

11.04

Office of Superintendent of Schools

COPY

**ITEM REQUIRING ATTENTION - BOARD OF EDUCATION**

Board of Trustees:

November 30, 2016

**Subject: COMMUNITY BENEFIT AGREEMENT  
Measure I & J**

**Staff Analysis:** A Community Benefit Agreement (CBA), properly drafted and properly managed, can operate to the benefit of the Alum Rock community by providing jobs for our residents, program and financial support for our school community, and labor/management collaboration to move District projects forward without undue interruption or work stoppage. The merits of a CBA will be discussed and action may be taken to adopt a CBA, including direction to the Measure I and Measure J Project Manager/Construction Manager regarding the administration of such CBA. This item was submitted by Trustee Esau Ruiz Herrera.

**Action**

Submitted by: <u>Hilaria Bauer</u>	Title: <u>Superintendent</u>
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To the Board of Trustees:	Meeting: December 8, 2016 Regular Board Meeting
<b>Recommend Approval</b>	
<u>11.04</u> Agenda Placement	<u>Hilaria Bauer, Ph.D., Superintendent</u>

12/8/16  
ARUESD Board Approved

<b>DISPOSITION BY BOARD OF TRUSTEES</b>		
Motion by: <u>Andrés Guntoro</u>	Seconded by: <u>Dolores Marquez-Fraust</u>	
Approved: <u>4</u>	Not Approved: <u>0</u>	Tabled: _____

1 absent  
Esau Herrera

**ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT  
COMMUNITY WORKFORCE AGREEMENT**

This Agreement is entered into this 8<sup>th</sup> day of December, 2016 by and between the Alum Rock Union Elementary School District (hereinafter the "District"), together with contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the **Agreement To Be Bound ("Addendum A")** (referred to collectively herein as "Contractor(s)/Employer(s)"), and the Santa Clara and San Benito Counties Building & Construction Trades Council (hereinafter the "Council") and its affiliated local Unions that have executed this Agreement (referred to collectively herein as "Union" or "Unions").

The purpose of this Agreement is to promote the efficiency of construction operations for the District through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of Projects funded by proceeds from Measure I and/or Measure J bonds.

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

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

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

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

WHEREAS, the interests of the District, the Unions, the Contractor(s)/Employer(s) and the public would be best served if 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)/Employer(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project and to encourage close cooperation among the Contractor(s)/Employer(s) and the Unions so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, potentially leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the

Contractor(s)/Employer(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the California Public Contracts Code and all state, local and federal laws; and

WHEREAS, the District has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contract(s) on the Project; and

WHEREAS, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of District graduates, underrepresented workers and targeted workers, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

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

WHEREAS, the District has previously entered into a Construction Careers Agreement for prior projects and has experienced positive benefits with its relationship with the Unions; and the District Board of Directors has approved the use of this Agreement.

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

## **ARTICLE I DEFINITIONS**

- 1.1 "Agreement" means this Community Workforce Agreement.
- 1.2 "Agreement to be Bound" means the agreement (attached hereto and incorporated herein as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of performing Project work.
- 1.3 "Completion" means that point at which there is Final Acceptance by the District of a Construction Contract and the District has filed a Notice of Completion. For the purposes of this definition, "Final Acceptance" means that point in time at which the engineer for the District has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents, and the District has executed a written acceptance of the work.
- 1.4 "Construction Contract(s)" means all public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of the Project is done) awarded by the District that are necessary to complete the Project.
- 1.5 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent

entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and that enters into a contract with the District with respect to the construction of any part of the Project, under contract terms and conditions approved by the District and which incorporate this Agreement, and all contractors or subcontractors of any tier.

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

1.7 "District" means the Alum Rock Union Elementary School District, its Board of Directors, officers, agents, employees and administrative staff, including managerial personnel.

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

1.9 "Project" means all District construction projects paid for in whole or in part out of Measure I and/or Measure J funds. The District and the Council may mutually agree in writing to add additional components to the Project's scope of work covered by this Agreement. Although "Project" is used throughout this Agreement in the singular, it applies to all projects as defined in this Section.

1.10 "Project Manager" means the person(s) or entity(ies) designated by the District to oversee all phases of construction on the Project and the implementation of this Agreement, and who works under the guidance of the District's authorized representative.

1.11 "Union" or "Unions" means the Santa Clara and San Benito Counties Building & Construction Trades Council, AFL-CIO, and its affiliated Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

## ARTICLE II SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractor(s)/Employer(s) performing Construction Contracts on the Project (including subcontractors at any tier), and their successors and assigns, the District, the Council and its affiliated Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on the Project. For the purposes of this Agreement, Construction Contracts shall be considered completed as set forth in Section 1.3, except when the District directs a Contractor to engage in repairs, warranty work, modifications or punch list work as required under a Construction Contract with the District, or when a Contractor performs work under a change order for a Construction Contract.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related

activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, and modular furniture installation. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

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

2.3.2 This Agreement covers all on-site fabrication work over which the District, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s). This Agreement also covers work done off-site that is specifically dedicated to processing of materials that would otherwise be done on site if space was available (e.g. concrete batch plant, form or panel construction).

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand, or other fill or similar material which is incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of a written request or as required by bid specifications.

2.3.4 In limited circumstances requiring specialized knowledge of particular item(s), this Agreement shall not apply to construction persons designated by a manufacturer as necessary to protect the manufacturer's warranty, provided that the contractor using the manufacturer's construction persons can demonstrate by an enumeration of specific tasks that the work cannot be performed by workers employed under this Agreement. All such work must be identified and discussed by the contractor at the Pre-Construction Conference, and the contractor shall be responsible for requesting a Pre-Construction Conference if necessary to satisfy the requirements of this Section. Any dispute shall be subject to the grievance and arbitration procedures set forth in this Agreement.

2.3.5 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Agreement of Elevator Constructors, the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and all instrument calibration work and loop checking shall be performed under the terms of the

UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIII, XIV of this Agreement shall apply to such work.

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

2.4.1 The Agreement shall not apply to a Contractor/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees, other professional engineers, supervisors above the level of General Foreman (except those covered by existing Master Agreements), and administrative and management personnel.

2.4.2 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city or other governmental bodies or their contractors, or by public or private utilities.

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

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

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

### ARTICLE III EFFECT OF AGREEMENT

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

3.2 By accepting the award of work under a Construction Contract for the Project, whether as a Contractor or subcontractor thereunder, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the **Agreement to be Bound**, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor/Employer may not be evaded by subcontracting. If the subcontractor refuses to

execute the **Agreement to be Bound**, then such subcontractor shall not be awarded a construction subcontract to perform work on the Project.

3.4 This Agreement shall only be binding on the signatory parties hereto and their successors and assigns and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor(s)/Employer(s) respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

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

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement is inconsistent with a Schedule A, the provisions of this Agreement shall prevail. Where a provision of a Schedule A is not inconsistent with this Agreement, the provisions of the Schedule A shall apply.

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

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

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

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

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on the Project during the interim, with

retroactive payment due within seven (7) calendar days of the effective date of the modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the District and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred and one (1) business day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer's or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

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

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

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then the parties shall select the arbitrator from the list in Section 13.4. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the District and the party alleged to be in violation, and to the Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the District will contact the permanent arbitrator named above, or his alternate, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours

after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this Section.

4.2.5 Such award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such 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 delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

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

## ARTICLE V PRE-CONSTRUCTION CONFERENCE

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

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

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

5.3 Pre-Construction Conference: The pre-construction conference shall include but not be limited to the following subjects:

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

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

## **ARTICLE VI NO DISCRIMINATION**

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

## **ARTICLE VII UNION SECURITY**

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

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

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

## **ARTICLE VIII REFERRAL**

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

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

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain workers from any source. A Contractor/Employer who hires any worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Targeted Hiring: In order to increase construction job opportunities for District graduates, underrepresented workers and targeted workers, the parties shall comply with the Targeted Hiring Agreement attached hereto as **Addendum B**.

## **ARTICLE IX WAGES AND BENEFITS**

9.1 The 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(s) for each hour worked on the Project, in the amounts designated in the Master Agreement(s) of the appropriate Union(s).

9.2 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, 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 Contractor(s)/Employer(s) 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)/Employer(s). The Contractor(s)/Employer(s) agrees to execute a Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be in compliance with the applicable Schedule A.

## **ARTICLE X APPRENTICES**

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

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

10.3 Consistent with the Master Agreements, there shall be no restrictions on the utilization of apprentices in performing the work of their craft, provided they are properly supervised. The Unions agree to cooperate with the Contractor(s)/Employer(s) in furnishing apprentices as requested up to the maximum percentage, in compliance with the applicable Master Agreement and the state-approved apprenticeship standards for that craft.

## **ARTICLE XI HELMETS TO HARDHATS**

11.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (the "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

11.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

## **ARTICLE XII COMPLIANCE**

12.1 It shall be the responsibility of the Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. 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 Contractor(s)/ Employer(s) on the Project. The District shall monitor and enforce compliance with the prevailing wage requirements of the state, and the Contractor(s)/Employer(s)' compliance with this Agreement.

## **ARTICLE XIII GRIEVANCE ARBITRATION PROCEDURE**

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

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

13.3 No grievance shall be recognized unless the grieving party (Local Union or District Council, on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

13.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Local Union or District Council, or his/her designee, or the representative of the employee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not settled in Step 1, within five (5) business days of the Step 1 meeting, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved, and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union

representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not settled in Step 2, within five (5) business days of the Step 2 meeting, either party may request the dispute be submitted to arbitration or the time may be extended by mutual agreement of the parties. Within five (5) business days after referral of the dispute to Step 3, the representatives shall notify the permanent arbitrator, or if he/she is not available, the alternate arbitrator, for final and binding arbitration. The parties agree that if the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. William Riker
2. Morris Davis
3. William Engler

13.5 The decision of the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

13.6 The time limits specified at any step of the Grievance Procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

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

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

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

**ARTICLE XIV  
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

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

**ARTICLE XV  
MANAGEMENT RIGHTS**

15.1 Consistent with the Schedule A agreements, the Contractor(s)/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that lawful manning provisions in the Master Agreement shall be recognized.

15.2 Consistent with the Schedule A agreements, it is the responsibility of the Contractor(s)/Employer(s) to ensure safe working conditions on the Project and to notify employees of and ensure compliance with the applicable safety laws and regulations on the Project.

**ARTICLE XVI  
DRUG AND ALCOHOL TESTING**

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies contained in the applicable Schedule A.

**ARTICLE XVII  
SAVINGS CLAUSE**

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

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

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

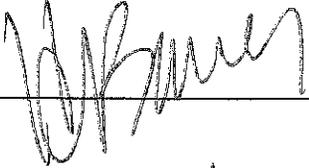
**ARTICLE XVIII  
TERM**

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

18.2 This Agreement shall become effective on the day it is executed by the District and by the Council.

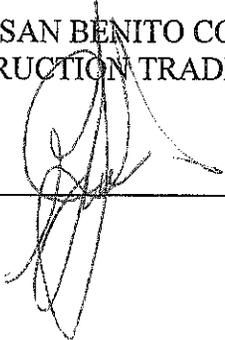
18.3 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed PDF signature pages transmitted to other parties to this Agreement shall be deemed the equivalent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

ALUM ROCK UNION ELEMENTARY SCHOOL  
DISTRICT

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

Date: 4/24/17

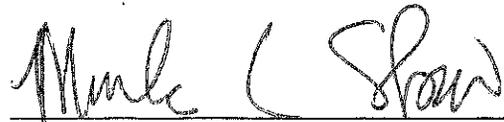
SANTA CLARA AND SAN BENITO COUNTIES  
BUILDING & CONSTRUCTION TRADES COUNCIL

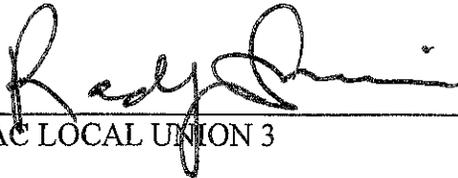
By:  \_\_\_\_\_  
Josué García, CEO

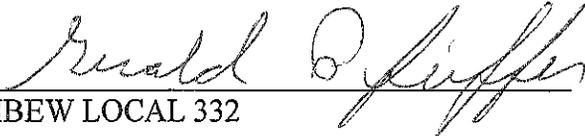
Date: 4/5/17

SIGNATURE BLOCKS FOR UNIONS

  
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BOILERMAKERS LOCAL UNION 549

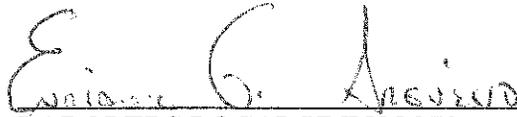
  
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IBEW LOCAL 332

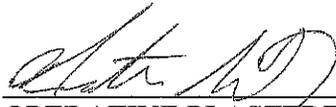
  
ELEVATOR CONSTRUCTORS LOCAL UNION 8

I.U.P.A.T. DISTRICT COUNCIL 16

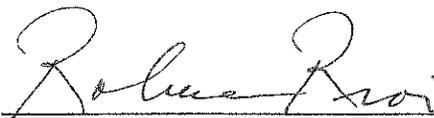
  
IRON WORKERS LOCAL 377

  
LABORERS LOCAL UNION 270

  
OPERATING ENGINEERS LOCAL 3

  
OPERATIVE PLASTERERS AND CEMENT MASONS LOCAL UNION 400

  
PLASTERERS LOCAL UNION 300

  
ROOFERS LOCAL UNION 95

  
UNITED ASSOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 355

  
UNITED ASSOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 393

  
UNITED ASSOCIATION, SPRINKLER FITTERS LOCAL UNION 483

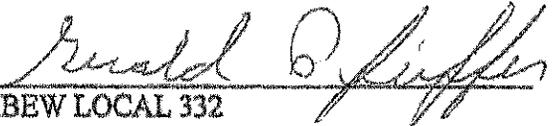
  
SHEET METAL WORKERS INTERNATIONAL UNION LOCAL 104

SIGNATURE BLOCKS FOR UNIONS

  
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BOILERMAKERS LOCAL UNION 549

  
BAC LOCAL UNION 3

  
IBEW LOCAL 332

  
ELEVATOR CONSTRUCTORS LOCAL  
UNION 8

  
I.U.P.A.T. DISTRICT COUNCIL 16

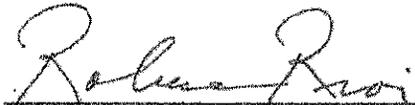
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LABORERS LOCAL UNION 270

OPERATING ENGINEERS LOCAL 3

  
OPERATIVE PLASTERERS AND CEMENT  
MASONS LOCAL UNION 400

  
PLASTERERS LOCAL UNION 300

  
ROOFERS LOCAL UNION 95

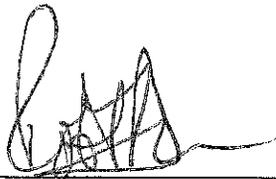
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PIPEFITTERS LOCAL UNION 355

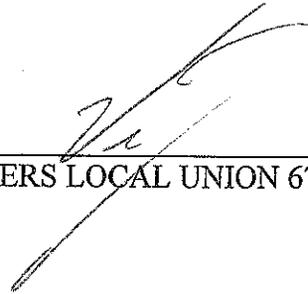
  
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PIPEFITTERS LOCAL UNION 393

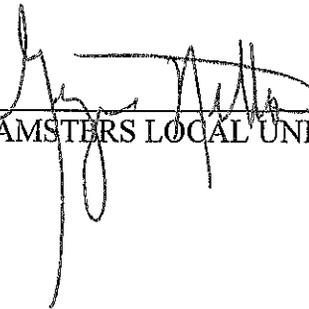
UNITED ASSOCIATION, SPRINKLER  
FITTERS LOCAL UNION 483

SHEET METAL WORKERS  
INTERNATIONAL UNION LOCAL 104

  
SIGN, DISPLAY AND ALLIED CRAFTS  
LOCAL UNION 510

  
NORTHERN CALIFORNIA CARPENTERS  
REGIONAL COUNCIL, FOR ITSELF AND  
ITS AFFILIATES

  
LABORERS LOCAL UNION 67

  
TEAMSTERS LOCAL UNION 287

**Addendum A  
Agreement to be Bound**

[Addressee]  
[Address]  
[City and State]

Re: Alum Rock Union Elementary School District Community Workforce Agreement

Dear Mr./Ms. \_\_\_\_\_:

The undersigned party confirms that it agrees to be a party to and bound by the Alum Rock Union Elementary School District Community Workforce Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this **Agreement to be Bound**, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate Subscription Agreement when such trust funds require such documents.

The obligation to be a party to and bound by this Agreement shall extend to all work covered by the Alum Rock Union Elementary School District Community Workforce Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to be Bound.

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

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

Contractor State License Number or Motor Carrier (CA) Permit Number: \_\_\_\_\_

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

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

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

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

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

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

**Addendum B**  
**ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT**  
**TARGETED HIRING AGREEMENT**

**I. Purpose**

As parties to the Alum Rock Union Elementary School District Community Workforce Agreement (“Agreement”), the Alum Rock Union Elementary School District (“District”) and the Santa Clara & San Benito Counties Building Trades Council (“Council”) recognize the mutual needs and the public interest in: (1) increasing training and career opportunities for District graduates, Targeted Workers and Underrepresented Workers in the construction trades through apprenticeship and pre-apprenticeship programs; and (2) developing a pipeline to ensure the continued availability of a skilled, qualified and readily available construction workforce for this and future construction Projects.

In furtherance of these goals, the District and the Council hereby agree to enter into this Targeted Hiring Agreement (“THA”).

**II. Definitions**

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

***Approved Pre-Apprenticeship Program.*** An Approved Pre-Apprenticeship Program means the Santa Clara County Trades Orientation Program or an equivalent structured, MC-3 certified pre-apprenticeship program; or a Union-sponsored program that serves Underrepresented Workers and is sponsored by Council-approved community based organizations (“CBOs”), the Council itself, affiliate(s) of the Council, the State Building & Construction Trades Council of California, or the North America Building & Construction Trades Council.

***Community Workforce Coordinator.*** The Community Workforce Coordinator means the work2future Workforce Investment Board, or another entity as determined by mutual written agreement of the District and the Council. The Community Workforce Coordinator is responsible for maintaining an up-to-date list of Targeted Workers who are available for work with their current contact information, and will provide this list to any of the Parties upon request.

***Covered Contractor.*** A Covered Contractor means a contractor performing \$250,000 or more of Covered Work on a Project. A Covered Contractor is subject to the Workforce Goal. If a contractor performs less than \$250,000 of Covered Work on a Project, that contractor is not subject to the Workforce Goal, but may nonetheless participate voluntarily in the Workforce Goal.

***Targeted Worker.*** A Targeted Worker is an individual who has completed an Approved Pre-Apprenticeship Program. Prior to working on the Project, a Targeted Worker must be indentured in the applicable Joint Apprenticeship Training Program.

*Underrepresented Worker.* An Underrepresented Worker is an individual who, prior to commencing work, has at least one of the following barriers to employment: (1) is currently homeless; (2) is currently receiving public assistance; (3) is currently participating in a reentry program or was formerly incarcerated; (4) has been continuously unemployed for the previous one year; (5) has been emancipated from the foster care system; (6) is a veteran of the U.S. military; (7) is an at-risk youth; or (8) is a survivor of labor trafficking.

### **III. Hiring/Employment Obligations**

Consistent with the Master Agreements of the Unions signatory to the Agreement, the Unions' hiring hall procedures, and the applicable Joint Apprenticeship Training Committee ("JATC") rules, standards and procedures, Covered Contractors shall make a good faith effort to meet the following Workforce Goal related to hiring and employment of workers on the Project.

#### *Workforce Goal.*

- a) Consistent with the requirements of California Labor Code §§ 1776, 1777.5 and 1777.6, each Covered Contractor shall make a good faith effort to reach the goal of employing one (1) or more Targeted Worker(s) as First Year Apprentice(s) for at least 25% of the Covered Contractor's apprentice hours on the Project, unless the Contractor demonstrates to the Community Workforce Coordinator that the Targeted Worker(s) worked the maximum feasible hours, or shows other good cause. A Targeted Worker may be assigned to work on the Project or on another jobsite at the employer's discretion, provided that the worker is assigned to the same job classification that would apply to a Targeted Worker on the Project.
- b) Nothing in this THA requires a Covered Contractor to hire a particular individual or to retain a particular individual in employment. In the event that a Targeted Worker is hired by a Covered Contractor but does not complete the requisite hours of employment in Section III(a), the Covered Contractor shall make a good faith effort to meet the "Alternate Method to Satisfy Workforce Goal" set forth in Part IV of this THA.
- c) The Community Workforce Coordinator will, upon request, refer names of qualified, available and willing Targeted Workers to the Union and/or Covered Contractor(s).
- d) The Unions agree to cooperate with Covered Contractor(s) in providing available apprentices as requested. All apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements.
- e) In the event that the Community Workforce Coordinator is unable to refer sufficient qualified, available and willing Targeted Workers, this section shall not apply until such time as qualified, available and willing Targeted Workers are available for hire.

- f) The Unions agree to cooperate with the District and CBOs designated by mutual agreement of the District and the Council in conducting outreach activities to recruit and refer Underrepresented Worker applicants to Approved Pre-Apprenticeship Programs for which they are qualified or qualifiable.
- g) Covered Contractors shall maintain electronic records documenting the employment of and hours worked by Targeted Worker(s), and provide such records to the General Contractor, the District or the Community Workforce Coordinator upon request.

#### **IV. Alternate Method to Satisfy Workforce Goal**

Covered Contractors who fail to make good faith efforts to meet the Workforce Goal in Part III of this THA may also satisfy the Workforce Goal by demonstrating they have accomplished *all* of the following, subject to the applicable Master Agreement(s), hiring hall procedures, JATC procedures and standards approved by the Division of Apprenticeship Standards of the California Department of Industrial Relations.

##### *Alternate Method.*

- a) Make good faith efforts to employ least one (1) first-year apprentice on the Project (or for equivalent work on another jobsite, provided that the apprentice is assigned to the same job classification that the apprentice would have performed on the Project).
- b) Submit a Craft Request Form to the Community Workforce Coordinator offering the opportunity to provide qualified, available and willing individuals with employment consideration for first-year apprentice positions.
- c) Submit a Craft Request Form to the applicable Union(s) requesting the dispatch of qualified, willing and available individuals referred by the Community Workforce Coordinator by name.
- d) Contact the Community Workforce Coordinator and provide the following information for all first-year apprentice job openings on the Project:
  - i. a description of the job, including the trade and any job requirements, such as specific qualifications or skills;
  - ii. the person's name and telephone number at the Covered Contractor's business who will be responsible for answering questions regarding the job opening; and
  - iii. a description of how applicants should apply for the job.

#### **V. Consequences of Non-Compliance**

The District and the Council shall oversee compliance monitoring through a Memorandum of Understanding with Working Partnerships. The Joint Administrative

Committee formed by Section 5.4 of the Agreement shall consider allegations of non-compliance by a Covered Contractor. If there is a determination by the JAC that a Covered Contractor has failed to make good faith efforts to meet the Workforce Goal *and* failed to satisfy the Alternate Method, this issue will be referred to the grievance procedure set forth in Article XIII of the Agreement. At any time during the process of compliance review, the JAC shall have the authority to reach a resolution with the Covered Contractor.

## **VI. Implementation**

The JAC shall assist with implementation of and monitoring compliance with the terms of this THA.