

**BERKELEY UNIFIED SCHOOL DISTRICT
PROJECT LABOR AGREEMENT**

The purpose of this Agreement is to promote efficiency of construction operations during the Berkeley Unified School District Measure I New Construction and Modernization Projects (“Projects”) as defined herein, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Projects, while also helping to increase training and employment opportunities for the District’s students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the District’s schools.

WHEREAS, the timely and successful completion of the Projects is of the utmost importance to the Berkeley Unified School District (“District”) to meet the educational needs of the District’s students 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 to be represented by the unions affiliated with the Building and Construction Trades Council of Alameda County (“Unions”) and any other labor organization which is signatory to this Agreement employed by contractors and subcontractors who are signatory to this Agreement; and

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

WHEREAS, the interests of the general public, the District, the Unions and Contractor/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

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

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

WHEREAS, the contracts for construction work on the Projects will be awarded in accordance with the applicable provisions of the Public Contract Code, Education Code and other applicable California law; and

WHEREAS, all of the funding for the construction of the Projects will come from Measure I, passed by the Berkeley residents, and paid for by the Measure I special tax on

the properties owned by Berkeley residents, in contrast to typical California school projects, which are funded through a balance of local and State funds; and

WHEREAS, the District has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects, or to reject all bid proposals, or to use other legal project delivery methodologies; and

WHEREAS, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and has identified the need to prepare its students for lifelong careers and continuing education, recognizing the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

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

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

ARTICLE 1. DEFINITIONS

1.1 “Agreement” means Project Labor Agreement.

1.2 “District” means the Berkeley Unified School District, its employees, agents, and administrative staff under its Superintendent.

1.3 “Contractor/Employer(s)” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and enters into a contract with the District not excluded in this Agreement or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Projects under contract terms and conditions approved by the District and which incorporate the Agreement.

1.4 “Construction Contracts” means the public works contracts not excluded in this Agreement which will be signed by the District and which are necessary to complete the Projects.

1.5 ”Projects” is defined to include all phases of the construction of new facilities and upgrading and repair to all existing facilities covered in construction contracts executed by the District and that are covered by this Agreement in Section 2.2.

1.6 “Union” or “Unions” means the Building and Construction Trades Council of Alameda County, AFL-CIO (“Council”) and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement (“Signatory Unions”).

1.7 “Project Manager” means the person(s) or business entity(ies) designated by the District to oversee all phases of construction on the Projects and to oversee the

implementation of this Agreement and who works under the guidance of the District's Authorized Representative.

1.8 "Chief Facilities Officer" means the Chief Facilities Officer for the Berkeley Unified School District.

1.9 "Master Agreement" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "Berkeley Resident" for purposes of this Agreement means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resided within either the boundaries of the Berkeley Unified School District or the Berkeley City Limits both on the date of such certification and the effective date of this Agreement.

1.11 "District Graduate" is a person who has graduated from the Berkeley Unified School District.

1.12 "First Period Apprentice" is a first period apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program.

1.13 "General Contractor" means the entity with overall project schedule responsibility, such as a General Contractor, Construction Manager, Lease-Leaseback partner, Prime Contractor, etc.

1.14 "Allocated" regarding project funding means the point in time in which a project is defined enough to where a preliminary budget is created and established in the Measure I program budget tracking system managed by the Program Manager.

ARTICLE 2. SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to all Contractors/Employer(s) performing construction contracts on the Projects, the District and the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions"). It is agreed that liability under this Agreement is several and not joint.

2.2 Project Description:

2.2.1 The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District for the Project, which are those construction contracts funded in whole or in part by Measure I General Obligation

bonds, and which were let for bid, or for which RFQ's or RFP's were issued, after the date of this Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities.

2.2.2 Exempt Work. However, the Parties acknowledge that the District may utilize five percent (5%) of Measure I proceeds under a special program to be established by the District and the City of Berkeley to facilitate a transition for emerging Berkeley businesses to succeed in performing work under the Project and to assist the District in making a transition to utilization of the Agreement ("Exempt Work"). The District will ensure that no more than ten percent (10%) of the work of any craft be executed under the Exempt Work, and the Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision. Either Party to the agreement can call to meet and confer regarding the implementation of this section 2.2.2.

2.3 Project Labor Disputes: All project labor disputes involving the application or interpretation of a Master Agreement to which a signatory Contractor/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of the Project Stabilization Agreement shall be subject to resolution by the Joint Administrative Committee and the grievance arbitration procedure set forth in Article 13.

2.4 Covered Work:

2.4.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation, pipelines, site preparation, construction survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

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

2.4.3 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to and dedicated to the Projects, and at any batch plant(s) constructed or used solely to supply materials to the Projects, when those sites are dedicated exclusively to the Projects. This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.) Additionally, it is agreed hereby that any off-site work, including

fabrication necessary for the Projects defined herein, that are covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.4.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of written request or as required by bid specifications.

2.4.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.5 Work covered by the Project Stabilization Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors, except that Articles 4, 13, and 14 of the Project Labor Agreement shall prevail and be applied to such work.

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

2.6.1 Work that has been historically performed by public utilities is not intended to be covered by this Agreement even if such work is funded all or in part by local bond funds.

2.6.2 The award of construction contracts funded in whole by Measure AA General Obligation bonds, or funded in whole by any currently existing General Obligation bonds other than those for Measure I.

2.6.3 The Exempt Work identified in section 2.2.2 of this Agreement.

2.6.4 Work, independent of job-site construction work contracts, performed by the District related to the purchase or lease of specialized equipment and

work performed by manufacturers' representatives, office equipment vendors, or District personnel.

2.6.5 All off-site manufacture, warehousing and handling of materials, equipment or machinery except when covered by prefabrication provisions included in a Schedule A agreement on the effective date of this Agreement.

2.6.6 All employees of the design team or other consultants to the District not performing craft or manual labor within the scope of this Agreement.

2.6.7 Off-site maintenance of leased equipment and onsite supervision of such work.

2.6.8 The Agreement shall not apply to a Contractor/Employer's executives, managerial employees, engineering employees and supervisors (except those covered by existing building and construction trades collective bargaining agreements), and office and clerical employees.

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

ARTICLE 3. EFFECT OF AGREEMENT

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

3.2 By accepting the award of a Construction Contract for the Projects, 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 Letter of Assent 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 the Construction Contract, the Contractor/Employer(s) shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

ARTICLE 4. WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

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

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 Projects, at the job site of the Projects or at any other facility of District because of a dispute on the Projects. Disputes arising between the Unions and Contractor/Employers on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 As to employees employed on the Projects, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

4.1.3 If a master collective bargaining agreement between a Contractor/Employer and the Union expires before the Contractor/Employer completes the performance of the Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified master collective bargaining agreement, the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired master 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 between the Union and Contractor/Employer. If the new or modified master collective bargaining agreement reached between the Union and Contractor/Employer provides that any terms of the master collective bargaining agreement shall be retroactive, the 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.

4.2 In the case of nonpayment of wages and trust fund contributions on the Projects, the Union shall give the District and the Contractor/Employer(s) 5 business day notice of the intent when nonpayment of trust funds has occurred and three (3) business days 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 Contractor/Employer(s)' or their subcontractor's workforce, during which time the Contractor/Employer shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor/Employer who has failed to pay his/its fringe benefit contributions or failed to meet his/its weekly payroll shall not be considered a violation of this Article.

4.3 Any party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity, when a breach of this Article is alleged to have occurred:

4.3.1 A party invoking this procedure shall notify, by email, facsimile or telephone, the party alleged to be in violation, the District representative, and the Building and Construction Trades Council of Alameda County and the involved local Union if a Union is alleged to be in violation.

4.3.2 Upon receipt of said notice, the recipient party shall notify William Riker, as the designated arbitrator, or, Jerrilou Cossack, as the designated alternate arbitrator under this procedure. In the event that the designated arbitrator is unavailable at any time, the designated alternate arbitrator will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article 13.2. The designated arbitrator named above or his/her alternate will designate a place for, schedule and will convene a hearing within twenty-four (24) hours if it is contended that the violation still exists. It is further understood, that the Joint Administrative Subcommittee (defined in Article 13.2), shall review the designated arbitrators named above, prior to the award of the first construction contract, and thereafter annually. The purpose of this review is to either confirm or re-designate the arbitrators from the list of arbitrators in Article 13.2.

4.3.3 The Arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator. 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 retain jurisdiction to determine compliance with this Article and to establish the appropriate sum of damages, which shall not be less than one thousand dollars (\$1,000.00) or more than fifteen thousand dollars (\$15,000.00) for each shift.

4.3.4 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.

4.3.5 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.

4.3.6 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.

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

4.3.8 If, after final order by any Court of competent jurisdiction, the offending party continues to breach the terms of Article 4 of this Agreement, the non-offending party shall have the option to recover monetary damages associated with the breaching party's failure to comply with the Agreement and court order, including but not limited to delay damages and escalation costs.

ARTICLE 5. PRE-CONSTRUCTION CONFERENCE

5.1 A pre-construction conference shall be held prior to the commencement of the Construction Contract. Such conference shall be attended by a representative each from the participating Contractor/Employer(s), including all subcontractors, Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will be held at least 7 days before the work commences. All meetings shall be held either at the District's offices at 1720 Oregon Street, Berkeley, CA or at the offices of the Building Trades Council of Alameda County, 8400 Enterprise Way, Oakland, CA 94621.

ARTICLE 6. NO DISCRIMINATION

6.1 The Contractor/Employer(s) and Union(s) agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), or any other basis made illegal by law against any employee, or applicant for employment, on the Projects.

ARTICLE 7. UNION SECURITY

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

7.2 No employee covered by this Agreement can be required to join any Union as a condition of being first employed on Projects. Each employee covered by this Agreement shall be subject to the Union's valid Union security provisions contained in the Schedule A of the craft in which he is employed; provided however, that "core workforce" employees as defined in Article 8.1 and employees employed pursuant to Article 8.6 may, at their option, refrain from joining a Union as may otherwise be required by such Union security provision; provided however, that such employees shall nevertheless be required, for the period during which they are performing work under the Agreement, to pay such monthly dues, service dues, "working dues" or administrative dues as are uniformly required of employees working under this Agreement and subject to the full Union security provisions of the applicable Schedule A.

7.3 All employees who are employed by the Contractor/Employer(s) on the Projects shall, as a condition of employment, on or before the eighth (8th) day of

consecutive or cumulative employment on a Construction Contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non -union employees from joining the local union.

7.4 Authorized representatives of the Union(s) shall have access to the Projects whenever work covered by this Agreement is being, has been or will be performed on the Projects.

ARTICLE 8. REFERRAL

8.1 The Union(s) shall be the primary source of all craft labor employed on the Projects. However, in the event that a Contractor/Employer has his/her own Core workforce, the Contractor/Employer(s) may request by name, and the local shall honor, referral of persons who demonstrate the following qualifications:

8.1.1 possess any license required by state or federal law for the Project work to be performed;

8.1.2 have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;

8.1.3 were on the Contractor/Employer(s)' active payroll for at least sixty (60) out of the one hundred (100) calendar days prior to the contract award;

8.1.4 have the ability to perform safely the basic functions of the applicable trade; and

8.1.5 are a resident of the Green Corridor.

8.2 The Union will refer to such Contractor/Employer(s) one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer(s)' "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer(s) crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor/Employer(s)' work the ratio shall be maintained and when the Contractor/Employer(s)' workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractor/Employer(s) signatory to a Local, Regional, and/or National collective bargaining agreements with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the Master Agreement of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s) as they relate to such Contractor/Employer(s), except the provisions limiting the number of core employees

and the provisions regarding the use of Berkeley Residents as core employees.

8.3 Contractor/Employer(s) shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions when such procedures are not in violation of Federal law.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer(s) for employees within a forty-eight (48) hour period, weekends and holidays excluded, after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. The Contractor/Employer(s) shall immediately notify the appropriate Union of the identity, including name, address, telephone number and social security number, of any such person(s) hired from an alternative source.

8.5 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s), and document such efforts as required.

8.6 Subject to the limitation of applicable law, the parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the City of Berkeley, to meet the needs of the Projects and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures of the Unions, of qualified Berkeley Residents, as journeymen and apprentices on the Projects and entrance into such apprenticeship and training programs as may be operated by the signatory Unions consistent with the applicable Apprenticeship Program's State-approved Standards.

ARTICLE 9. BENEFITS

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

9.2 By signing this Agreement, the Contractor/Employer(s) adopt and agree to be bound by the written terms of the legally established trust agreements, as described in 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds.

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Projects shall be governed by the

Master Agreement of the respective crafts, copies of which shall be on file with the District, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered in this Agreement, the Master Collective Bargaining Agreement will prevail. When a subject is covered by both the Master Collective Bargaining Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

**ARTICLE 10.
EMPLOYEE GRIEVANCE PROCEDURE**

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

**ARTICLE 11.
COMPLIANCE**

11.1 It shall be the responsibility of the Contractor/Employer(s) and Unions 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 Unions and/or employee benefit trust funds to collect delinquent trust fund contributions from Employers on the Projects. The District shall monitor and enforce compliance with the prevailing wage requirements of the State and Contractor/Employer(s)' compliance with this Project Stabilization Agreement.

**ARTICLE 12.
JOINT ADMINISTRATIVE COMMITTEE**

12.1 The parties to this Agreement shall establish a nine (6) person Joint Administrative Committee. This Committee shall be comprised of three (3) representatives selected by the District and three (3) representatives selected by the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

12.2 The Joint Administrative Committee shall meet as requested by the Parties to review the implementation of the Agreement and the progress of the Projects. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Committee for review and recommendation.

**ARTICLE 13.
GRIEVANCE ARBITRATION PROCEDURE**

13.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or 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 signatory party with whom it has a dispute within ten (10) 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. The time limits in Section 13.1 may be extended by mutual agreement (oral or written) of the parties.

13.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may submit it within three (3) business days to the Joint Administrative Subcommittee (consisting of one District and one Union representative of the Joint Administrative Committee), which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Joint Administrative Committee), to confer in an attempt to resolve the grievance. If the dispute is not resolved within such time five (5) business days after its referral or such longer time as mutually agreed upon, it may be referred within five (5) business days by either party to Step 3.
- Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties cannot mutually agree on the selection of an arbitrator, the arbitrator shall be selected by the alternate striking method from the following list: Jerrilou Cossack, Thomas Angelo, William Riker, Larry Kay, and Robert Clark. 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. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 13.2

may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE 14. 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 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 Employer and Union parties to this Agreement.

14.3 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, D.C., at the request of any party to a jurisdictional dispute under this Agreement, an Arbitrator shall be chosen by the procedures specified in Article 5, 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 applicable Building and Construction Trades Council. 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. Individuals violating this Section shall be subject to immediate discharge.

14.5 Each Employer shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the Owner 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(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized.

**ARTICLE 16.
SAVINGS CLAUSE**

16.1 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.

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.

If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the unions will no longer be bound by the provisions of Article 4.

**ARTICLE 17.
TERM**

17.1 The Agreement shall be included as a condition of the award of all construction contracts for the Projects.

17.2 The Agreement shall continue in full force and effective until the completion of the Projects. However, upon the fifth anniversary of the execution of the Agreement, the District shall have the unilateral right to terminate the Agreement without cause therefore. However, if the District does not exercise its right to terminate the Agreement within thirty (30) days of the fifth anniversary of the execution of the Agreement, then, the Agreement shall continue in full force for an additional five- year term, at which time the District will again be afforded the unilateral right to terminate the Agreement without cause, to be exercised under the same conditions as the initial right to terminate.

ARTICLE 18.
LOCAL BERKELEY HIRE REQUIREMENTS

18.1 The Parties agree to a goal that Berkeley Residents, and especially District Graduates, will perform a minimum of 30% of the hours worked, on a craft by craft basis on the Projects. In the event that no Berkeley residents or District Graduates are available to fulfill the 30% local hire requirement, the next tier of residents will come from the Green Corridor. This includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro. The Contractor/Employer(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of District Graduate and Berkeley Resident workers and in their hiring hall procedures to facilitate this 30% goal on the Projects.

18.2 Should any of the contractors performing work on the Projects fail to meet this 30% goal and fail to demonstrate "good faith" efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract's 10% retention will be held until such time that this failure is remedied. Acceptable remedies to correct continued failure may include, but not be limited to the following remedies, as determined by the Joint Administrative Committee (as established in Section 12):

18.2.1 Classification as a non-qualified bidder on future District projects;

18.2.2 Commitment, with documentation, to employ District Graduates, Berkeley residents or Green corridor Residents on non-District projects for a determined number of work hours; and

18.2.3 Bringing in District Graduates and Berkeley residents as new apprentices and continuing their employment for up to 12 months.

18.3 A Contractor/Employer(s) who has employed a District Graduate for up to six months preceding the start of the District project for a minimum of at least 100 hours per month and has the ability to perform safely the basic functions of the applicable trade may receive credit for 50% of these hours towards the 30% goal. A Contractor/Employer may also receive credit for 50% of the documented hours performed by District Graduates or Berkeley Residents on the Contractor's non-District projects, when such hours are concurrent with the Contractor's work on the Projects.

18.4 The maximum total combined credit that can be applied for in 18.3 is half of the 30%.

18.5 The contractors may use District student intern's hours for credit towards the local hiring goals. Internships for credit may be up to three (3) interns per year at up to 3000 hours per year per intern.

18.6 Should any Contractor/Employer performing work on the Projects exceed the 30% local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, televised school board meeting for their efforts at the completion of

their contract scope.

18.7 Apprenticeship Provision:

18.7.1 The Prime Contractor and their sub-contractors will be required to hire 1 District Graduate, Berkeley Resident or Berkeley Student as a first period apprentice for every 5 million dollars of total construction cost. There can be no more than 2 entry-level apprentices credited for each craft, and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The District will refer names of former students or recent graduates to the Union and Contractors and the Unions will agree to cooperate with the Contractor in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements. The failure of the District to refer names and/or the Union to provide those apprentices upon request will relieve the Prime contractor of this District Graduate/Berkeley Resident/Student first period apprentice hiring responsibility.

18.7.2 The General Contractor , or subcontractor who hires such Berkeley Resident/Student First Period Apprentices shall be credited with two work hours towards the 30% local work hours, for each hour worked by the first period Berkeley Resident/Student apprentices.

18.7.3 The intent of this provision is to work the new apprentices to the full extent permissible by state law and the Master Agreements. Failure of the General Contractor and their subcontractors to maintain qualified apprentices on the job will be subject to Division of Apprenticeship Standards penalties, and further penalties as determined by the Joint Administrative Committee.

18.8 Career Technical Education Program. Both the District and the Building Trades agree that an active school to career program in the trades can be a benefit to many Berkeley students. The Building Trades and the District agree to collaborate in the development and implementation of a Construction Career Technical Education program.

The Building Trades agree to support the District's programs by doing the following:

1. Assisting the Green Academy by:
 - a. Providing speakers at least twice a year,
 - b. Escorting field trips to existing apprenticeship centers at least three times a year, per the school's schedule,
 - c. Mentoring students. Identify at least five individuals who will serve as mentors,

- d. Internships for students. The Unions will explore providing internships. The Unions will assist the program in identifying willing contractors and suppliers to provide additional internships.
2. Actively participate in the District's CTE Advisory Committee which may meet as frequently as once per month.
3. Career Fairs. Agree to actively participate with multiple trade booths in two career fairs per year.
4. Actively participate in helping to create and provide hands-on training for, pre-apprenticeship programs set up by the District for adult school and b-tech students. Such participation may begin slowly, but it is envisioned that the trades will spend no less than 100 hours per year in assisting this program.
5. Assist in exploring the feasibility of the District students participating in local pre-apprenticeship programs, such as the Cypress-Mandela program. Support the District efforts with this program if a mutual agreement with such a program can be worked out.

The parties agree to meet around the implementation of the program at the discretion of the District.

ARTICLE 19. MISCELLANEOUS PROVISIONS

19.1 **Integration.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

19.2 **No Representations or Warranties.** Each of the parties acknowledges no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.

19.3 **Modification.** Each of the parties acknowledges and agrees that this Agreement may be amended only by a writing signed by all of the parties.

19.4 **Interpretation.** Each of the parties acknowledges and agrees that this Agreement is an accord and satisfaction to be construed as whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.

19.5 **Forum.** Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda in accordance with the procedures set forth in this Agreement.

19.6 Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of California and the Federal laws of the United States of America as applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California.

19.7 No Attorneys Fees. No party shall be entitled to recover an award of attorneys fees or costs with respect to any action or proceeding seeking relief under this Agreement.

19.8 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

19.9 Warranty of Authority. 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 by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.10 Ratification by Governing Board. This Agreement shall not be binding on the District until it is ratified by the Governing Board at a publicly noticed Governing Board meeting.

Berkeley Unified School District

By: _____
John T. Selawsky, Clerk
Building and Construction Trades Council of Alameda
County, AFL-CIO (Council)

Date: _____

By: _____
Andreas Ferreira Cluver
Secretary-Treasurer

Date: _____

Asbestos Workers, Local 16

Boilermakers, Local 549

By: _____
Steve Steele

By: _____
Dale Bilyeu

Bricklayers & Allied Craftsmen, Local 3

Roofers and Waterproofers, Local 81

By: _____
Tom Spear

By: _____
Doug Ziegler

District Council of Plasterers and
Cement Masons of Northern California

By: _____
Mike Moylan

Plasterers, Local 66

By: _____
Chester Murphy, Jr.

United Association of Steamfitters,
Pipefitters, Plumbers & Gasfitters, Local
342

By: _____
Jay Williams

Hod Carriers, Local 166

By: _____
Sam Robinson

Laborers, Local 304

By: _____
Fernando Estrada

District Council Ironworkers of the State
of California and Vicinity

By: _____
Joe Standley

Sheet Metal Workers, Local 104

By: _____
Bruce Word

Cement Masons, Local 300

By: _____
Mike Moylan

Electrical Workers, Local 595

By: _____
Victor Uno

Laborers District Council on behalf of,
Hod Carriers, Local 166, Laborers, Local
67, Laborers, Local 304

By: _____
Oscar de la Torre

Laborers, Local 67

By: _____
Victor Para

Operating Engineers, Local 3

By: _____
Russ Burns

Ironworkers, Local 378

By: _____
Jeff Mcuen

Sign Display & Allied Crafts, Local 510

By: _____
Joseph Toback

Sprinkler Fitters, Local 483

By: _____
Stan Smith, Jr.

Elevator Constructors, Local 8

By: _____
Pat McGarvey

District Council 16, Painters & Allied Trades on behalf of Auto & Marine Painters, Local 1176, Carpet & Linoleum Layers, Local 12, Glaziers, Architectural Metal & Glassworkers, Local 169, Painters & Tapers, Local 3

By: _____
Doug Christopher

Teamsters, Local 853

By: _____
Rome Aloice

United Association of Journeyman & Apprentices of the Pipe Fitting Industry, Underground Utility / Landscape, Local 355

By: _____
Dennis Soares

Northern California Regional Council of Carpenters on behalf of, Carpenters, Local 713, Carpenters, Local 2236, Lathers, Local 68L, Pile Drivers, Local 34, Millwrights, Local 102

By: _____
Robert Alvarado

Addendum A: Agreed To Letter of Assent

[Addressee]
[Address]
[City and State]

Re: Berkeley Unified School District Measure I New Construction and Modernization
Projects, Project Stabilization Agreement.

Letter of Assent for _____
(Projects Name)

Dear Mr. /Ms. _____:

The undersigned party confirms that it agrees to be a party to and bound by the Berkeley Unified School District Measure I New Construction and Modernization Projects, Project Stabilization Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

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

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

CONTRACTOR/SUBCONTRACTOR: _____

Project Contract Number: _____

California State License Number:
or Motor Carrier (CA) Permit Number _____

Name and Signature of Authorized Person: _____
(Print Name)

(Title)

(Signature) (Date)