with work disruptions on its projects. Straightforward road paving contracts do not need the same coordination of work and labor peace requirements to get the job done as a complex billion-dollar airport expansion project.
- **Broadening Opportunity:** CWA's clearly open career pathways for young adults, and support the training and job prospects of older adults who have otherwise limited job skills. Yet those advantages can be secured with a robust CWA requirement on public projects; it begs the question arises why we must also impose a uniform PLA requirement.

Finding Middle Ground

It seems, however, that we can find some middle ground here. Specifically, if we can achieve the "labor peace" benefits of PLA's and CWA's for larger, complex projects, and eliminate the more onerous burdens that eliminate non-signatory competition from bidding processes, we can all win. Neither side of this polarizing debate appears willing to find that middle ground, yet there is no reason why the Council cannot demonstrate the leadership to do so.

By consulting the academic literature and the corroborating observations of local industry participants, there appear a few uniquely burdensome elements in PLA's that we should avoid in San Jose, namely:

- **Prohibiting non-signatory contractor from employing their own workers on a job,** instead forcing them to hire employees through union hiring halls.
- **Mandating non-signatory employers to pay workers' health and welfare benefits to union trust funds for their own workers, who will likely never benefit from those contributions.** Non-signatory contractors that have their own benefit plan, therefore, must pay twice for benefits for the same worker: once to the union plan, and once to the company plan. A non-signatory Contractor employee will rarely become a beneficiary of the union pension trust fund, unless they quit their employer and find union work.
- **Forcing compliance with union work rules having nothing to do with worker safety or health.**

- **Requiring non-signatory employees to pay union dues and fees to work on a PLA project.**

In my conversations with contractors, union leaders, and advocates, I have not found any principled reason justifying these specific elements of the PLA requirement. Labor leaders have told me that they're not legitimate concerns, asserting, for example, that there is no evidence of non-union contractor's double-paying for benefits on their workers. Yet Staff's October 19, 2017 memorandum (p. 5) clearly shows that on one of the only two City-negotiated PLA projects—the Airport expansion—there *was* a non-union contractor double-billed for benefits. So, that problem is real.

The recommendations outlined in this memorandum attempt to eliminate these requirements to ensure bid competition, and to mitigate the cost burdens to our residents, while embracing the benefits that PLA's and CWA's may bring for our most vulnerable residents.

Attached to this memorandum as Exhibit A is a sample Project Labor Agreement that incorporates many of these recommendations. I do not seek Council adoption of this sample agreement, but merely include it to illustrate how such an agreement might operate. Obviously, any actual boilerplate agreement would require substantial public input, discussion, and revision.

Exhibit A – Sample Project Labor Agreement

**CITY OF SAN JOSE
CITYWIDE PROJECT LABOR AGREEMENT**

This Agreement is entered into this _____, 2017, by and between the City of San Jose (hereinafter, the “City”), together with contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the “Agreement To Be Bound” (Addendum A) (all of whom are referred to herein as “Contractor/Employer”), and the Santa Clara and San Benito Counties Building & 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”).

WHEREAS, the timely and successful completion of the Project is of the utmost importance to the City to meet the needs of the City and 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 represented by the Unions signatory to this Agreement and those employed by contractors and subcontractors who are 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 City, the Unions and the Contractor/Employers believe that this Agreement provides the City with the opportunity to establish a partnership with the local construction labor community, the benefits of which are expected to be: project cost containment, the efficient and economical completion of projects to secure optimum productivity, a boost to the economy by generating local construction jobs and related jobs, partnering with responsible companies and Contractor/Employers, and providing for the peaceful settlement of labor disputes and grievances without work interruptions such as strikes, slowdowns or lockouts, thereby promoting the public interest and assuring the timely and economical completion of projects contracted under this Agreement; and

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

WHEREAS, the 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 a Contractor/Employer and the affected Union, 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 contracts 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 the construction contract on the Project; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training and employment of traditionally underrepresented and targeted workers, and recognizing the ability of local preapprenticeship and apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

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

WHEREAS, the San Jose City Council has approved the use of this Agreement.

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

ARTICLE 1 DEFINITIONS

1.1 "Agreement" means this Citywide Project Labor Agreement.

1.2 "Agreement To Be Bound" means the agreement (attached hereto and incorporated herein as Addendum A) which shall be executed by each and every Contractor/Employer as a condition of performing Project Work.

1.3 "Completion" means that point at which there is Final Acceptance by the County of a Construction Contract. For this definition of "Completion," "Final Acceptance" shall mean that point in time at which the engineer for the City has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written acceptance of the work.

1.4 "Construction Contract" means any public works capital improvement contract(s) (including design-bid, design-build, lease-leaseback or other contract under which construction of the Project is done) awarded by the City that are necessary to complete the Project.

1.5 “Contractor/Employer” or “Contractor” or “Employer” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, and their successors and assigns, that enters into a contract with the City 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, and any of its contractors or subcontractors of any tier.

1.6 “Council” means the Santa Clara and San Benito Counties Building & Construction Trades Council.

1.7 “City” means the City of San Jose, its authorized employees, agents, and administrative staff.

1.8 “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.

1.9 “Project” means all City capital improvement construction projects in excess of ten million dollars (\$10,000,000.00) funded in whole or in part with City funds and approved by the City Council in accordance with the City’s Public Works Contracts Policy _____. 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.

1.10 “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.

1.11 “Union” or “Unions” means the Santa Clara and San Benito Counties Building & Construction Trades Council, AFL-CIO, (“the Council”) and any affiliated Union 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”).

ARTICLE 2 SCOPE OF AGREEMENT

2.1 **Parties:** The Agreement shall apply to and is limited to all Contractor/Employer performing or subcontracting work under the Construction Contract(s) on the Project (including subcontractors at any tier), the City, the Council and its affiliated Unions signatory to this Agreement.

2.2 **Applicability:** The Agreement shall govern all Capital Improvement Construction Contracts awarded on City Projects in accordance with the City’s Public Works Contracts Policy _____. For the purposes of this Agreement, the Construction Contract shall be considered complete as set forth in Section 1.3, except when the City’s authorized representative directs a

Contractor to engage in repairs, warranty work, or modifications as required under the Construction Contract with the City.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. 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.

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

2.3.2 This Agreement covers all on-site fabrication work over which the City or Contractor/Employer possess the right of control (including work done for the Project in any temporary yard or area established for the Project.).

2.3.3. The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill or material which are 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. Contractor/Employer, 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.

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

2.4.1 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, staff engineers or other professional engineers, administrative and management personnel.

2.4.2 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, city or other governmental bodies or their contractors; or by public or private utilities or their contractors.

2.4.3 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.4.4 The City shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code.

2.5 Award of Contracts: It is understood and agreed that the City shall have the right to select any qualified bidder for the award of the Construction Contract(s) under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on or after the effective date of this Agreement. A copy of all invitations to bid shall be provided at time of issuance to the Council.

2.6 The Council acknowledges and agrees that the City retains the unilateral right to exempt projects from this Agreement if the City receives less than five (5) bids for a Project, the work is being performed as the result of an emergency including, but not limited to, flood or earthquake reconstruction, or if the City determines, in its sole discretion, that the bid variances from the City's budget are excessive.

ARTICLE 3 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 work under 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 **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a condition of accepting an award of a construction subcontract to agree in writing, by executing the Agreement To Be Bound, 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 their successors and assigns and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer 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 Union and the Contractor/Employer respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the signatory Union and other Contractor/Employers 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/Employer and other Unions party to this Agreement.

3.6 The provisions of this Agreement 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 local, area and/or national union agreement, to the extent there is inconsistency, the provisions of this Agreement shall prevail.

ARTICLE 4 WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

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

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of City because of a dispute on the Project. Disputes arising between the Unions and Contractor/Employer on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on the Project.

4.1.3 If a master collective bargaining agreement expires before a signatory Contractor/Employer completes the performance of work under the Construction Contract and the Union or signatory Contractor/Employer gives notice of demands for a new or modified master collective bargaining agreement, the Union agrees that it will not strike on work covered under this Agreement and the Union and the signatory Contractor/Employer agree that the expired master collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified master collective bargaining agreement is reached. If the new or modified master collective bargaining agreement provides that any terms of the master collective bargaining agreement shall be retroactive, the signatory Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining agreement which are applicable to employees who were employed on the projects during the interim, with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement. This section 4.1.3 shall not apply to Contractor/Employers which are not bound by the collective bargaining agreement.

4.1.4 In the very rare case of nonpayment of wages or trust fund contributions on the Project, the applicable Union shall give the City and the subject signatory Contractor/Employer five (5) business days' written notice when nonpayment of trust fund

contributions has occurred and two (2) business days' written notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the subject signatory Contractor/Employer's or their subcontractor's workforce, during which time the subject signatory Contractor/Employer shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a signatory Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll and to correct the default within the respective time periods shall not be considered a violation of this Article. The City or the prime Contractor may elect to issue joint checks for the disputed delinquencies. Upon written notification to the applicable Union(s) of this election by the City or the prime Contractor, the applicable Union shall promptly order all employees to return to work, or, if within the 120-hour or 48-hour notice period as applicable, shall not withhold labor from Contractor/Employer with which the Union has a dispute over, respectively, payroll or trust fund contributions. If the applicable Union does not receive copies of the joint checks within five (5) business days of notification, the Union may resume withholding of labor without further notice. The applicable Union and subject signatory Contractor/Employer agrees to use its best efforts to resolve any dispute over wage or trust fund contributions in a prompt and expeditious manner in order to minimize any disruption of work of the subject signatory Contractor/Employer, and the City shall have the right to participate in such efforts. This Section 4.1.4 shall not be invoked for a single inadvertent error in the amount of the payment to an individual employee.

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

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:

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator 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 Section 13.3. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the City and the party alleged to be in violation, and to the Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to 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, email 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 an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of 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. If the Arbitrator determines that a violation of this Article has occurred, the breaching party shall, within eight hours of receipt of the decision, take all steps necessary to immediately cease such activities and return to work. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation by the beginning of the next regularly scheduled shift following the expiration of the eight hour period after receipt of the Arbitrator's decision, the party in violation shall pay to the affected party as liquidated damages the sum of one thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

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, 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 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.

ARTICLE 5 PRE-CONSTRUCTION CONFERENCE

5.1 Timing: Upon request of the City or the Council, the Project Manager shall convene and conduct a pre-job conference with the Unions and with representatives of all

involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and other issues as set forth below, at a location mutually agreeable to the Council at least 14 calendar days prior to:

- (a) The commencement of any Project Work, and
- (b) The commencement of Project Work on each subsequently awarded Construction Contract.

5.2 The conference shall be attended by a representative of each participating Contractor and each affected Union and the Council and City may attend at their discretion.

5.3 Pre-Job Conference: The pre-job conference will consist of:

- (a) A listing of each Contractor's scope of work;
- (b) The craft assignments;
- (c) The estimated number of craft workers required to perform the work;
- (d) Transportation arrangements;
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: This Agreement is intended to provide close cooperation between management and labor. To that end, the City and Council shall each designate two representatives to serve on a Joint Administrative Committee ("JAC"), each of whom may designate an alternate. JAC members may invite participation by a Contractor or Union as needed. The Committee shall meet periodically, at the request of any member, to review progress on the Project, and to discuss matters of general concern, such as safety and security. It is intended that the committee serve as a forum to foster communication between management and labor, and to assist the Unions and the Contractors to complete the Project in an economic and efficient manner without interruption, delays or work stoppages. The Committee shall have no authority to review grievances or disputes involving this Agreement, which are subject to the applicable grievance procedure.

5.4.1 Targeted Hiring Agreement (THA) Implementation: The JAC shall help monitor and implement the THA. The Community Workforce Coordinator shall provide the JAC with an annual report and interim reports as requested on key performance indicators of success such as the number of Targeted Workers and Underrepresented Workers who have participated in an Approved Pre-Apprenticeship Program and Program graduation rates.

ARTICLE 6 NO DISCRIMINATION

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

ARTICLE 7

UNION SECURITY AND RECOGNITION

7.1 For purposes and duration of this Agreement only, the Contractor/Employer recognizes the Union as the sole bargaining representative of all craft employees working within the scope of this Agreement on this Project.

7.2 No employee working for a Contractor/Employer covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of this Project work. However, any employee who is a member of a Union, at the time the Union refers the employee, shall maintain that membership in good standing while employed on the Project. The Contractor/Employer shall require all employees working on the Project, to the extent which this Agreement applies, to comply with the applicable Union security provision for the period during which they are performing on-site Project work to the extent, as permitted by law, of rendering payment of representation fees equal to the monthly and working dues as uniformly required of all craft employees while working on the Project and represented by the applicable Union. The Union agrees to inform employees of non-signatory Contractor/Employers working on the Project who are required to pay representation fees, in writing, of their right to not join the Union and their ability and how to object to the full payment of Union dues.

7.3 The Contractor/Employer agrees to deduct union dues or representation fees from the pay of any employee who executes an authorization for such deductions.

7.4 Authorized representatives of the Union shall have access to the Project site whenever work covered by this Agreement is being performed on the Project. However, all authorized representatives of the Union shall comply with the check-in and safety procedures and established by the Project Manager and/or Contractor/Employer prior to visiting the work area.

ARTICLE 8 REFERRAL AND LOCAL WORKFORCE

8.1 The Union shall be the primary source of craft labor employed by signatory Contractor/Employers on the Project. The first workers employed by a non-signatory Contractor/Employer shall come from its core workforce. The Contractor/Employer may initially use up to forty (40) core workers. When a non-signatory Contractor/Employer requires employees for covered work in addition to its initial forty (40) core workers, the Contractor/Employer may obtain workers from any source including, but not limited to, the appropriate Union referral system. Referrals from the Union shall include apprentices. Any reduction in workforce, other than for cause, shall occur in the reverse order of hiring/referral as outlined above. Prior to commencing work on the Project, non-signatory Contractor/Employers shall submit a list of eligible core workers, and proof of eligibility in accordance with Article 8.2, from which the Contractor/Employer may select and substitute core workers during the Project, as provided within this section, to the Project Manager and to the appropriate Union. A non-signatory Contractor/Employer is also required to notify the appropriate Union, in writing, when it elects to employ a core worker and to register that core worker with the appropriate Union

hiring hall, if any, before the core worker begins any work on the Project. To "register," as provided in this section, means to provide the Union the core worker's name and other information necessary to comply with Article 7.2.

8.2 A "core worker" shall include any person employed by a Contractor/Employer for at least thirty (30) days during the twelve months immediately preceding submission of the list of core employees to the appropriate Union. The Contractor/Employer shall submit a computer printout from its payroll records sufficient to establish each core worker's eligibility.

8.3 Signatory Contractor/Employers 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.

8.4 Contractor/Employers shall have the right to reject any applicant referred by the Union.

8.5 In the event that referral facilities maintained by the Union are unable to fill the requisition of a Contractor/Employer for employees within a twenty-four (24) hour period, Saturdays, Sundays and holidays excepted, after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain and retain work persons from any source.

8.6 The Union shall exert their utmost efforts, including assistance from other local unions to recruit sufficient number of local skilled craftpersons to fulfill the labor requirements of the Contractor/Employer.

8.7 Contractor/Employer shall have the right to name call or rehire any existing employees from the Union, as provided for in the appropriate master labor agreement.

8.11 Targeted Hiring: In order to increase construction job opportunities for traditionally underrepresented and targeted workers, the parties agree to comply with the Targeted Hiring Agreement, Addendum B.

ARTICLE 9 WAGES AND BENEFITS

9.1 All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing wage rate determination established by the Department of Industrial Relations pursuant to the California Labor Code. If a prevailing rate increases under state law, the Contractor/Employer shall pay that rate as of its legally effective date. This Agreement does not relieve Contractor/Employer from any independent contractual or other obligation they may have to pay wages in excess of the prevailing wage rate as required.

9.2 Except as provided for in 9.3, Contractor/Employer shall pay contributions to the established employee benefit funds in the amounts designated in the appropriate master labor

agreement, and make all employee authorized deductions in the amounts designated in the appropriate master labor agreements. However, the Contractor/Employer and Union agree that such contributions shall not exceed the contribution amounts set forth in the applicable prevailing wage determination. This Agreement does not relieve signatory Contractor/Employer from making all contributions set forth in those Union agreements.

9.3 A non-signatory Contractor/Employer shall compensate any workers for benefits in excess of the basic hourly wage rate in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to the California Labor Code. Contractor/Employer may: (1) directly compensate the core worker, or (2) contribute to Contractor/Employer sponsored benefit plans on behalf of the worker, or (3) contribute to the Union's established employee benefit plans on behalf of the worker.

9.4 Any travel and/or subsistence payment shall be calculated and paid in accordance with the California Labor Code and the Department of Industrial Relations.

ARTICLE 10 APPRENTICES

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

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

10.3 Consistent with the Master Agreements, there shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

ARTICLE 11 HELMETS TO HARDHATS

11.1 Contractor/Employer and Union 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. Contractor/Employer and Union 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.

11.2 Contractor/Employer and Union agree to coordinate with the Center to participate in 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 12 COMPLIANCE

12.1 It shall be the responsibility of the Contractor/Employer and Union to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Union and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from signatory Contractor/Employer on the Project. To the extent required by law, the City shall monitor and enforce compliance with the prevailing wage requirements of the state, and the Contractors/Employers' compliance with this Agreement.

ARTICLE 13 GRIEVANCE ARBITRATION PROCEDURE

13.1 Project Labor Disputes: All Project labor disputes involving the application or interpretation of a Master Collective Bargaining Agreement to which a signatory Contractor/Employer and a signatory Union are parties, and all disputes involving employee discipline and/or discharge by a signatory Contractor/Employer, shall be resolved pursuant to the resolution procedures of the Master Collective Bargaining Agreement. No employee working on the Project shall be disciplined or dismissed without just cause. All disputes relating to the interpretation or application of this Agreement or any dispute involving discipline or discharge by a non-signatory Contractor/Employer shall be subject to resolution by the Grievance arbitration procedures set forth herein.

13.2 No grievance shall be recognized unless the grieving party (Local Union or District Council, on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within seven (7) calendar days after the event giving rise to the dispute. Timelines may be extended by mutual agreement of the parties.

13.3 Grievances shall be settled according to the following procedures:

Step 1: Within seven (7) calendar 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 seven (7) calendar days of the Step (1) meeting, the Union and the Contractor/Employer involved shall meet within seven (7) calendar days thereafter to arrive at a satisfactory settlement thereof. The Union shall notify its International Union representative(s), which shall advise both parties if it intends on participating in a Step 2 meeting. Meeting minutes shall be kept by both the Contractor/Employer and the Union. In the event that these representatives are unable to

resolve the dispute, either involved party may submit the grievance in writing within seven (7) calendar days to the Business Manager(s) of the affected Union involved, a Labor Relations or managerial representative of the Contractor/Employer involved, and the Project Manager for discussion and resolution.

Step 3: If the grievance is not settled in Step 2, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of the parties. Within seven (7) calendar days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. An arbitrator shall be selected by the alternate striking method from a list of arbitrators supplied by the Federal Mediation and Conciliation Service. 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.

13.4 The decision of the Arbitrator shall be final and 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.

13.5 The time limits specified in any step of the Grievance Procedure may be extended by mutual agreement of the parties. 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.

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

ARTICLE 14 WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

14.1 The assignment of Covered Work will be solely the responsibility of the Contractor/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.

14.2 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.

14.3 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, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.4 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 Prime Employer and the 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 15 MANAGEMENT RIGHTS

15.1 The Contractor/Employer retains full and exclusive authority for the management of its work force for all work performed under this Agreement. This authority includes, but is not limited to the right to:

- (a) Plan, direct and control the operation of all the work.
- (b) Decide the number and types of employees required to perform the work safely and efficiently. The lawful manning provisions of the applicable Schedule A shall be recognized.
- (c) Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required. The Contractor /Employer will determine the competency and qualifications of applicants and employees with the right to hire, reject, or terminate for just cause.
- (d) Assign and schedule work at its sole discretion and determine when overtime will be worked.
- (e) Discharge, suspension or discipline of employees will be handled under Article 13.

The Contractor/Employer shall be the sole judge as to the numbers of foremen and general foremen to be employed, as well as the number of employees to be assigned to any crew, operation or piece of equipment subject to this Agreement and, for signatory Contractor/Employer, subject to the applicable master agreement. Foremen and general foremen shall perform work as directed by the Contractor/Employer.

ARTICLE 16 DRUG & ALCOHOL TESTING

16.1 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.

16.2 Drug and alcohol testing by signatory Contractor/Employers shall be conducted in accordance with the Substance Abuse Prevention Policies set forth in each applicable master agreement. Drug and alcohol testing by non-signatory Contractor/Employers shall be conducted in accordance with the Contractor/Employer's internal policies.

ARTICLE 17 SAVINGS CLAUSE

17.1 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 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 the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the County from complying with all or part of its provisions and the County 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 4.

ARTICLE 18 TERM

18.1 The Agreement shall be included in the Bid Documents as a condition of the award of all Construction Contracts for the Project.

18.2 This Agreement shall become effective on the day it is executed by the City and the Council and shall terminate five (5) years later unless the San Jose City Council and the Council agree in writing to extend the Agreement. This Agreement shall apply to each individual Project in excess of ten million dollars (\$10,000,000.00) approved by the City Council pursuant to Public Works Contracts Policy _____ and shall remain in full force and effect until the Completion of each individually approved Project in accordance with Sections 1.3 and 2.2.

18.3 The City and the Council agree to meet and confer annually, subsequent to approval of this Project Labor Agreement by the City, regarding the status of and experience with the Project covered by the Agreement and any future projects that may be considered for coverage by this Agreement. Any changes to the Agreement shall be set forth in writing and

shall not be effective unless and until approved by the San Jose City Council, the Council and the applicable Unions.

18.4 City staff will develop metrics for annual reporting intended to measure whether this Agreement has been effective for the people of the City of San Jose. The City reserves the right to terminate this Agreement at any time if the annual report indicates that this Agreement is have a negative impact on the City budget.

ARTICLE 19
MISCELLANEOUS PROVISIONS

19.1 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. Faxed or emailed PDF signature pages transmitted to other parties to this Agreement shall be deemed equivalent of original signatures.

19.2 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.3 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

19.4 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.