

BERKELEY UNIFIED SCHOOL DISTRICT PROJECT LABOR AGREEMENT

The purpose of this Agreement is to promote efficiency of construction operations during Berkeley Unified School District 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, 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 “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 resides 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.

1.3 “Construction Contract(s)” means the public works contracts not excluded by this Agreement and which are necessary to complete the Projects.

1.4 “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 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.

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

1.6 “District Graduate” is a person who has graduated from the Berkeley Unified School District.

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

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

1.9 “New Apprentice” is an apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program, and

is either newly enrolled in the program or has been enrolled for two (2) years or less.

1.10 "Project(s)" 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. Project work will not be split, divided or otherwise separated for the purpose of avoiding application of this Agreement.

1.11 "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.

1.12 "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").

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: The District will apply the Agreement as a contract specification to the award of Construction Contracts identified by the District for the Projects, which are:

- a) District projects where the engineer's estimate of the total cost of the project exceeds seven hundred and fifty thousand dollars (\$750,000); and
- b) District projects where the engineer's estimate of the total cost of the project does not exceed seven hundred and fifty thousand dollars (\$750,000) but the District's governing board has voted to apply the Agreement.

2.2.1 Construction Contracts include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities.

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.

2.4.2 This Agreement shall apply to all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.4.3 This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after completion pursuant to a Construction Contract, unless it is performed by District employees. Any warranty work properly excluded pursuant to Section 2.4.6 will not be considered Covered Work.

2.4.4 This Agreement shall apply to 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, this Agreement covers any off-site work, including fabrication necessary for the Projects defined herein, that are covered by a current Master 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.

2.4.5 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.

2.4.6 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), such work 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 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 4, 13 and 14 of this Agreement shall apply to such work.

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

2.6.1 Any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. However, 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.

2.6.2 All off-site manufacture, warehousing and handling of materials, equipment or machinery except when covered by a Master Agreement.

2.6.3 All employees of the design team or other consultants to the District not performing Covered Work.

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

2.6.5 The Agreement shall not apply to a Contractor/Employer's executives, managerial employees, engineering employees and supervisors (except those covered by existing Master Agreements), and office and clerical employees.

2.6.6 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 a Project, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **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 a 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.

3.4 The District has the right to select any qualified bidder for the award of Construction Contracts under this Agreement. The bidder need only be willing, ready, and able to execute and comply with this Agreement.

3.5 The provisions of this Agreement, including the Master Agreements 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 Master Agreement, the provision of this Agreement shall prevail. Where a provision of a Master Agreement does not conflict with this Agreement, the provision of the Master Agreement shall apply.

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 a 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 Council and the involved local Union if a Union is alleged to be in violation.

4.3.2 Upon receipt of said notice, the parties shall meet and confer to select an arbitrator. 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: William Riker, David Weinberg, Carol Vendrillo, Morris Davis, Robert Hirsch. 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. The arbitrator selected by the parties 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.

4.3.3 The Arbitrator shall notify the parties by email 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 Section 4.1 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 4.3.4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.3.6 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.

PRECONSTRUCTION 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 or at the offices of the Council, or by telephone or video conference.

**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 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union contractor to join a Union or to pay dues or fees to a Union as a condition of working on the Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

^{7.3} 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 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, defined as Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro.

8.2 The Union will refer to such Contractor/Employer 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).

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. In the event that Berkeley Residents are insufficient to fully staff the project, the Unions are encouraged to reach out to and utilize residents of the County of Alameda.

ARTICLE 9. WAGES AND 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 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.

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 Joint Administrative Committee. This Committee shall be comprised of two (2) District representatives and two (2) Union representatives. 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 (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 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: William Riker, David Weinberg, Carol Vendrillo, Morris Davis, Robert Hirsch. 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. 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 this 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.

13.3 In the event any of the arbitrators named in Section 13.2 or in Section 4.3.2 are no longer available to conduct arbitrations, the District and the Council shall mutually agree to a replacement.

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 Unions and the Employers that are 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 that are 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. 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 work for a Project. The District 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 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.

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

16.3 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 This Agreement shall become effective upon execution by the District and the Council, and shall continue in full force and effect for a period of five (5) years. At least six (6) months prior to the expiration of the Agreement, the District and the Council shall meet and confer and make best faith efforts to agree to extend or amend the Agreement, with any such extension or amendment to be mutually agreed and ratified by the District's Board of Trustees.

ARTICLE 18. APPRENTICES

18.1 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.

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

18.3 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.

ARTICLE 19. HELMETS TO HARDHATS

19.1 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.

19.2 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 20. LOCAL HIRING AND CAREER TECHNICAL EDUCATION

20.1 Local Hiring: The Parties agree to a goal that Berkeley Residents, and especially District Graduates, will perform a minimum of thirty percent (30%) of the hours worked on the Projects. In the event that no Berkeley Residents or District Graduates are available to fulfill the thirty percent (30%) goal, the next tier of residents will come from the Green Corridor or will have graduated from a high school located in the Green Corridor, defined as Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro. Double credit will be given for District Graduates toward this thirty percent (30%) goal. 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 Graduates and Berkeley Residents and in their hiring hall procedures to facilitate this goal on the Projects.

20.1.1 Should any Contractor fail to meet the goal set forth in Section 20.1 and fail to demonstrate “good faith” efforts to do so through a specific submittal process to be included in their contractual requirements, the Contractor must remedy the failure as instructed by the District. 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 Article 12):

- Classification as a non-qualified bidder on future District projects;
- 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
- Hiring District Graduates and Berkeley Residents as new apprentices and continuing their employment for up to 12 months.

20.1.2 A Contractor/Employer who employs a District Graduate on a concurrent project not covered by this Agreement for a minimum of 100 hours per month may receive credit up to half of the thirty percent (30%) goal.

20.1.3 Should any Contractor/Employer performing work on the Projects exceed the goal set forth in Section 20.1, the District will make every reasonable effort to acknowledge

the Contractor at the appropriate public, televised school board meeting for their efforts at the completion of their contract scope.

20.2 New Apprentices: Consistent with the requirements of State law, Contractors will be required to hire one New Apprentice for the first one million dollars (\$1,000,000) of the total prime contract amount. Thereafter, for every five million dollars (\$5,000,000) of the total prime contract amount, Contractors shall hire one additional New Apprentice. The Contractors shall make every effort to maximize the hours worked by New Apprentices on the Project, which New Apprentices must work a minimum of ten percent (10%) of the total craft's work hours. The Contractors may employ a New Apprentice on a different concurrent project in order to meet these requirements. Certified Payroll Records must reflect the hours worked by New Apprentices under this Section.

20.2.1 Contractors must fully document efforts to hire a New Apprentice consistent with this Section 20.2, through the following steps: (1) requesting New Apprentices through the Union dispatch procedure; (2) contacting a minimum of three MC3-approved pre-apprenticeship training programs; and (3) contacting the District for graduates of the District's Building and Construction Trades Pathway.

20.2.2 There can be no more than one (1) New Apprentice for each craft, provided said crafts have apprenticeship openings. Prime contractors will be able to include New Apprentices hired by their subcontractors to meet this requirement. The Unions agree to cooperate with Contractors in furnishing apprentices as requested and the hiring of apprentices will be in accordance with the apprenticeship provisions of the applicable Master Agreements and the standards and procedures of the applicable Joint Apprenticeship Program approved by the California Department of Industrial Relations, Division of Apprenticeship Standards. Apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements. The Unions and Contractors will agree to cooperate with local pre-apprenticeship programs to ensure Berkeley Residents and District Graduates have the opportunity to apply for and enter into the Joint Apprenticeship Programs.

20.2.3 The intent of this provision is to utilize New Apprentices to the fullest extent permissible by state law and the Master Agreements. Failure of Contractors to maintain apprentices on the job consistent with this Agreement may be subject to further penalties as determined by the Joint Administrative Committee or via the grievance procedure herein.

20.3 Career Technical Education: Both the District and the Council agree that an active school to career program in the trades can be a benefit to many District students. The Council and the District agree to meet within six (6) months of execution of this Agreement to collaborate regarding the funding and expansion of construction career programming in the District, including by partnering with the Construction Trades Workforce Initiative ("CTWI").

20.3.1 Career Fairs: With support from CTWI, the District shall co-sponsor two building trades career fairs during each school year that provide exposure to students and families. The purpose of this is to inform students and their families about career opportunities in the building trades and to inform student pathway selection and pre-apprenticeship programs in the building trades.

20.3.2 Workforce Development Fund: The Council and the District shall meet and confer within twelve (12) months of execution of this Agreement regarding the establishment of a monetary fund for construction careers programming, apprenticeship-related learning programs, and apprenticeship costs for District students, to be funded by Contractor contributions of no more than thirty cents (\$0.30) per work-hour performed under this Agreement.

20.3.3 The Council agrees to support the District's construction careers programming by doing the following:

- Providing guest speakers at least twice a year;
- Escorting field trips to apprenticeship centers at least once a year, per the District's schedule;
- Provide guidance and counseling to current District students;
- Identifying willing contractors to provide internships; and
- Actively participating in the District's CTE Advisory Committee as requested by the District.

ARTICLE 21. DRUG AND ALCOHOL TESTING

21.1 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.

21.2 Drug and alcohol testing shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Master Agreement.

ARTICLE 22. MISCELLANEOUS PROVISIONS

22.1 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.

22.2 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.

22.3 Modification: Each of the parties acknowledges and agrees that this

Agreement may be amended only by a writing signed by the District and the Council.

22.4 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.

22.5 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.

22.6 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.

22.7 No Attorney's Fees: No party shall be entitled to recover an award of attorney's fees or costs with respect to any action or proceeding seeking relief under this Agreement.

22.8 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.

22.9 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.

22.10 Ratification by Signatory Unions: This Agreement shall be binding on the Unions that are signatory to this Agreement, as indicated by their ratification on the Union Signatures page attached hereto.

22.11 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 Calise
Executive Director of Facilities

Date: September 21, 2022

Building and Construction Trades Council of Alameda
County, AFL-CIO (Council)

By: _____
Andreas Ferreira Cluver
Secretary-Treasurer

Date: _____

UNION SIGNATURES

Addendum A: Agreed To Letter of Assent

[Addressee]
[Address]
[City and State]

Re: Berkeley Unified School District Project Labor Agreement.
Letter of Assent for _____
(Projects Name)

Dear _____:

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

By executing this 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 Project Labor Agreement. 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 _____

State Public Works Registration Number: _____

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

(Title)

(Signature) (Date)