

**PROJECT LABOR AGREEMENT  
FOR THE CITY OF MILPITAS**

**INTRODUCTION/FINDINGS**

This Project Labor Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Milpitas (hereinafter the “City”), together with its contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the “**Agreement to be Bound**” (**Addendum A**) (hereinafter the “Contractor(s)/Employer(s)”), and the Santa Clara & San Benito Counties Building and Construction Trades Council (hereinafter the “Council”) and its affiliated local Unions that have executed this Agreement (referred to collectively herein as the “Union(s)”).

**WHEREAS**, the City's purpose in entering this Agreement is to efficiently procure public works contracts awarded by the City where the City engineer's estimate of the total cost of the contract to construct the project exceeds \$3 million, as adjusted for inflation;

**WHEREAS**, this Agreement applies only to those qualifying public works contracts in which the initial bid or proposal solicitation occurs during the term of the Agreement;

**WHEREAS**, the purpose of this Agreement is to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the 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(s) covered by this Agreement.

**WHEREAS**, the timely and successful completion of the Project is of the utmost importance to meet the needs of the City and avoid increased costs resulting from delays in construction; and

**WHEREAS**, large numbers of workers of various skills will be required in the performance of construction work on the Project and will be represented by the Unions who are signatory to this Agreement and employed by the Contractors and subcontractors who are also signatory to this Agreement; and

**WHEREAS**, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; 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 may be substantial without an overriding commitment to maintain continuity of work; and

**WHEREAS**, the interests of the general public, the City, the Unions, and the Contractors/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 Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist; 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 non-union workers of different employers were to work side by side on the Project, potentially 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 Contractors/Employers and the Unions, 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 City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways in the construction industry; 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, the City's applicable ordinances, and all state, local and federal laws; and

**WHEREAS**, the City has the right to select the lowest responsive and responsible bidder for the award of public works contracts to which this Agreement is applicable; and

**WHEREAS**, the parties to this Agreement pledge their full good faith and trust to work toward the 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 City-wide Project Labor Agreement .
- 1.2 "Agreement to be Bound" means the agreement (attached hereto as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on the Project.
- 1.3 "City" means the City of Milpitas, California and its governing board, officers, agents and employees, including managerial personnel.
- 1.4 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract and the City has filed a Notice of Completion. For purposes of this definition, "Final Acceptance" means that point in time at which 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.

1.5 “Construction Contract” means a public works contract awarded by the City for the construction of the Project, as defined in Section 1.9. It includes design-build contracts, lease-leaseback contracts or other contracts for construction work on a Project. Construction Contracts do not include design, engineering, or other design related professional services agreements separately entered into by the City.

1.6 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of the Project, and all contractors and subcontractors of any tier.

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

1.8 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.9 “Project” means a project for which the City sends out the initial solicitation of a bid or proposal after the effective date of the Agreement, and that meets all three of the following requirements: (1) it is a public works project for construction awarded by the City (subject to section (c) below), (2) it is paid for in whole or in part out of City funds, and (3) the City's engineer's estimate of the total cost of the Construction Contract(s) to construct it exceeds three million dollars (\$3,000,000).

- (a) In determining the three million-dollar (\$3,000,000) threshold, the City will consider all Construction Contracts required to complete an integrated construction project and will include design costs for a design-build Construction Contract.
- (b) Each year on the anniversary date of the day this Agreement became effective, the parties will adjust up or down the three million-dollar (\$3,000,000) threshold based on the Consumer Price Index for All Urban Consumers — U.S. city average. The adjusted threshold amount will apply to Construction Contracts in which the City solicits bids or proposals after the effective date of the adjusted amount.
- (c) The City and the Building Trades Council may mutually agree in writing to add additional projects to be covered by this Agreement. The term Project applies to all projects as defined in this section, whether used in the singular or plural herein.

1.10 “Project Manager” means the person(s) or entity(ies) designated by the City to

oversee all phases of construction on the Project and the implementation of this Agreement.

1.11 “Rehabilitation Work” means rehabilitation projects and programs undertaken by the City to maintain and update existing public improvements, such as projects for street resurfacing program; bridge rehabilitation; street pavement re-stripping; Americans with Disabilities (ADA) transition program; soundwall & barrier repair and renovation program; curb, gutter, & sidewalk repair program; park renovation and rehabilitation programs sports field and sports court rehabilitation and renovation programs; building repairs, replacement, renovation, and rehabilitation projects; water meter replacement program; hydrant replacement program; sewer pump station rehabilitation program; sanitary sewer assessment program

1.12 “Union” or “Unions” means the Santa Clara & San Benito Counties Building and Construction Trades Council and its affiliated 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.

## **ARTICLE II** **SCOPE OF AGREEMENT**

2.1 **Parties:** This Agreement applies to and is limited to all Contractors/Employers performing work under a Construction Contract on the Project (including subcontractors at any tier), and their successors and assigns, the City, the Building Trades Council, and its affiliated Unions signatory to this Agreement.

2.2 **Applicability:** This Agreement governs all Construction Contracts awarded on the Project. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.4, except when the City directs a Contractor to engage in repairs, warranty work, modifications, or punch list work under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.3 **Covered Work:** This Agreement covers all construction work, not including design phase work, performed under the Project Construction Contract(s), without limitation, all site preparation, construction, alteration, demolition, installation, improvement, remediation, retrofit, 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 that is directly or indirectly part of the Project Construction Contract(s), including, without limitation to the following examples, landscaping and temporary HVAC, exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers 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 to supply materials to the Project.

2.3.1 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established solely for the Project). This Agreement also covers any off-site work, including fabrication, that is traditionally performed by the Unions and is directly or indirectly part of the Project, provided such work is covered by a Master Agreement or local addenda to a national agreement of the applicable Union(s).

2.3.2 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all Project related construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records in accordance with applicable law, within ten (10) days of written request or as required by the bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any 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, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work.

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

2.4.1 This Agreement shall not apply to work performed by the City's own employees as permitted by applicable law.

2.4.2 This Agreement is not intended to, and shall not, affect or govern the award of public works contracts by the City that are not included in the Project and/or excluded from this Agreement by this section, including Rehabilitation Work as defined in Section 1.11 above.

2.4.3 This Agreement shall not apply to a Contractor/Employer's non-construction craft executives, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.

2.4.4 This Agreement shall not apply to any non-Project 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. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.

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

2.4.6 The City is not limited or restricted on the choice of material or the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. The City has the right to purchase

material and equipment from any source, and craft persons covered by this Agreement will handle and install such material and equipment.

2.4.7 This Agreement does not apply to work performed by employees of a manufacturer or vendor that is necessary to maintain such manufacturer's or vendor's warranty or guaranty provided that if the work can be performed by craft workers covered by this Agreement without voiding or limiting such warranty or guaranty, such work will be performed by such qualified craft workers. All such work shall be identified and discussed at the Pre-Job Conferences as provided in Article V of this Agreement.

2.4.8 This Agreement shall not apply to any start-up, calibration, commissioning, testing, integration, repair, maintenance, and operational revisions to systems and/or subsystems, unless such work is covered by a Master Agreement and is done pursuant to the Construction Contract.

2.4.9 This Agreement shall not apply to any emergency work which requires the City to enter into any contract to address an emergency or Act of God endangering public health or safety.

2.4.10 This Agreement does not apply to any Project in which a federal, state, or other public entity with jurisdiction over, or with authority to approve, all or some portion of the Project prohibits the use of project labor agreements on the Project.

2.4.11 This Agreement does not apply to any Project funded in whole or in part by a federal, state or local grant if a condition of that grant prohibits the use of project labor agreements.

2.5 Award/Administration of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of a Construction Contract under this Agreement in accordance with applicable law. The City shall at all times maintain the sole right to administer all such contracts, including, terminating and/or suspending any bid, contract, and/or Project if the City determines such contract action is appropriate. 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. The City shall provide a copy of all such invitations to bid to the Building Trades Council at the time of issuance.

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

Contractor and Union(s) with reasonable notice of any changes it requires pursuant to this Section.

### **ARTICLE III** **EFFECT OF AGREEMENT**

3.1 By executing this Agreement, the Building Trades Council, 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 a Contractor or subcontractor thereunder, all Contractors/Employers agree to be bound by each and every provision of this Agreement and agree to evidence their 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 to said subcontractor and shall require the subcontractor, as a condition of accepting the 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. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a Construction Contract on the Project.

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 shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any dispute between the Union(s) and the Contractor(s) with respect to compliance with this Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s) party to this Agreement.

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

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, 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. To the extent a provision of this Agreement conflicts with a Schedule A, the provision of this Agreement shall prevail. Where a provision of a Schedule A does not conflict with this Agreement, the provision of the Schedule A shall apply.

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

4.1. The Unions, the City, and the Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or any other City facility because of a dispute on the Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) 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 Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of a demand for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement 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 that are applicable to any employee(s) on the Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's 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, of the intent to withhold labor from the Contractor/Employers' or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City or any Contractor contends that any Union has violated this Article, it will so notify in writing the Senior Executive of the Building Trades 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 Building Trades 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 workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

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 the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, the parties shall select the arbitrator from the list in Section 13.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City, the involved Contractor, and the party alleged to be in violation, and to the Building Trades 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 permanent arbitrator named above, or the alternate if the permanent arbitrator is not available, 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 email and 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 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) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article, and the arbitrator's award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator's award ordering the party to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten 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 The arbitrator's 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. The party filing such enforcement proceedings shall give written notice to the other party. In a proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceeding may be *ex parte*. However, such agreement does not waive any party's right to seek or participate in a hearing for a final order of enforcement. Any court order 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 with the above procedure, 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.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

## **ARTICLE V** **PRE-JOB CONFERENCES**

5.1 Timing: The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Building Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

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

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

5.3 The pre-job conference shall include but not be limited to the following subjects:

- (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: In order to ensure the terms of this Agreement are being fulfilled and concerns pertaining to the operation of this Agreement are addressed, the City and the Building Trades Council shall establish a Joint Administrative Committee comprised of an equal number of representatives from the City and the Building Trades Council. The Joint Administrative Committee shall meet on a periodic basis during the term of construction, at least semi-annually, to assess the implementation of this Agreement, review the progress of the Projects, and facilitate harmonious relations between the parties. Both the City and the Building Trades Council shall have the right to call a meeting of the Joint Administrative Committee.

## **ARTICLE VI**

## **NO DISCRIMINATION**

6.1 The Contractors/Employers and the 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 Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement.

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

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

## **ARTICLE VIII** **REFERRAL**

8.1 Contractor(s)/Employer(s) performing construction work on the Project 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(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s), unless such craft construction employee is covered by a Master Agreement.

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, the Contractor/Employer shall be free to obtain the worker(s) from any source. A Contractor/Employer who hires a worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 It is in the interest of the parties to this Agreement to facilitate employment of Local Area residents and to use resources in the Local Area in construction of the Project. It is the objective of the parties that not less than twenty percent (20%) of all hours worked on the Project will be worked by residents of the Local Area, defined as the City of Milpitas. However,

if a Contractor/Employer does not have a sufficient number of City of Milpitas residents to satisfy the goal, the Contractor/Employer may count residents of Santa Clara County toward the goal. The Unions will exert their utmost efforts to recruit sufficient numbers of craft persons to fulfill the referral requirements of the Contractor(s)/Employer(s). To the extent allowed by law, and consistent with the Unions' hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

8.5 Core Workers. A Contractor may request by name, and the Union shall honor, referral of Core Workers who have applied to the Union for Project Work and who demonstrate to the Union dispatcher and provide satisfactory proof (with a copy of such proof provided to the Project Manager) that the worker meets all the following qualifications:

- (a) Appearance on the Contractor/Employer's active payroll for at least the last ninety (90) out of the one hundred and twenty (120) working days prior to award of a Construction Contract;
- (b) Possession of all licenses and certifications required by applicable state and federal law for the Project Work; and
- (c) Has worked at least two thousand (2,000) hours in the appropriate construction craft during the past two years.

8.5.1 The following procedure shall apply for dispatch of Core Workers: The first one (1) worker will be referred from the applicable Union hiring hall out-of-work list, then one (1) Core Worker shall be selected and referred from the hiring hall, followed by one (1) worker from the hiring hall out-of-work list, and this process shall repeat until such Contractor/Employer's requirements are met or until such Contractor/Employer has hired five (5) such Core Workers for that trade or craft, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the applicable hiring hall out-of-work list. In the event the Contractor/Employer reduces the workforce, such reduction will take place in the reverse order starting with a Core Worker and in the same ratios as was applied in hiring. In addition, at the request of the Building Trades Council or Union, Contractor/Employer shall submit a Core Worker list to the requesting party and shall provide payroll records evidencing the worker's qualifications as a Core Worker.

8.5.2 This provision applies only to employers not currently working under a current Master Agreement and is not intended to limit the transfer provisions of the Master Agreement of any trade. As part of this process, and in order to facilitate the contract administration procedures and appropriate fringe benefit fund coverage, all Contractor(s)/Employer(s) shall require their Core Workers to register with the appropriate Union hiring hall prior to the first day of employment on the Project and to comply with Union security on or before the eighth [8th] day of consecutive or cumulative employment on the Project.

8.5.3 Prior to each Contractor performing any Project Work, such Contractor or subcontractor shall provide a list of its Core Workers to the City and the Building Trades

Council. Failure of such a Contractor to do so will result in that Contractor being prohibited from using any Core Workers on that Construction Contract.

## **ARTICLE IX** **WAGES AND BENEFITS**

9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the applicable Master Agreement(s).

9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis upon which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if they were appointed by the Contractors/Employers. The Contractors/Employers agree to execute a separate subscription agreement(s) when such Trust Fund(s) requires such document(s).

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 craft, 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: Holidays shall be as set forth in the applicable Master Agreement and also include any City holidays established by the City.

## **ARTICLE X** **APPRENTICES**

10.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

10.2 Apprentice ratios will be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination.

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

10.4 In order to increase apprenticeship opportunities for traditionally underrepresented and targeted workers, the parties shall comply with the Targeted Hire Addendum attached hereto as **Addendum B**.

## **ARTICLE XI** **HELMETS TO HARDHATS**

11.1 The Contractors/Employers and 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 Contractors/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.

11.2 The Unions and Contractors/Employers 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 the Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

## **ARTICLE XII** **COMPLIANCE**

12.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement. 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 wages or Trust Fund contributions from Contractors/Employers on the Project. Because the Project is a public work subject to the California Labor Code, the City shall ensure that all required state prevailing wage requirements as well as those of this Agreement are incorporated into and enforced through the City's bid and contract documents.

## **ARTICLE XIII** **GRIEVANCE ARBITRATION PROCEDURE**

13.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XIV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article.

13.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or discharged without just cause.

13.3 No grievance shall be recognized unless the grieving party (Union or Building Trades 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 five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

13.4 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 representative of the involved Union or Building Trades Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting or the conclusion of efforts to resolve the grievance at Step 1, 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 Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. This time limit may be extended by mutual consent of both parties. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Building Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, either party may request the dispute be submitted to arbitration within five (5) business days of the Step 2 meeting or the conclusion of efforts to resolve the grievance at Step 2. This time limit may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to arbitration, the representatives shall notify the permanent arbitrator designated in Article IV, or if not available, the alternate arbitrator designated in Article IV, for final and binding arbitration. If the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) 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. Carol Vendrillo
3. Morris Davis

13.5 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.

13.6 The time limits specified at 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 and/or resolution of like or similar grievances or disputes.

13.7 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.

13.8 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union(s) may request that the City withhold and retain an amount from what is due and owing to the Contractor(s) against whom the grievance is filed, or its higher-tier Contractor, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the City until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an arbitrator shall so order.

13.9 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

#### **ARTICLE XIV** **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

14.1 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.

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) calendar 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.

14.5 Each Employer will conduct a pre-job conference with the Building Trades Council prior to commencing work. The City and the Project Manager 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 XV**  
**MANAGEMENT RIGHTS**

15.1 Consistent with the Schedule A agreements, the Contractor(s)/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 all lawful manning provisions in the Master Agreement shall be recognized.

**ARTICLE XVI**  
**DRUG AND 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 shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Schedule A.

**ARTICLE XVII**  
**SAVINGS CLAUSE**

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

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

17.3 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 the Agreement's provisions, and the City accordingly determines that compliance with this Agreement will not be required in order to perform work under a Construction Contract, the Unions will no longer be bound by the provisions of Article IV.

**ARTICLE XIX**  
**TERM**

18.1 This Agreement shall be included in all bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for the Project.

18.2 This Agreement shall apply until the Completion of each Project in accordance with Sections 1.4 and 2.2.

18.3 This Agreement shall become effective on the day it is executed by the City and the Building Trades Council. Prior to each three (3) year anniversary of the effective date of this Agreement, the City and the Building Trades Council shall meet to discuss proposed changes, if any, to the Agreement. Upon mutual written agreement, and subject to the approval of the City Council, the Agreement may be amended to for an additional three (3) years.

**ARTICLE XVII**  
**MISCELLANEOUS PROVISIONS**

19.1 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.

19.2 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 signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

19.3 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.

19.4 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.

19.5 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.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date first herein above written.

CITY OF MILPITAS

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

Name/Title: \_\_\_\_\_

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

SANTA CLARA & SAN BENITO COUNTIES  
BUILDING AND CONSTRUCTION TRADES  
COUNCIL

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

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

Name/Title: \_\_\_\_\_

DRAFT

[UNION SIGNATURES]

DRAFT

**Addendum A**  
**AGREEMENT TO BE BOUND**

[Date]  
[Addressee]  
[Address]

Re: City of Milpitas Project Labor Agreement  
Agreement to be Bound

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

The undersigned confirms that it agrees to be a party to and bound by the City of Milpitas Project Labor Agreement (“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 subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 9.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the 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: \_\_\_\_\_

California Contractor State License No. or Motor Carrier (CA) Permit No.: \_\_\_\_\_

Name of Authorized Person (print): \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

Telephone Number of Authorized Person: \_\_\_\_\_

Address of Authorized Person: \_\_\_\_\_

State Public Works Registration Number: \_\_\_\_\_

**Addendum B**  
**TARGETED HIRE ADDENDUM**

**Purpose.** The Parties to the City of Milpitas Project Labor Agreement (“Agreement”) recognize the need to increase training and career opportunities for underrepresented and targeted individuals in the construction trades through apprenticeship and pre-apprenticeship programs, and to develop a pipeline to ensure the continued availability of skilled, qualified, and readily available construction workers for future construction projects.

Additionally, the Santa Clara and San Benito Counties Building and Construction Trades Council (“Council”) is signatory, with other parties, to the Santa Clara County Construction Careers Collaborative Memorandum of Understanding (“MOU”), which established a pre-apprenticeship program in Santa Clara County that serves as a pipeline into the construction trades for youth and job-seekers.

Additionally, in order to increase construction career opportunities for individuals presently underrepresented in the building trades, the Parties to the Agreement agree to exert their best efforts to recruit, refer, and employ Targeted Workers as apprentices, and to cooperate with the Community Workforce Coordinator to maximize the employment of Targeted Workers on projects covered by the Agreement (“Covered Projects”).

The Parties to the Agreement therefore enter into this Targeted Hire Agreement to participate in the community workforce pipeline as set forth in the MOU, in furtherance of the above-stated purpose.

**I. Definitions.**

All capitalized terms not defined in this Targeted Hire Agreement are as defined in the Agreement.

**Approved Pre-Apprenticeship Program.** An Approved Pre-Apprenticeship Program means the Santa Clara County Trades Orientation Program or an equivalent structured, MC-3 certified career training and placement program or Union-sponsored program, that: (1) serves Underrepresented Workers, and (2) is sponsored by a Building Trades Council-approved community-based organization, a Building Trades Council affiliate, the Building Trades Council itself, the California State Building & Construction Trades Council, or North America’s Building Trades Unions (“NABTU”).

**Community Workforce Coordinator.** Community Workforce Coordinator means the Santa Clara County Trades Orientation Program, or another entity as determined by mutual written agreement between the Building Trades Council and the City. The Community Workforce Coordinator is responsible for maintaining an up-to-date list of Targeted Workers who are available for work and their current contact information, and will provide this list to any of the Parties upon request.

**Participating Contractor.** Participating Contractor means a contractor of any tier that performs \$250,000.00 or more of Covered Work (as that term is defined in Section 2.3 of the Agreement) on a Covered Project. A Participating Contractor is subject to the

Workforce Goal set forth in Section II below. If a contractor performs less than \$250,000 of Covered Work on a Covered Project, that contractor is not subject to the Workforce Goal, but may nonetheless participate voluntarily in the Workforce Goal.

**Targeted Worker.** Targeted Worker means an individual who has completed an Approved Pre-Apprenticeship Program.

**Underrepresented Worker.** An Underrepresented Worker is an individual who, prior to commencing work on a Covered Project, has at least one of the following barriers to employment:

- Veteran of the U.S. military;
- Currently receiving public assistance;
- Emancipated from the foster care system;
- Participating in a re-entry program or formerly incarcerated;
- Homeless, recently housed (within the past twelve months), or at risk of losing their housing;
- Continuously unemployed for the previous one year;
- Has family or household income below the current HUD threshold for Low Income Households in Santa Clara County;
- A survivor of labor trafficking; or
- An At-Risk Youth.

At-Risk Youth means a person between 18 and 24 years old that is either: 1) disconnected from school and/or work; 2) currently or formerly justice engaged; 3) in the foster care system; 4) pregnant/parenting; or 5) homeless.

**II. Workforce Goal.** The Parties have a goal of employing Targeted Worker(s) as Apprentices on all Covered Projects to the maximum extent allowable under applicable hiring hall procedures, Master Agreement(s), and apprenticeship program standards, for at least twenty-five percent (25%) of each Participating Contractor's apprentice hours on a Covered Project. In meeting this goal, priority shall be given to the employment of First Year Apprentices, subject to the needs of the Project.

- a) Nothing herein requires a Participating Contractor either to hire a particular individual or to retain a particular individual in employment. Any individual referred to a Covered Contractor shall be hired and employed at the Participating Contractor's discretion.
- b) A Participating Contractor will receive credit toward the Workforce Goal for hours performed by a Targeted Worker assigned to work on a Covered Project or on another jobsite at the employer's discretion, provided the worker is assigned to the same job classification that would apply to the Targeted Worker on a Covered Project.
- c) Participating Contractors shall properly supervise and pay all apprentices in accordance with the Master Agreements.

- d) Participating Contractors will provide, upon request, certified payroll records and/or records of hours worked by Targeted Workers to the General Contractor (or equivalent), the City, the Building Trades Council, the Unions, or the Community Workforce Coordinator.
- e) Participating Contractors will retain documentation sufficient to demonstrate that they requested a sufficient number of Targeted Worker apprentices to satisfy the Workforce Goal.
- f) **Community Workforce Coordinator Obligations.** The Community Workforce Coordinator will, upon request, refer the names of qualified, available, and willing Targeted Workers to the City, the Building Trades Council, the Unions and Participating Contractors. The Community Workforce Coordinator will also work with City to facilitate outreach events.
- g) **Union Obligations.** To the maximum extent allowable, consistent with the applicable hiring hall procedures, Master Agreement(s), and apprenticeship program standards, the Unions shall:
- Refer Targeted Workers as apprentices to Participating Contractors;
  - Cooperate with the City and community-based organizations designated by mutual agreement of the City and the Building Trades Council in conducting outreach to recruit and refer Underrepresented Worker applicants to Approved Pre-Apprenticeship Programs for which they are qualified or qualifiable;
  - Cooperate with the Community Workforce Coordinator and Participating Contractors in order to satisfy the requirements of this Targeted Hire Agreement; and
  - Facilitate, encourage, and assist Targeted Worker apprentices in their progress and success in joint labor/management apprenticeship programs.
- h) **City Obligations.** The City shall have a designated person or persons responsible for liaising with the Community Workforce Coordinator and conducting at least the following activities, to maximize the employment of Targeted Workers on Covered Projects:
- Notify the Community Workforce Coordinator on a quarterly basis of upcoming Covered Projects;
  - Communicate with the Community Workforce Coordinator regarding Covered Project work schedules, delays, major changes in scope, or other updates affecting labor demand in order to facilitate timely referral of Targeted Workers;
  - Host or coordinate outreach events with Participating Contractors or prospective contractors on Covered Projects;

- Monitor compliance with this Targeted Hire Agreement via reporting requirements in its Construction Contracts.

**III. Satisfying Workforce Goal.** A Participating Contractor meets its obligations under this Targeted Hire Agreement by complying with both of the following:

- (a) Prior to commencing work on the Covered Project, submitting a Targeted Hiring Form to the Community Workforce Coordinator and the Santa Clara & San Benito Counties Building and Construction Trades Council;
- (b) Making best efforts to employ Targeted Workers on all Covered Projects for a least twenty-five percent (25%) of apprentice hours (or equivalent work on another jobsite, provided the apprentice is assigned to the same job classification the apprentice would have been assigned to on the Covered Project). Best faith efforts shall include, at a minimum:
  - 1) Requesting a list of available and qualified Targeted Workers from the Community Workforce Coordinator prior to hiring for Covered Project work;
  - 2) Sponsoring a Targeted Worker into a Union apprenticeship program and employing that Targeted Worker on a Covered Project, if sponsorship is available; or
  - 3) Requesting that the applicable Union(s) provide qualified and available Targeted Workers for employment consideration in a number sufficient to meet the Workforce Goal under Section II.

**IV. Consequences of Non-Compliance.** The Joint Administrative Committee (“JAC”) established by the Agreement shall consider allegations of non-compliance with this Targeted Hire Agreement. If there is a determination by the JAC that a Party failed to meet its obligations hereunder, the issue will be referred to the grievance procedure as provided in Article 13 of the Agreement. At any time during the process of compliance review, the JAC shall have the authority to reach a resolution with the Participating Contractor.

**V. Reporting.** The Building Trades Council and Community Workforce Coordinator shall report to the City on an annual basis regarding the goals of this Targeted Hire Agreement. Such reports will be discussed and approved at JAC meetings before provision to the City. Participating Contractors agree to provide information upon request to the Building Trades Council, the Community Workforce Coordinator, or the City, as needed to assess the effectiveness of this Targeted Hire Agreement.

The City and the Building Trades Council may request to meet and confer regarding additional or revised terms and/or procedures in order to improve the employment of Targeted Worker apprentices on Covered Projects.

Nothing in this Targeted Hire Agreement is intended to conflict with or supersede the reporting requirements imposed by the City on its contractors.

**VI. *Implementation.*** The JAC shall help monitor and implement this Targeted Hire Agreement.

132624\1078496  
38077.01000\33396681.1

DRAFT