

COMMUNITY WORKFORCE AGREEMENT
WITH THE CITY OF HAYWARD

This Agreement is made and entered into this 6 day of July, 2017 ("Effective Date"), by and between the City of Hayward ("City"), together with other contractors and/or sub-contractors, who agree to, and shall become parties to this Agreement by signing the "Agreement To Be Bound" (Attachment A), and the Building and Construction Trades Council of Alameda County and its affiliated local unions.

PURPOSE

The purpose of this Agreement is to promote efficiency of construction operations performed by the City of Hayward and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects covered by this Agreement, while helping to increase training and employment opportunities for graduates of the Hayward Unified School District ("HUSD") and Hayward residents in the construction trades through local hire, apprenticeship and pre-apprentice programs.

RECITALS

WHEREAS, the successful completion of the City's construction projects, as hereinafter defined, is of the utmost importance to the City of Hayward; and

WHEREAS, the interests of the general public, the City, the Unions and Contractor(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(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on construction work performed for the City of Hayward by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to the Agreement; and

WHEREAS, the Contractor(s) and the Union(s) and the City of Hayward wish to ensure labor peace at the jobsite devoid of any disruption that could jeopardize the schedule and timeliness of the construction process, where both contractors that are signatory to collective bargaining agreements of the Union(s) are supervising employees that are members of the Union(s) and where contractors that are not signatory to collective bargaining agreements are also supervising employees; and

WHEREAS, SB 922, codified as Public Contract Code Section 2500 *et seq.*, authorizes public entities to use, enter into, or require contractors to enter into, project labor agreements for construction projects, provided the agreement includes specified taxpayer protection provisions, which requirements have been incorporated into this Agreement; and

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

WHEREAS, contracts for construction subject to this Agreement will be awarded in accordance with the applicable provisions of the Charter of the City of Hayward, the California State Public Contract Code, the California Labor Code, and other applicable California law; and

WHEREAS, the City of Hayward has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts; 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 covered by this Agreement.

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

ARTICLE 1

DEFINITIONS

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Building Trades Council" means the Building and Construction Trades Council of Alameda County, AFL-CIO.

1.3 "City" means the City of Hayward.

1.4 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. It is understood by the parties that portions of the Projects may be completed in phases and Completion of any such phase may occur prior to Completion of the Projects.

1.5 "Contractor(s)" means all contractors and subcontractors at all tiers, any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the City of Hayward or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Project,

including construction building material delivery truckers, trucking companies and trucking brokers, who agrees, under contract with the Contractor(s), or a subcontractor of the Contractor(s), to perform on the project, any part or portion of the construction work covered by this Agreement, including the operating of construction equipment, performance of labor and/or installation of materials.

1.6 “Construction Contract(s)” means all of the contract(s) for construction of any Project as that term is hereinafter defined.

1.7 “Council” means the Building and Construction Trades Council of Alameda County.

1.8 “District Graduate” is a Hayward resident who has graduated from a Hayward Unified School District school within the last four years preceding the effective date of this Agreement.

1.9 “New Apprentice” is an apprentice who has been enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program for a maximum of two years.

1.10 “Hayward Resident” 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 that the individual resides within the boundaries of the City of Hayward.

1.11 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto (copies of which shall be provided by the Union to the City) and which are listed in Attachment B, and which are incorporated herein by reference.

1.12 “Project” or “Projects” for the purposes of this Agreement mean all construction Projects costing more than one million dollars (\$1,000,000) based on Engineer’s Estimate.

1.13 “Union” or “Unions” means the Building and Construction Trades Council of Alameda County and its affiliated local Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

1.14 “Project Manager” means the person or persons or business entity designated by the City to oversee all phases of design and construction on the Projects.

1.15 “Sole Operator” means a licensed contractor with no employees and exempted by the Contractor’s State License Board from the requirement to carry workers’ compensation insurance. *(See: California Business and Professions Code section 7125.)*

1.16 "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 **Parties:** This Agreement shall apply and is limited to all Contractors and Subcontractors performing Construction Contracts necessary for the Projects, the City, the Building Trades Council and any labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 **Project Description:** This Agreement shall govern the award of all of the Construction Contracts identified by the City as part of the Project. All Projects that are subject to this Agreement shall be identified as covered Projects in the agenda report to the City Council requesting the authorization to solicit bids. The City Council retains the right to exempt projects following meet and confer as an agenda item at the JAC between City staff and the Building Trades Council. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Projects. Once a Construction Contract is completed, it is no longer covered by this Agreement, except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered completed as set forth in Section 1.4 of this Agreement.

2.3 **Covered Work:**

2.3.1 This Agreement covers, without limitation, all construction Projects with a construction cost estimate of more than one million dollars (\$1,000,000). For these Projects, the Agreement covers all Contractor performed on-site site preparation, on-site surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary and permanent HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and installation of modular furniture that is covered by the State of California Prevailing Wage determinations. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published. This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, and

operational revisions to systems and/or subsystems performed for the Project after completion unless it is performed by City employees.

2.3.2 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to and/or dedicated to the Projects, and at any on-site batch plant(s) constructed solely to supply materials to the Projects. This Agreement covers all on-site fabrication work over which the City or Contractor(s) possesses 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 off-site work, including fabrication work necessary for the projects defined herein that is covered by a provision of a current Master Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the Effective Date of this Agreement shall be considered covered work under this Agreement.

2.3.3 The furnishing of supplies, equipment or materials that 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 that 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 City within ten (10) calendar days of written request or as required by bid specifications.

2.3.4 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, that the installation of specialty items which may be furnished by the Contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role; further, provided, however, in limited circumstances requiring special knowledge of the particular item(s), 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 shall be subject to the grievance and arbitration clause of this Agreement. Work subject to manufacturer's warranty shall be discussed during the pre-job conference.

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

2.4.1 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City that are outside the identified scope of work of the Projects. This Agreement is not intended to and shall not govern any construction work that is bid or performed prior to the effective date of this Agreement. This Agreement applies only to Construction Contracts that are awarded by the City, and not third party public agencies, where City funding is utilized.

2.4.2 This Agreement is not intended to, and shall not affect the current or anticipated operation, maintenance, repair, access to or use of any of the City's buildings or facilities, except in those circumstances where the Project satisfies the requirements set forth in Section 1.12.

2.4.3 This Agreement shall not apply to a Contractor or Subcontractor's executives, managerial employees, engineering employees, design employees, supervisors (except those covered by existing building and construction trades collective bargaining agreements), and office and clerical employees that are not performing construction work on the project.

2.4.4 This Agreement shall not apply to any work performed on, near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by the City or its contractors for work not part of the scope of the Projects. Furthermore, this Agreement shall not be construed to prohibit or restrict the City or its employees from performing work on or around the Project construction sites or from entering the sites for any purposes deemed necessary or appropriate by the City.

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

2.4.6 Unless otherwise decided by the City, work covered by this Agreement within the following craft jurisdictions shall be based on the terms of various National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and 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 Technicians, with the exception that Articles 4, 11, 13 and 14 of this Agreement shall apply to such work.

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

ARTICLE 3
EFFECT OF AGREEMENT

3.1 By executing this Agreement, the Unions, and the City, and any other signatory to this Agreement, agree to be bound by each and every provision of this Agreement.

3.2 By accepting the award of a Construction Contract for the Projects, whether as contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.3 This Agreement shall only be binding on the signatory parties hereto their successors and assigns and shall not apply to the parents, affiliates, subsidiaries, lenders, or other ventures of any such party unless performing work within the scope of the Project(s).

3.4 At any time that any Contractor enters into a subcontract with any subcontractor of any tier for the performance of construction or construction trucking work within the scope of this Agreement, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified by the negotiating parties, 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 the Agreement prior to the commencement of work.

3.5 Each Contractor and Subcontractor shall evidence their agreement to be bound to this Agreement by executing the Agreement To Be Bound form attached hereto as Attachment A. A copy of the Agreement To Be Bound executed by a Contractor or Subcontractor shall be submitted to the Union(s) prior to both the commencement of work and the pre-job conference. If the Contractor or Subcontractor refuses to execute the Agreement To Be Bound, then such Contractor or Subcontractor shall not be awarded a Construction Contract to perform work on the Projects. A Contractor or Subcontractor who executes the Agreement To Be Bound shall then subsequently be considered a signatory party to this Agreement.

3.6 The Contractor(s) has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor(s) elect to subcontract, the Contractor(s) shall continue to have such primary obligation.

3.7 Each Contractor(s) shall give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either seven (7) days of entering such subcontract or before such subcontractor(s) commences work on the Project, whichever occurs first. Such notice shall specify the name, address and the California State License Board license number of the subcontractor(s).

3.8 (a) With regard to any Contractor that is independently signed to any Master Agreement, this Community Workforce Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Master Agreement, except as specifically set forth in subsection (b) of this Section. Any such subcontracting clause in a Master Agreement shall remain and be fully enforceable between each craft union and its signatory employers, and no provision of this Community Workforce Agreement shall be interpreted and/or applied in any manner that would give this Community Workforce Agreement precedence over subcontracting obligations and restrictions that exist between craft unions and their respective signatory employers under a Master Agreement, except as specifically set forth in subsection (b) of this Section 3.8. To the extent that the provisions of this Agreement are inconsistent with any other provisions contained in a Master Agreement, the provisions of this Agreement shall prevail.

(b) If a craft union (hereafter "Aggrieved Union") believes that an assignment of work on this Project has been made improperly by a contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its Master Agreement, as permitted by subsection (a) of this Section 3.8, the Aggrieved Union may submit a claim under the jurisdictional resolution process contained in Article 12 of this Community Workforce Agreement, and the decision rendered as part of that process shall be enforceable to require the contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft union under the subcontracting clause of its Master Agreement, as permitted pursuant to Section 3.8(a) of this Article, shall be valid and fully enforceable by that craft union unless it conflicts with a jurisdictional award made pursuant to this Community Workforce Agreement. If the award made under the Master Agreement conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio*.

3.10 Each Contractor(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor(s) or any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor(s), party to this Agreement.

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

3.12 The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City and/or any Contractor or subcontractor.

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

ARTICLE 4

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 During the duration of the Projects, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, wobble, sympathy strike, picketing or other work stoppage or handbilling of any nature whatsoever, for any cause whatsoever (including jurisdictional disputes), and it is expressly agreed that any such action is a violation of this Agreement.

4.1.1 Withholding employees for failure of a Contractor(s) to tender trust fund contributions as required in accordance with Article 15 and/or for failure to meet its weekly payroll is not a violation of this Article 4; however, the Union(s) shall give the affected Contractor(s) and the City written notice five (5) business days prior to the withholding of employees when failure to tender trust fund contributions has occurred.

4.1.2 Expiration of Master Agreements. It is specifically agreed that there shall be no strike, sympathy strike, picketing, lockout, slowdown, withholding of work, refusal to work, walk-off, sit-down, stand-in, wobble, boycott or other work stoppage of any kind as a result of the expiration of any local, regional or other applicable labor agreement having application at the Projects and/or failure of the parties to that agreement to reach a new contract. If a Master Agreement expires before the Contractor(s) completes the performance of a construction contract and the Union(s) or Contractor(s) gives notice of demands for a new or modified Master Agreement, the Union(s) agrees that it will not strike or withhold labor from the Contractor(s) on said contract for work covered under this Agreement and the Union(s) and the Contractor(s) agree that the expired collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union(s) and Contractor(s). If the Union(s) and Contractor(s) agree to an interim agreement that will apply until a new Master Agreement is reached, then, at the Contractor(s)' option, the Contractor(s) may work under the terms of the interim agreement until a new or modified Master Agreement is reached between the Union(s) and Contractor(s). If the new or modified Master Agreement reached between the Union(s) and Contractor(s) provides that any terms of compensation of the Master Agreement shall be retroactive, the Contractor(s) agrees to comply with any retroactive terms of the new or modified Master Agreement to its effective

date which is applicable to employees employed on a project within seven (7) days after its effective date.

4.2 In consideration of the foregoing, the Contractor(s) shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by the Contractor(s) for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include the City's decision to terminate or suspend work on the site or any portion thereof for any reason.

4.3 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and the procedure of Article 11, if invoked.

4.4 If the City contends that any Union has violated this Article, it will notify in writing (including email) the Secretary-Treasurer/Business Manager/Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use his/her best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the membership of their obligations under this Article.

4.5 Any party to this Agreement shall institute the following binding arbitration procedure prior to initiating any other action at law or equity when a breach of this Article is alleged to have occurred. In the event a party institutes this procedure, arbitration shall be mandatory.

4.5.1 The party invoking this procedure shall immediately notify Robert Hirsch who the parties agree shall be the permanent Arbitrator under this procedure. Barry Winograd shall serve as the alternate in the event that the permanent Arbitrator is unavailable at any time. If both Arbitrators are unavailable, the City will propose three (3) additional alternate Arbitrators from which the other party in the action will select from those three (3) additional alternates. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegram, email or similar means to the party alleged to be in violation and the involved Contractor(s) and/or Union(s), the Building Trades Council and the City.

4.5.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.

4.5.3 The Arbitrator shall notify the parties by facsimile, telegram, email or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

4.5.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification,

explanation or mitigation of such violation or to award damages, which issue is reserved for court or other arbitration proceedings, if any. The Arbitrator shall determine compliance with this Article and establish the appropriate sum of damages, which shall not be less than One Thousand Dollars (\$1,000) or more than Ten Thousand Dollars (\$10,000) for each shift, for violations of this Article. 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 shall 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.

4.5.5 The award shall be final, binding and non-reviewable as to the merits. A judgment of any court of competent jurisdiction shall be entered upon the award, which may be enforced by any such court, upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Facsimile, telegram or similar 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 4.5.4, 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 of enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

4.5.6 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued.

4.5.7 The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be borne equally by the parties.

4.5.8 The procedures contained in Article 4 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article 4 shall be subject to the grievance and arbitration procedures of Article 9.

4.6 If there is a lockout, strike, sympathy strike, stoppage, slowdown, picketing or action otherwise advising the public that a labor dispute exists or interference with the progress of the Projects, the Parties shall have the right to seek full legal redress in the courts of California, after complying with the emergency arbitration provisions of Article 4.

ARTICLE 5
PRE-JOB CONFERENCE

5.1 A mandatory pre-job conference shall be held after the award of the contract and prior to the commencement of each Construction Contract or subcontract. Such conference shall be attended by a representative each from the participating Contractor(s), including all sub-contractors under contract, and Union(s), the Project Manager or any other City representative deemed appropriate by the City. One of the conference topics shall be discussion of work covered under warranty. 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 fourteen (14) calendar days before the work commences. All meetings shall be held at Hayward City Hall, 777 B Street, Hayward, California 94541, or with mutual agreement of the parties, the meeting may be held at the offices of the Building Trades Council.

ARTICLE 6
NO DISCRIMINATION

6.1 The Contractors and Unions 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, gender identity, disability or any other basis made illegal by law against any person, or applicant for employment on the Projects.

ARTICLE 7
UNION SECURITY

7.1 The Contractors recognize the Union(s) as the sole bargaining representative of all construction persons working within the scope of this Agreement.

7.2 All construction persons who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on the Projects, be responsible for the payment of the applicable monthly working dues, fees, pension-fund type benefits, and any associated fees uniformly required for union membership in the applicable local union that is signatory to this Agreement, but is not required to join union.

7.3 Authorized representatives of the Unions shall have access to the Projects whenever their respective craft work is being performed on the Project.

ARTICLE 8
REFERRAL

8.1 Contractor(s) performing construction work on the Projects described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto ("Job Referral System"). Such Job Referral System will be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and nondiscrimination.

8.2 The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with any applicable Master Agreement.

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

8.4 In the event that referral facilities maintained by Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period, weekends and holidays excluded, after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain employees from any source ("Alternative Employees"). Upon hiring Alternative Employees, the Contractor(s) shall immediately notify the appropriate Union(s) of the name and address of the Alternative Employees hired. This provision does not affect core employees as defined below.

8.5 Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft persons, particularly those craft persons residing in Hayward, to fulfill the requirements of the Contractor(s).

8.6 A Sole Operator, as defined in this Agreement under section 1.15, self-performing work on a covered Project shall not be required to request dispatch from the union hall with jurisdiction over the Sole Operator's work. However, if the Sole Operator hires any additional employees subsequent to starting work on a covered Project, the Sole Operator will be treated as the core employee and any subsequent employee(s) will be dispatched from the hiring hall. Before hiring an employee(s) on the Project, the Sole Operator must request permission from the JAC through the Coordinator and provide evidence of compliance with CLSB and Workers Compensation requirements. For purposes of this Agreement, Trucking Sole Operators will be treated as the core employee, but must nevertheless be dispatched from the hiring hall, and will be exempt from trust fund obligations but must pay representational fees. All Sole Operators, including truckers, must sign this Agreement's Letter of Assent prior to starting work on a covered Project.

8.7 In the event that a Contractor has its own core employees, the Contractor may request by name, and the local union will honor, referral of persons who demonstrate the following qualifications:

- (1) Possess any license and/or certifications required by state or federal law for the Project work to be performed; and
- (2) Have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years; and
- (3) Were on the Contractor's active payroll for at least sixty (60) days out of the one hundred and eighty (180) calendar days prior to the contract award; and
- (4) Have the ability to perform safely the basic functions of the applicable trade.

8.8 The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then thereafter refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor(s) has hired no more than 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 lists(s). For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor'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(s) signatory to a Master Agreement with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the relevant collective bargaining 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, as they relate to such Contractor(s). Any exceptions requested to this process must be referred to the JAC for review.

8.9 Subject to the limitations of applicable law, the parties to this Agreement support the development of increased numbers of skilled construction workers who are residents of the City of Hayward, to meet the needs of the Projects and the requirements of the industry generally. To 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 Hayward 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

GRIEVANCE PRODEDURE

9.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. For purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered

by this Agreement without just cause. For purposes of this Agreement, just cause shall have the meaning set forth in the Master Agreement of the craft representing the employee(s) involved in the dispute.

ARTICLE 10

JOINT ADMINISTRATIVE COMMITTEE

10.1 The parties to this Agreement shall establish a five (5) person Joint Administrative Committee. This Committee shall be comprised of two (2) representatives selected by the City; two (2) representatives selected by the Unions; and one (1) industry representative mutually agreed to by the parties. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. A quorum of the Joint Administrative Committee shall consist of three members, comprising at least one representative from the City and one representative from the Building Trades Council.

10.2 The Joint Administrative Committee shall meet as required, but not less than once each quarter, to review the implementation of the Agreement and the progress of the Projects. Any question by any party to the Agreement 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. The Joint Administrative Committee will also have the responsibility of monitoring the provisions in Article 13 Local Hire and Apprentices.

10.3 If there is a request regarding exemptions per Section 2.2, the meet and confer discussion will occur between the City and Building Trades Representatives. If there is no agreement, the exemption would be presented to City Council for decision.

ARTICLE 11

GRIEVANCE ARBITRATION PROCEDURE

11.1 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. All disputes concerning the interpretation and/or application of this Agreement which do not fall within the Article 4 Work Stoppages, Strikes, Sympathy Strikes, and Lockouts procedure shall be governed by the following grievance and arbitration procedure. No grievance shall be recognized unless the grieving party provides notice in writing to the signatory party with whom it has a dispute within seven (7) calendar 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 this Article may be extended by mutual written agreement of the parties.

11.2 Grievances shall be settled according to the following procedures:

Step 1: Within seven (7) calendar days after the receipt of the written notice of grievance, the necessary parties to the grievance, including but not limited to the Business Representative of the involved Local Union, or the City's authorized representative or his/her designee, or representative of the construction person or the involved Contractor shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step 1, either involved party may submit it within three (3) calendar days to a Grievance Committee consisting of one (1) person selected by the City and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the Committee), to confer in an attempt to resolve the grievance. Regardless of which party has initiated the grievance proceeding, prior to the meeting of the Grievance Committee, the Union(s) shall notify its International Union(s) Representative(s), which shall advise both parties if it intends on participating in the meeting. The participation by the International Union(s) Representative in this Step 2 meeting shall not delay the time set herein for the meeting, unless otherwise mutually agreed by the parties. A decision of the Grievance Committee shall be final and binding. If the dispute is not resolved with such time (seven (7) calendar days after its referral or such longer time as mutually agreed upon), it may be referred within seven (7) business days by either party to Step 3.

Step 3: In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral 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, Barry Winograd, The Honorable Laurence Kay, Robert Hirsch and Robert Clark. The order of striking names from the list of arbitrators shall be determined by a coin toss; the winner of such toss shall decide whether to strike first or second. Such striking shall take place within three (3) calendar days. If a party does not respond within three (3) calendar days, any arbitrator from the list is acceptable.

11.3 The Arbitrator shall arrange for a hearing no later than fourteen (14) calendar days after the matter has been submitted to arbitration. 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 Arbitrator.

11.4 The decision of the Arbitrator shall be binding by all parties. The Arbitrator shall not have authority to change, amend, add or detract from any of the provisions of the Agreement. The expense

of the Arbitrator shall be borne equally by both parties, with each party bearing the cost of their own legal counsel.

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

11.6 The time limits specified in any step of the Grievance Procedure set forth in Section 11.2 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 the 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.

11.7 Where an issue is addressed in this Agreement and a Master Agreement, this Agreement shall prevail. Where an issue is addressed in a Master Agreement and not in this Agreement, the Master Agreement shall control. Grievances between a Union(s) and a Union(s)' signatory contractor involving interpretation or application of the Master Agreement shall be governed by the grievance procedures contained in the Master Agreement.

11.8 Any strike, slowdown, picketing, sympathy strike or other form of work stoppage that arises out of a dispute as to the interpretation of the Agreement shall be subject to the procedures set forth in Article 4.

11.9 Should any of the arbitrators listed in section 11.2 or above no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

ARTICLE 12

JURISDICTIONAL DISPUTES

12.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) 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.

12.2 All jurisdictional disputes on this Project between or among the Building and Construction Trades Unions and the Contractors, 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 Union parties to this Agreement.

12.2.1 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 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

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

ARTICLE 13

LOCAL HIRE AND APPRENTICES

13.1 The parties agree to a goal that Hayward Residents, and especially District Graduates, will perform a minimum of thirty (30%) percent of the hours worked on a craft by craft basis on the Projects (the "Local Hire Goal"). The Contractor shall make good faith efforts to reach the Local Hire Goal through the utilization of the Union's hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of Hayward Resident workers and in their hiring hall procedures to facilitate the Local Hire Goal on the Projects. The parties shall cooperate to establish or support a pre-apprenticeship/internship program for HUSD graduates. If a Contractor fails to meet the Local Hire Goal or demonstrate a good faith effort, there will be a ten (10%) percent contract retention withheld until the Local Hire Goal is remedied. Acceptable remedies include: commitment to employ Hayward residents on non-City projects or acceptance of Hayward residents as new apprentices.

13.2 A Contractor that has employed a Hayward Resident for up to six (6) months preceding the start of the Project for a minimum of at least one hundred (100) hours per month who has the ability to perform safely the basic functions of the applicable trade may receive credit for fifty (50%) percent of those hours towards the Local Hire Goal. A contractor may also receive credit for fifty (50%) percent of the documented hours performed by Hayward Residents on non-City projects, when such hours are concurrent with the Contractor's work on the Project. The maximum total combined credit that can be applied under this section is half of the Local Hire Goal.

13.3 The Contractor is required to hire one Hayward resident as a New Apprentice for the first 1 million dollars (\$1,000,000) of construction costs with one additional apprentice for every \$5 million dollars (\$5,000,000) thereafter (capped at 2 per craft). A minimum of 50% of the applicable Apprentice hours on any project must be worked by the Hayward New Apprentice. Any modifications to these

requirements must be agreed to by the JAC. There shall be no more than two New Apprentices for each craft, and the General Contractor shall be entitled to include New Apprentices hired by their subcontractors to meet this requirement. The City will refer the names of District Graduates and/or Hayward Residents to the Union and Contractors, and the Unions agree to cooperate with the Contractor in furnishing apprentices as requested. The hiring, supervision and compensation of apprentices shall be in accordance with the Apprenticeship Programs in the Master Agreements. The Contractor may deploy the Hayward New Apprentice to work on another concurrent project in order to meet the minimum hours, and those hours will be counted towards the total hours of the craft on the City project. The failure of the City to refer names and/or the Unions to provide those apprentices upon request will relieve the Contractor of this First-Period Apprentice hiring responsibility. The Contractor shall make good faith efforts to hire Apprentices for a minimum of six (6) months or 1,000 labor hours.

13.4 The Council shall facilitate and encourage enrollment of least ten (10) Hayward residents or District Graduates into State approved Labor-Management Apprenticeship programs during each year of the agreement term and facilitate placing them on a job site.

13.5 The Contractor or Subcontractor who hires such Hayward Resident First-Period Apprentices shall be credited with two (2) work hours towards the Local Hire Goal, for each hour worked by the Hayward Resident First-Period Apprentices.

13.6 The intent of the apprentice requirement is to employ new apprentices to the fullest extent permissible by state law and the Master Agreements. The failure of the Contractor and its subcontractors to maintain qualified apprentices on the Project will be subject to Division of Apprenticeship Standards' penalties and further penalties as determined by the Joint Administrative Committee. The Contractors, Unions and the Building Trades Council shall use good faith efforts to retain apprentices employed pursuant to this Agreement and advance those apprentices to journeyman status.

13.7 It shall be the responsibility of the Contractor to report and document compliance with this Article. This shall include, but not be limited to, monthly utilization reports showing all work hours by craft, certified weekly payroll records, and any documentation showing dispatch and referral requests.

13.8 The Contractor may request a negotiated compliance plan if compliance with the requirements of this Article is unreasonable or poses difficulty due to safety. In this case the Contractor will make the request in writing for a meeting with the Joint Administrative Committee prior to the commencement of work. The Joint Administrative Committee will then review this request, and if there is consensus, will approve the negotiated compliance plan, that the Contractor will sign off on. This new document will become the new local hiring requirements that the Contractor will have to meet or risk being in non-compliance.

ARTICLE 14
MANAGEMENT RIGHTS

14.1 The Contractor shall retain full and exclusive authority for the management of its operations, including the right to direct its work force in its sole discretion, except as otherwise limited by the terms of this Agreement and/or the Master Agreements. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful manning provisions of the Master Agreements shall be recognized.

ARTICLE 15
WAGES/BENEFITS

15.1 The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts and shall also comply with applicable general prevailing wages, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

15.2 All Contractor(s)/Employer(s) agree to pay contributions to the vacation, pension and other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions.

15.3 By signing this Agreement, the Contractor(s)/Employer(s) adopt and agree to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, and which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s). The Contractor(s) agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

15.4 If an employee is discharged or voluntarily terminates, wages due shall be paid in accordance with California State Law.

ARTICLE 16
MODIFIED MASTER AGREEMENTS

16.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified Master Agreements that are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or that may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Article 11 hereof.

ARTICLE 17

SAVINGS CLAUSE

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

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

ARTICLE 18

ENTIRE AGREEMENT

18.1 This Agreement, including the attachments hereto, and the Schedule As incorporated by reference, represents the complete understanding of the parties. The provisions of this Agreement shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Master Agreement and is not covered by this Agreement, the provisions of the Master Agreement shall prevail.

18.2 The parties agree that this Agreement covers matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

18.3 This Agreement may be executed in counterpart, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile or PDF signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

ARTICLE 19

HELMETS TO HARDHATS

19.1 The parties recognize a desire to facilitate the entry of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment ("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 Union(s) and Contractor(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on the Projects and of apprenticeship and employment opportunities for the Projects. To the extent permitted by law, the Contractor(s) and Union(s) will give credit to such Veterans for bona fide, provable past experience.

ARTICLE 20

TERM

20.1 This Agreement shall be included as a condition of the award of the Construction Contract.

20.2 This Agreement shall continue in full force and effect for a term of three (3) years from the Effective Date and shall be applicable to all Projects until completion that are advertised for bidding during the term.

20.3 This Agreement shall continue in full force and effect until Completion of the Term. The parties may mutually agree to extend and/or amend this Agreement, and will review the Agreement at two years from date of execution for possible extension beyond the initial term. Review of the Agreement may include, but is not necessarily limited to, the following criteria: (1) the impact of the agreement on local jobs and work hours, (2) the administrative costs of implementing the Agreement, and (3) the impact on awarding contracts or subcontracts to City-based businesses as a result of the Agreement.

ARTICLE 21
COMPLIANCE

21.1 It shall be the responsibility of the Contractor(s) and Union(s) to investigate and monitor compliance with the provisions of this Agreement contained in Article 15. 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 Contractors on the Project.

ARTICLE 22
SUBSTANCE ABUSE PREVENTION

22.1 The use, sale, transfer and/or possession of a controlled substance during the work day is prohibited. Accordingly, the parties agree to adopt the procedures and safeguards for the testing of employees for prohibited or controlled substances set forth in the Uniform Substance Abuse Prevention Policy, attached as Attachment C hereto (the "Policy"). With respect to testing procedures, the parties agree that:

(i) No person referred from a Union hiring hall or any hiring organization shall be allowed on site as an employee until such person has completed and passed any test required under the applicable Policy; and

(ii) A person who is put to work immediately after having passed the tests shall be paid starting at the time the person reported for the test; and

(iii) Where a contractor requests a person to report for purposes of a pre-hire substance abuse test, and does not intend to place the person in an active work position that day, the person shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.

22.2 Requirements of Substance Abuse policies currently contained within a Master Agreement shall supersede the Policy attached as Attachment C and of the General Contractor policy below.

22.3 If the Substance Abuse policy of the General Contractor meets or exceeds the requirements of the policy in Attachment C, the General Contractor may then use their policy.

City of Hayward

By 

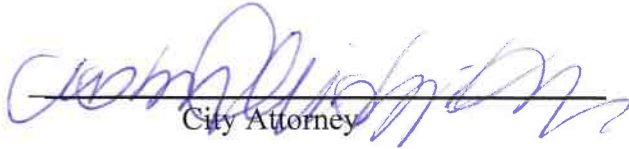
Date: _____

Alameda County Building & Construction Trades Council, AFL-CIO

By _____ Date _____

Attest: _____
City Clerk

Approved as to Form and Procedure:



City Attorney

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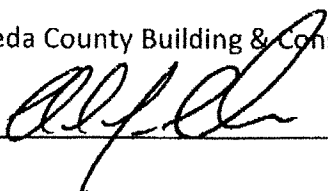
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City of Hayward

By _____ Date: _____

Alameda County Building & Construction Trades Council, AFL-CIO

By  _____ Date 7-13-14

Asbestos Workers, Local 16

By: _____

Boilermakers, Local 549

By: _____

Carpenters, Local 2236

By: _____

Carpet & Lino Layers, Local 12

By: _____

Electrical Workers, Local 595

By: _____

Glass Workers, Local 169

By: _____

Ironworkers, Local 378

By: _____

Laborers, Local 304

By: _____

Lathers, Local 68L

By: _____

Auto & Marine Painters, Local 1176

By: _____

Bricklayers & Allied Craftsmen, Local 3

By: _____

Carpenters, Local 713

By: _____

Cement Masons, Local 300

By: _____

Elevator Constructors, Local 8

By: _____

Insulator Workers, Local 16

By: _____

Laborers, Local 67

By: _____

Laborers, Local 886

By: _____

Millwrights, Local 102

By: _____

Operating Engineers, Local 3

By: _____

Plasters, Local 66

By: _____

Sheet Metal Workers, Local 104

By: _____

Sprinkler Fitter, Local 483

By: _____

Plumbers & Steamfitters, Local 342

By: _____

U.A. Utility/Landscape, Local 355

By: _____

**No. CA Carpenters Regional Council
(Local 713, 2236, 68L, 102, 34)**

By: _____

Painters, Local 3

By: _____

Roofers, Local 81

By: _____

Sign Display, Local 510

By: _____

Pile Driver, Local 34

By: _____

Teamsters, Local #853

By: _____

**District Council #16 Painters
(Local 1176, 12, 169, 3)**

By: _____

**District Council Iron Workers of CA &
Vicinity Trades *Only Regional***

By: _____

ATTACHMENT A
AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Community Workforce Agreement ("Agreement"), a copy of which was received and is acknowledged, hereby:

Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement;

Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;

Agrees to secure from any contractor (as defined in said Agreement) which is or becomes a subcontractor (of any tier) to it, and from any successors, a duly executed Agreement to be bound in form identical to this document;

Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft Master Agreement and ratifies and accepts the trustees appointed by the parties to such trust funds, and agrees to execute a separate Subscription Agreement(s) for Trust Funds when such Trust Fund(s) requires such document(s).

Date: _____

Company Name _____

Name of Prime Contractor or Higher Level Subcontractor:

Name of Project: _____

Signature: _____

Print Name: _____

Title: _____

Contractor's License #: _____

Motor Carrier Permit (CA) #: _____

ATTACHMENT B

(List of Master Agreements)

ATTACHMENT C

CITY OF HAYWARD COMMUNITY WORKFORCE AGREEMENT UNIFORM SUBSTANCE ABUSE PREVENTION POLICY

This Uniform Substance Abuse Prevention Policy, hereinafter referred to as "Policy," is adopted by the City of Hayward, the Alameda County Building and Construction Trades Council, AFL-CIO, the Unions that become signatories to the Community Workforce Agreement (collectively referred to as "Unions") and the Contractors who agree to be bound by the City of Hayward Community Workforce Agreement (collectively the "parties").

The parties agree and acknowledge that the United States Government may require differing testing and detection standards than those that are contained in this policy for certain projects that will be constructed under the Community Workforce Agreement (the "CWA"). To the degree that these federal policies differ in substance or procedure (including the use of random testing), the parties acknowledge that the federal policies will prevail where required by law or regulation. Violation of any federal policy will result in the same consequences as a violation of this Policy.

POLICY

The Contractors and the Unions are committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees not be permitted to perform their duties while under the influence of drugs or alcohol.

This Policy supersedes any policies negotiated for any other work outside of the Project by Contractors and the Unions that might otherwise apply. Nothing in this Policy is intended to supersede or diminish more restrictive controlled substance or alcohol regulations imposed by federal or state agencies upon specific employee groups or categories of employees who are also covered by this Policy. A summary of this Policy will be provided to all dispatched employees. The full Policy will be made available to any Union representative or to Project employees upon request.

The intention of this Policy is to comply with the City of Hayward CWA's requirement to maintain a drug and alcohol free workplace in order to ensure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in the Policy have been carefully defined and intentionally restricted. The Substance Abuse Prevention Coordinator will retain oversight over Policy implementation and will monitor test procedures for consistency and policy compliance.

In order to implement this Policy, the following agreements have been reached:

1. No employee may purchase, sell, transfer, furnish, possess, use or be under the influence of illegal drugs or any alcoholic beverage while working on any Project job site in connection with work performed under the CWA, or when using any Contractor vehicle.
2. The proper use of prescription drugs or over-the-counter medication as part of a medical treatment program and consistent with the terms of this Policy is not a violation of this Policy. The improper use of prescription drugs, over-the-counter medication or the use of designer synthetic drugs that alters or affects an individual's motor function or mental capacity is prohibited and is a violation of this Policy. Employees who believe or have been informed that their use of any prescription drug or over-the-counter medication may present a safety risk are to report such use to the Contractor's supervision to ensure the safety of themselves, other employees, and Contractor or Project property or vehicles.
3. Any employee, while employed on the Project, who tests positive for drug or alcohol abuse or who is convicted for selling illegal drugs off the Project will not be permitted to work on the Project and will be subject to discipline up to and including discharge, subject to the provisions of this Policy. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination and removed from the Project and will not be eligible for rehire.
4. Any prospective or dispatched worker who fails the pre-employment testing required pursuant to this Policy will be denied employment and will not be eligible for referral to any Contractor on the Project until a period of not less than sixty (60) calendar days has passed and the applicant has provided a certification of rehabilitation and satisfactory participation in an approved counseling or rehabilitation program, which will be at the employee's expense.
5. Any prospective or dispatched worker/employee who refuses to submit to a properly administered drug or alcohol test will be treated as having tested positive on the test and will be subject to removal from the Project and will not be granted permission for a second drug or alcohol test for a period of ninety (90) days.

NOTICE

1. When calling the Union hiring hall for workers, the Contractor shall advise the Union dispatcher that the Contractor will require any dispatched worker to take a pre-employment drug and alcohol test, and that worker(s) will be subject to further testing in accordance with specified circumstances outlined in this Policy.
2. At the commencement of a Contract, the Contractor shall also provide notice in advance of the first dispatch request either by certified mail, by facsimile transmission or by hand delivery.
3. The Contractor shall provide written notice to each employee, attached hereto as Appendix C, of the major provisions of the drug and alcohol testing policy and its consequences.
4. A Contractor that fails to provide notice to the dispatcher shall be liable for two hours show-up pay for any dispatched worker who refuses to take a pre-employment test, and a dispatched worker's

refusal to take the test may not be used in any adverse manner against that worker, except that no dispatched worker will be hired without having taken a pre-employment drug test.

TERMS/DEFINITIONS

For purposes of this Policy, the following terms/conditions will apply:

1. Illegal drugs:

For the purpose of this Policy, the terms “illegal drugs” or “drugs” refer to those drugs listed in Appendix A, except in those circumstances where they are prescribed by a duly licensed health care provider. Appendix A lists the illegal drugs and alcohol and the threshold levels for which an employee/applicant will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (“SAMHSA”) (formerly the National Institute of Drug Abuse, or “NIDA”) threshold levels, or U.S. Government thresholds where required, in effect at the time of testing. Appendix A will be updated periodically to reflect the SAMHSA or the U.S. Government threshold changes, subject to mutual agreement of the Parties.

2. Prescription Drug:

A drug or medication prescribed by a duly licensed health care provider for current use by the person possessing it that is lawfully available for retail purchase only with a prescription.

3. Reasonable Cause:

Reasonable cause to test (which test must be conducted pursuant to this Policy’s Identification and Consent Procedures outlined below) an employee for illegal drugs or alcohol will exist when specific, reliable, objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while on the job site. These indicators will be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, and will be indicators not reasonably explained as resulting from causes other than the use of such controlled substances (such as, but not by way of limitation, fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.) If cause results from an observation, the observation must be confirmed by a second member of the Contractor’s supervision and those Contractor representatives will endeavor to consult with the Contractor’s Safety Representative or a job site management representative, one who must be trained in detection of drug use, and whose training will be documented. The specific behavioral, performance on-the-spot physical indicators of being under the influence of drugs or alcohol

on the job will be substantiated in writing by the use of an Incident Report Form (attached as Appendix E).

The following may constitute some of the reasonable cause to believe that an employee is under the influence of drugs or alcohol:

- (a) Incoherent, slurred speech;
- (b) Odor of alcohol on breath;
- (c) Staggering gait, disorientation, or loss of balance;
- (d) Red and watery eyes, if not explained by environmental causes;
- (e) Paranoid or bizarre behavior; or
- (f) Unexplained drowsiness.

4. Post-Accident Testing:

A Contractor will require that an employee who is involved in an accident in the course of job duties resulting in serious damage to property or equipment or injury to him/herself or others as defined below may be tested (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) for drugs or alcohol where the Contractor Safety Representative or designee concludes that:

- (a) The accident may have resulted from human error or could have been avoided by reasonably alert action; and
- (b) The employer's representative reasonably concluded that the employee(s) to be tested caused or contributed to the following circumstances:
 - (i) An OSHA recordable injury, i.e., medical treatment case, restricted work case or lost workday case;
 - (ii) Damage to equipment, vehicles, structures, or guarding resulting in repair costs that in the judgment of the Contractor will exceed \$2,500.00;
 - (iii) Loss of material containment resulting in an environmental spill notification; or
 - (iv) Any incident resulting in job site shutdown or involving a fatality; and
- (c) A basis exists to believe that the employee was under the influence of a drug or alcohol at the time of the accident.

5. Adulterated, Substituted or Diluted Specimens:

This Substance Abuse Prevention Policy adheres to guidelines established in SAMHSA Public Document 035 dated September 28, 1998, for determining the validity of a specimen. This guideline is consistent with the Department of Transportation (DOT) regulations (49 CFR Part 40 and 382) that permit laboratories to conduct additional tests to determine the validity of a specimen.

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an “adulterant,” “interfering substance” and/or “masking agent” or the sample is identified as a “substituted specimen” will be deemed a violation of the PSA and Policy and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an “adulterated,” “interfering substance,” “masking agent” or “substituted” specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant shall be required to show certification of rehabilitation of satisfactory participation in a Substance Abuse Prevention Coordinator-approved rehabilitation program, not at the expense of the Contractor or Owner, as a condition of the employee’s return to work at that time.

The guideline issued in PD 035, in the SAMHSA September 28, 1998, memo uses the following reporting protocols:

- (a) Adulterated Specimen: PD 035 includes three definitions for Adulterated:
 - (i) If the nitrite concentration is equal to or greater than 500 mcg/mL.
 - (ii) If the pH is less than or equal to 3, or if it is greater than or equal to 11.
 - (iii) If a foreign substance is present, or if an endogenous substance (one that is normally found in urine) is present at a concentration greater than the normal physiological concentration.
- (b) Substituted Specimen: one that has a creatinine reading of less than or equal to 5mg/dL and a specific gravity less than or equal to 1.001 or greater than or equal to 1.020. These specimens do not exhibit the clinical signs or characteristics associated with normal urine.
- (c) Dilute Test: Protocol covering diluted specimens will follow guidelines established by SAMSHA PD 035 in its memo dated September 28, 1998. Specimens identified by the testing laboratory as dilute will require the employee/applicant to submit to an observed test. Refusal to retest or noncompliance with drug testing procedures will result in the employee/applicant being prohibited from working on the Project for ninety (90) calendar days, and the employee/applicant will be required to successfully complete a Substance Abuse Prevention Coordinator-approved rehabilitation program at his/her own expense as a condition of the employee’s return to work at that time.

A “dilute specimen” is defined as: “one that has creatinine reading less than 20 mg/dL, but greater than 5mg/dL, and a specific gravity less than 1.003 but greater than 1.001.

6. Project:

The Project is defined as any construction activity that is undertaken under the terms of the City of Hayward Community Workforce Agreement.

IDENTIFICATION AND CONSENT PROCEDURE

1. When a prospective employee or dispatched worker arrives at the job site for potential employment, he/she will be shown and sign a copy of the Pre-Employment Substance Abuse Prevention Testing Consent/Waiver Form attached as Appendix D before taking a pre-employment drug or alcohol screening test. An employee who is working on the Project and has submitted to the pre-employment drug and alcohol test and has tested negative may thereafter be required to submit to drug or alcohol testing only if the Contractor has “reasonable cause” to believe that the employee is under the influence of drugs or alcohol in violation of this Policy or in connection with an accident as set out above in this Policy. The Contractor may order urine (or in the case of alcohol, breathalyzer) testing only.

2. If a management representative (preferably not in the bargaining unit) makes observations of an employee which may constitute reasonable cause for drug or alcohol testing, the supervisor shall immediately take the following actions:
 - A. Inform the employee that he/she may have a Union Representative present, if reasonably available. The employee will be shown the Substance Abuse Prevention Testing Consent/Waiver Form attached as Appendix B.
 - B. Fill out the Incident Report Form, including a statement of the specific facts constituting reasonable cause to believe that the employee is under the influence of drugs or alcohol, and the name of the person(s) making the supporting observations.
 - C. Provide a completed copy of this Incident Report Form to the employee before he/she is required to be tested (and one copy made available to the Union Representative, if present). After being given a copy of the Incident Report Form, the employee will be allowed enough time to read the entire document, to understand the reasons for the test.
 - D. Provide the employee with an opportunity to provide an explanation of his/her condition, including providing evidence (e.g., doctor’s prescription or note, or prescription container) or existing medical treatment or reaction to a prescribed drug. If available, the Union Representative shall be present during such explanation and will be entitled to confer with the employee before the explanation is required.
 - E. If the Management representative(s), after observing the employee, and hearing any explanation, concludes that there is in fact reasonable cause to believe that the employee is under the influence of drugs or alcohol, the employee may be ordered to submit to a drug and/or alcohol test and will be asked to sign the Consent/Waiver Form attached as Appendix B.

3. Failure to follow any of these procedures will result in the elimination of the test results as if no test had been administered; the test results will be destroyed and no discipline shall be imposed against the employee. Refusal of the employee to submit to the test where these procedures have been followed

will be treated as a positive test and subject the employee to discipline including removal from the Project and discharge.

4. Unless there is reason to believe that the person being tested has previously altered a sample or unless there is agreement in writing, an individual will be allowed to provide the required specimen in the privacy of a stall or partitioned area.

5. A worker initially dispatched to a Project job site where this Policy is in effect will be required to submit to testing for illegal drugs or alcohol as defined in the Policy. The testing of such workers must be conducted in compliance with the "Drug Testing Procedures" described in this Policy, and be required of dispatched workers only on the first day of reporting to the initial job site. The urine drug and alcohol testing of these dispatched workers is the only testing allowed under this Policy, other than for "reasonable cause" or in connection with an accident as set out above in this Policy. Notwithstanding this provision, if a rehabilitation program or drug treatment program determines that periodic testing is appropriate or necessary for the employee who has tested positive under this Policy, then that employee will be subject to future urine drug testing as recommended by the rehabilitation program.

Except as set out in the Notice provision above, a worker initially dispatched to such job site who refuses to submit a urine sample for drug/alcohol testing will not be entitled to show-up pay for that day, and will be denied employment on the Project for a period of ninety (90) calendar days. If a worker who has refused a test returns to the same job site within ninety (90) calendar days, and is denied work, that worker will not be entitled to show-up pay. If a worker initially dispatched to the job site refuses to submit a urine sample or to take a breathalyzer test for drug/alcohol testing, and that worker is denied employment for ninety (90) calendar days this action will not be grievable under the CWA. If the worker tests negative for drugs and alcohol, he/she will not be drug tested again while employed by the Contractor at any job site except for reasonable cause or post-accident as described in this Policy.

6. If the Contractor has reasonable cause to believe an employee is under the influence of drugs or alcohol, or requires a post accident drug or alcohol test, as set forth in this Policy, and the employee refuses to submit to a drug test, the refusal shall be treated as a positive test result and the employee/applicant shall be subject to discipline, including removal from the Project and discharge.

7. The following rules control the pay for dispatched workers tested on the first day of their employment:

- A. A dispatched worker who is put to work immediately after having passed the test shall be paid starting at the time the worker reported for the test(s).
- B. Where a contractor requests a dispatched worker to report for purposes of a pre-hire substance abuse test, and does not intend to place the worker in an active work position

on that day, the worker shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.

- C. If the dispatched worker is not allowed to work until the results of the drug test are received, and the test results are positive, the dispatched worker is not entitled to any form of pay (including show-up pay).
- D. If the dispatched worker is put to work, that dispatched worker is entitled to pay and benefits under the CWA for all hours worked, regardless of the results of the drug test.
- E. Where a Contractor fails to provide notice, pursuant to this Policy, to the Union hiring hall that the job site is a drug and alcohol testing site, a dispatched worker who refuses to take the pre-employment test will be paid two hours show-up pay, except that no dispatched worker will be hired without having taken a pre-employment drug test.

DRUG TESTING PROCEDURES

1. The testing shall be done at a certified laboratory located in California. The parties retain the right to inspect the laboratory to determine conformity with the standards described in this Policy. The laboratory will only test for alcohol and the illegal drugs listed in the Definition Section of this Policy and Appendix A. All testing will be at the Contractor's expense.

Testing procedures, including controlled substance to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol test shall be by breathalyzer. Any test revealing a blood/alcohol level equal to or greater than 0.08 percent, or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or crane any test revealing a blood/alcohol level equal to or greater than 0.04 percent, or the established California State standard for commercial motor vehicle operations, shall be positive and will be conducted under procedures consistent with California state law.

An employee/applicant presenting himself/herself at a Substance Abuse Prevention Coordinator-approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until he/she has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee/applicant being classified as “refusing to test” and

being prohibited from working on the Project for a minimum of ninety (90) calendar days from the date of the scheduled test.

At the time the urine specimens are collected two (2) separate samples shall be placed in separate sealed containers. One (1) of the samples collected in a separate container shall be kept refrigerated at the site where the sample is given. Upon request, this second sample shall be made available to the employee for testing by a certified laboratory selected by the employee at the employee's expense.

2. The specific required procedure is as follows:

- A. Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee's option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.
- B. Immediately after the specimen is collected, it will be divided into two (2) urine bottles which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employer's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
- C. A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.

- 3. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3) ions. In order to be considered "positive" for reporting by the laboratory to the employer, both samples must be tested separately in separate batches and must also show positive results on the GC/MS confirmatory test.
- 4. All positive drug, alcohol or adulterant test results must be reported to a Medical Review Officer (MRO) appointed by the designated laboratory. The MRO shall review the test results and disclosure made by the employee/dispatched worker and shall attempt to interview the employee/dispatched worker to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the employee/dispatched worker, but failing to make contact within two (2) working days, may deem the employee/dispatched worker's result a "lab positive." After the issuance of a "lab positive," the employee/dispatched worker will be barred

from the Project until the employee/dispatched worker makes contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of the negative result.

5. If the testing procedures confirm a positive result, as described above, the employee/dispatched worker and the Substance Abuse Prevention Coordinator will be notified of the results in writing by the MRO, including the specific quantities. If requested by the employee or the Union (within the written consent of the member), the laboratory will provide copies of all laboratory reports, forensic opinions, laboratory work sheets, procedure sheets, acceptance criteria and laboratory procedures.
6. In the event of a positive drug or alcohol test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the request of the employee at his/her expense. Re-tests may be conducted by the same or any other approved laboratory. The laboratory shall endeavor to notify the MRO of positive drug, alcohol or adulterant test results within five (5) working days after receipt of the specimen. The employee may request a re-test within five (5) working days from notice of a positive test result by the MRO. Costs of re-tests will be paid in advance by the requesting party.
7. The Substance Abuse Prevention Coordinator shall ensure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
8. All information from an employee's or dispatched worker's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or dispatched worker. The results of a positive drug test shall not be released until the results are confirmed.
9. Every effort will be made to ensure that all employee substance abuse problems will be discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in any disciplinary procedure, and those persons will be identified in writing at the time of the procedure.

No laboratory or medical test results will appear in the employee's Personnel File. Information of this nature will be kept in a separate confidential file.

All necessary measures shall be taken to keep the fact and the results of the test confidential.

**CONSEQUENCES FOR VIOLATING
THE RULES AND PROVISIONS OF THIS POLICY**

1. Prospective or dispatched workers: Dispatched workers who test positive to the pre-employment drug and alcohol test conducted pursuant to this Policy will be denied employment by the Contractor until the test is confirmed to the dispatched worker in writing. Dispatched workers will be informed in writing if they are rejected on the basis of a confirmed positive drug test result. A dispatched worker may utilize the CWA grievance procedure to challenge the validity of a positive test result.
2. Employees: If the initial results of a drug or alcohol test administered by the Contractor show that the employee was under the influence of drugs or alcohol while on duty, the employee will be removed from the Project until the test results have been confirmed by the procedures contained in this Policy.
 - (a) If the final test is negative, the employee will be reinstated with full back pay for lost time.
 - (b) If the initial positive test result is confirmed, the employee will be barred from the Project effective the date and time of the collection of the test specimen. The employee is subject to termination, subject to the provisions of the section below.
 - (c) Discipline imposed for a first positive test for an employee subjected to reasonable-cause testing, or subject to post-accident testing when in fact drugs or alcohol played no role in the accident, and any grievance filed in response thereto, will be held in abeyance pending voluntary participation by the employee in a Substance Abuse Prevention Coordinator-approved treatment program during an unpaid leave of absence.
 - (d) The employee may return to work if work is available after a certificate of either rehabilitation or satisfactory participation in the program. If the program determines that periodic testing is appropriate or necessary, the employee will be subject to future urine drug or alcohol testing, even on a random basis.
 - (e) If the employee successfully completes or participates in such a program or is not disciplined for substance use, possession or being under the influence of drugs or alcohol for twenty-four (24) months following the initial confirmed positive test, the discipline shall be revoked.
 - (f) A second positive test will result in the imposition of discipline, including termination and removal from the Project and the lifting of any suspension regarding discipline imposed for a first test less than twenty-four (24) months preceding the date of the second positive test.

NOTICE AND CONSENT/WAIVER FORMS

Employees must execute a written consent and waiver to submit to the drug and alcohol tests and for the testing laboratory to release the report of test results to the Contractor. The individual to be tested will sign the form attached as Appendix D at the time of submitting to a pre-employment test and the form attached as Appendix B for any subsequent test. Signing the Content/Waiver Form will not waive any individual rights available to the employee under federal or state law. The employee must also sign at the time of employment the Notice Form, attached as Appendix C, describing the employee's obligations under this Uniform Substance Abuse Prevention Policy.

SUBSTANCE ABUSE PREVENTION COORDINATOR

The City will designate a Substance Abuse Prevention Coordinator from candidates nominated by the parties to the CWA to monitor compliance with this Policy and to provide assistance to Project employees with questions concerning drugs or alcohol test procedures, availability of approved counseling or rehabilitation or any other drug or alcohol matters. All inquiries to the Coordinator will be confidential. The parties are eager to help employees with drug and alcohol problems. The Coordinator will be prepared to assist employees in discussing insurance coverage and locating available counseling, rehabilitation and community resources.

SUPERVISOR TRAINING

The Contractor shall develop and implement a program of training to assist management representatives and stewards in identifying factors which constitute reasonable cause for drug testing, as well as a detailed explanation and emphasis on the terms and conditions of the Policy.

EMPLOYEE VOLUNTARY SELF-HELP PROGRAM

An employee who engages in drug/alcohol abuse is encouraged to participate in an Employee Voluntary Self-Help Program. Employees who seek voluntary assistance for alcohol and/or substance abuse not arising out of or in connection with the occurrence of any testing incident or related disciplinary action may not be disciplined for seeking such assistance. Request by employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Such Voluntary Self-Help Program will not be at the expense of the Contractor. An Employee Self-Help Program Counselor shall not disclose information on drug/alcohol use received from an employee for any purpose or under any circumstances, unless specifically authorized in writing by the employee.

The Contractor shall offer an employee affected by alcohol or drug dependency an unpaid medical leave of absence, for the purpose of enrolling and participating in a drug or alcohol rehabilitation program. Any employee who voluntarily submits to such Voluntary Self-Help Program may return to employment on the Project upon successful completion of such a program, or upon a certification of rehabilitation and satisfactory participation in such a program, and provide that the employee passes a drug and alcohol test upon return to the Project and agrees for a period of one (1) year thereafter, to submit to periodic drug and alcohol testing, which shall be conducted in addition to any reasonable cause or post-accident testing otherwise conducted, if considered appropriate or necessary by the rehabilitation program.

The Substance Abuse Prevention Coordinator will work with the signatory Unions to develop an "approved" list of counseling and rehabilitation programs to be used by the employees/dispatched workers who test positive for illegal drugs, alcohol, adulterants or misuse of prescription drugs. The cost of counseling and rehabilitation will not be the responsibility of the Contractor.

GRIEVANCE PROCEDURE

All disputes concerning the interpretation or application of the Policy shall be subject to the grievances procedure established by the CWA. Nothing in the grievance procedure may void this Uniform Substance Abuse Policy from continued utilization on Project work.

SAVINGS CLAUSE

The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule or regulation. Should any part of the Policy be determined contrary to law, such invalidation of that part or portion of the Policy will not invalidate the remaining portions. In the event of such determination, the parties to the CWA agree to meet promptly to commence negotiations concerning the provision affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties hereto.

TERM OF THE POLICY

This Policy constitutes the only agreement in effect between the parties to the CWA concerning drug abuse, prevention and drug testing. No revisions or amendments will be made to this Policy except with the written approval of the parties hereto. This Policy shall become effective for all work covered by the CWA upon the effective date of the CWA and shall remain in effect for the duration of the CWA unless terminated or amended by the mutual consent of the parties hereto.

The parties to the CWA agree to meet on an annual basis to review this Policy, to bring it into compliance with the law, if necessary, and to review other considerations which may arise during the course of the CWA. Changes in this Policy may be made only if mandated by law or agreed upon by the parties.

APPENDIX A
SUBSTANCE ABUSE PREVENTION AND DETECTION
THRESHOLD LEVELS

CONTROLLED SUBSTANCE*	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	GC/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml **
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
Alcohol	EMIT	0.08 or 0.04% as required	GC/MS	0.08 or 0.04% as required

*All controlled substances including their metabolite components.

** SAMHSA specified threshold

*** A sample reported positive contains the indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level. Testing levels may be changed to meet revised industry standards subject to mutual agreement.

EMIT - Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

**APPENDIX B
EMPLOYEE DRUG TEST
CONSENT/WAIVER FORM**

TO: (Name of Contractor/Employer) _____
FOR: (Project Name) _____
Name of Dispatched Worker/Employee: _____
Social Security Number: _____
Home Address: _____
City: _____ State: _____ Zip Code: _____
Home Telephone: _____ Other Phone Numbers: _____

Consent for Testing

I (name) _____ understand that my Employer has determined that there is probable cause to believe that I have been working at the job site under the influence of alcohol or drugs. In response to this, my Employer requires that I provide a urine (or breathalyzer) sample as is allowed under the Project drug testing policy.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be subject to discipline including discharge from employment.

I hereby consent and agree to give specimens of my urine or to take the breathalyzer test. **My refusal to provide such a specimen or take such a test will lead to termination of my employment.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read and understood and agree to the above:

Witness Signature

Employee Signature

Date

Date

APPENDIX C
UNIFORM SUBSTANCE ABUSE PREVENTION POLICY NOTICE FORM

The City of Hayward CWA Substance Abuse Prevention Policy requires that:

- Use, possession or the sale of controlled substances at the Project site is prohibited. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination, removed from the Project and not be eligible for rehire.
- Conviction for selling illegal drugs, while employed on this Project, even if off the Project, will cause me to be barred from the Project and will subject me to discipline, including discharge.
- Use of prescribed or over-the-counter medication is permitted if it will not affect work performance.
- If prescribed or over-the-counter medication may cause a safety risk, I must notify my Contractor/Employer prior to using such substances on the job.
- If I refuse to submit to pre-employment screening/testing for controlled substances and alcohol as requested by the Contractor in accordance with the terms of the Policy, I will not be eligible to retake the drug test for ninety (90) calendar days. I understand that nobody will be hired on the Project without taking and passing such a test.
- The presence of an adulterant in my system at or above the defined threshold levels will make me ineligible for employment, or will result in the termination of my employment and ineligibility for reemployment, for at least ninety (90) calendar days.
- I will not be hired if I fail the test because an illegal drug or alcohol is found in my system, and I will not be eligible to be employee for ninety (90) calendar days and unless I have participated successfully in a drug or alcohol rehabilitation program.
- I may be terminated for failing a drug or alcohol test, and I will be required to complete an approved counseling or rehabilitation program and to agree to periodic testing at that program's request in order to return to work.

I sign this acknowledgement voluntarily, with full knowledge and understanding of the City of Hayward CWA Substance Abuse Prevention Program and I agree to be bound by its terms.

(Employee Name)

Print _____

Signature _____

Date _____

Contractor/Company Name

**APPENDIX D
CITY OF HAYWARD CWA
PRE-EMPLOYMENT DRUG TEST
CONSENT/WAIVER FORM**

TO: (Name of Contractor/Employer) _____
FOR: (Project Name) _____
Name of Dispatched Worker/Employee: _____
Social Security Number: _____
Home Address: _____
City: _____ State: _____ Zip Code: _____
Home Telephone: _____ Other Phone Numbers: _____

Consent for Testing

I (name) _____ understand that the City of Hayward Project to which I have been dispatched, or for which I am seeking employment, requires pre-employment drug and alcohol testing. The company to which I have been dispatched requires that I take and pass this test prior to commencing employment.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be ineligible for employment on the Project and will not be able to take a new drug or alcohol test for ninety (90) days.

I hereby consent and agree to give specimens of my urine. **My refusal to provide such a specimen will prevent me from gaining employment on the Project for ninety (90) days.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read and understood and agree to the above:

Witness Signature

Prospective/Dispatched Worker

Date

Date

**APPENDIX E
INCIDENT REPORT FORM**

Employer _____
Employee involved _____
Date of Incident _____ Time of Incident _____
Location of Incident _____
Employee's Job Assignment/Position _____
Has employee been notified of his/her right to Union Representation? _____
Date/Time notified _____
Employee's Initials _____
Witness to incident _____

OBSERVATIONS:

EMPLOYEE'S EXPLANATION:

Action Recommended:

Action Taken:

_____ Signature	_____ Date	_____ Signature	_____ Date
Employee Representative		Union Representative (if present)	
_____ Title		_____ Title	
Date/Time Action taken: _____			