

# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

David Coss, *Mayor*

**May 10, 2012**

**Addenda #1 to Bid # '12/28/B**

**Fire Station No. 4 Additions and Renovations**

Please be advised of the following change(s)/correction(s) in the Request for Bid packet for Bid '12/28/B.

1. The following item shall be incorporated into the above referenced project.
  - a. City of Santa Fe Community Work Force Agreement (see attached)

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## RECEIPT ACKNOWLEDGE BY PROPONENT

This addendum will be part of the contract documents and shall be included with Bid submittal. Non-receipt of addendum by proponent in no way relieves proponent of obligation of compliance with any terms and conditions stated in the addendum.

# City of Santa Fe

## COMMUNITY WORKFORCE AGREEMENT (CWA)

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This Community Workforce Agreement (hereinafter referred to as "CWA" or "Agreement") is entered into this 18<sup>th</sup> day of April, 2012, by and between the City of Santa Fe ("the City") and the International Association of Heat and Frost Insulators and Asbestos Workers #76, International Union of Bricklayers and Allied Craft Workers #3, Southwest Regional Council of Carpenters, International Brotherhood of Electrical Workers # 611, International Union of Elevator Constructors #131, International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers #495, Southwest Laborers District Council L.I.U.N.A. # 16, International Union of Operating Engineers #953, International Union of Painters and Allied Trades #823, International Association of Plasterers and Cement Masons #254, United Association of Plumbers and Pipe Fitters #412, International Union of Roofers and Water Prooferers #123, Sheet Metal Workers International Association #49, International Brotherhood of Teamsters #492, Road Sprinkler Fitters U.A. Local Union # 669, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers #847, (collectively referred to as the "Unions"), and the New Mexico Building and Construction Trades Council, acting on their own behalf and on behalf of their respective affiliates and members, who have, through their duly authorized officers, executed this Agreement with respect to the construction of [insert description of project], a public works project of the City (hereinafter referred to as "Project" or "Covered Project").

Covered Project Agreements will be executed on an individual project basis in the future by signature of the City and the New Mexico Building and Construction Trades Council, as designee for all of the Unions and applicable Appendix A will be attached.

#### **ARTICLE 1 – RECITALS**

WHEREAS, City Ordinance #2012-12, allows for City public works construction projects in excess of \$500,000 to be built pursuant to a Community Workforce Agreement ("CWA" or "Agreement") that may provide:

1. contracting, subcontracting, training and employment policies and pathways to stable work for all workers; and
2. apprenticeship programs for individuals seeking training in a particular craft;
3. State of New Mexico Collective Bargaining Agreement wages that lead to a lasting career-track; and
4. stakeholders and community members input into developing and enacting policies and processes; and
5. a ready and adequate supply of highly trained and skilled craft workers; and
6. accurate, determined project costs at the outset;
7. established working conditions for all construction crafts for the duration of the project; and
8. a negotiated agreement which is a legally enforceable means of assuring labor stability and labor peace over the life of the project; and
9. accountability and evaluation of performance towards these goals; and
10. efficiency of Public Works construction operations during the construction of Covered Projects; and

11. orderly settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of Covered Projects; and
12. 11. Make available a ready and adequate supply of highly trained and skilled trade and craft workers; and
13. Accurately determine project labor costs at the outset of any construction project
14. Establish working conditions for all construction trades and crafts for the duration of the project; and
15. Negotiate legally enforceable commitments with all parties to a construction project to ensure labor stability and labor peace over the life of the project; and
16. Facilitate increases in the number of trained and skilled local construction workers through cooperative procedures and apprenticeship programs; and
17. Promotes the hiring of local subcontractors in the construction of large-scale public works projects funded by gross receipts tax and general obligation and;
18. Strives for hiring Santa Fe County residents as 50% of its workers on the Project.

WHEREAS, the Covered Project, that is the subject of this Community Workforce Agreement, a Public Works Contract, is defined by the provisions of the Public Works Contracts Act, Sections 13-4-1 through 13-4-43 NMSA 1978, Resolution 2011-xx and Purchasing Manual 28.8 of the City of Santa Fe.

WHEREAS, the successful completion of the Covered Project(s) are of the utmost importance to the City and the general public in the City; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the Unions affiliated with the New Mexico Building and Construction Trades Council and any other trade or craft labor organization which is signatory to this Agreement, employed by contractors and subcontractors who are signatory to agreements with said labor organizations; and

WHEREAS, the parties recognize that the Project will require large numbers of craft workers. The parties intend this Agreement to assist interested local residents in the surrounding communities of the Project, especially disadvantaged and low income residents that have typically been underrepresented in the construction industry, in pursuing careers in the construction industry through apprenticeship programs.

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

WHEREAS, the interests of the general public, the City, the Unions and Contractors 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

WHEREASE, the Contractors and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project; and

WHEREAS, the Contractors and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Covered Project(s) by the Contractors, and further, to encourage close cooperation among the Contractors, and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist among the Parties to this Agreement; 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 Covered Project(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 further, it is understood that General contractors and each sub-contractor are bound and shall remain bound, for the duration of each Covered Project, by the terms of this Agreement;

WHEREAS, the contractors for the construction of the Covered Project will be awarded in accordance with the applicable provisions of the procurement processes defined in the City's Purchasing Manual; and

WHEREAS, the City has the absolute right to select the lowest and best regular responsible bidder for the award of construction contracts on the Covered Project; and

WHEREAS, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise, and to pledge their full good faith and trust to work towards a mutually satisfactory completion of the Covered Project;

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

## **ARTICLE 2 -- DEFINITIONS**

2.1 "Agreement" shall mean this Community Workforce Agreement.

2.2 “City” or “City” shall mean the Governing Body of the City of Santa Fe or its duly authorized representatives, whether public officials or public employees and is the City of the Covered Project.

2.3 “Construction Contract” shall mean the Public Works Construction Project as defined and governed by the Contract Documents included in the City’s Invitation for Bid Packet, including but not limited to contracts for roads, sidewalks, curbs, gutters, water and wastewater systems, street lights, public facilities, parking structures, trails, or open spaces.

2.4 “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this Agreement for the Covered Project.

2.5 “Covered Project” or “Project” shall mean a Public Works Construction Project governed by this Agreement by virtue of exceeding \$500,000 .

2.6 “Local Unions and Unions” shall mean those signatory unions that are affiliates or members of the New Mexico Building and Construction Trades Council and such other unions or trade organizations that are signatories to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.7 “Letter of Assent” shall mean Agreement acceptance letters by all contractors, subcontractors, or employers acknowledging the terms and conditions of this Agreement.

2.8 “Project Contractor” shall mean the principal contractor for the Covered Project, otherwise known as the successful bidder that is awarded the Covered Project.

2.9 “Project Work” shall mean all work performed in construction of a Covered Project.

2.10 “Public Works Contracts” shall include this Agreement and is defined by the Public Works Contracts Act, Sections 13-4-1 through 13-4-43 NMSA 1978.

2.11 “Purchasing Manual” shall mean the City’s Purchasing Manual which governs the City’s procurement for all goods and services.

2.12 “Trades Council” shall mean the New Mexico Building and Construction Trades Council.

### **ARTICLE 3 – PURPOSE**

3.1 **Purpose.** The purpose of this Community Workforce Agreement (“CWA”) is to comply with Ordinance # [insert] goals of:

- creating contracting, subcontracting, training and employment policies that will strive to provide pathways to stable employment for all workers;
- offer wages at the State Collective Bargaining Agreement rate that lead to a lasting career-track;
- involve stakeholders and community members in developing and enacting policies and processes;
- make available a ready and adequate supply of highly trained and skilled craft workers;
- permit the City to accurately determine project costs at the outset and to establish working conditions for all construction crafts for the duration of the project;
- provide a negotiated agreement which is a legally enforceable means of assuring labor stability and labor peace over the life of the project;
- provide accountability and evaluation of performance towards these goals;
- promote efficiency of Public Works construction operations during the construction of Covered Projects and to provide for orderly settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of Covered Projects;
- provide apprenticeship programs for individuals seeking training in a particular craft;

3.2 Local Preference. A fundamental objective of this CWA is to provide a preference toward local workers in accordance with the City's Purchasing Manual, and to promote careers in construction by residents in Santa Fe and surrounding communities.

3.3 Workforce Stability. The City recognizes that Covered Projects of large magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time creates substantial potential for work disruption without an overriding commitment to maintain continuity of work and consistency of employer-employee relations by agreement or otherwise.

3.4 Protection of Public Interest. The City recognizes that the use of CWAs serves the interests of the residents of the City by ensuring that large-scale public construction projects proceed in an orderly manner without disruption from strikes, work stoppages, picketing, lockouts, slowdowns, or other interferences with work.

#### **ARTICLE 4 – SCOPE OF AGREEMENT**

4.1 Applicability: New Construction. This CWA shall apply to the following new Public Works Covered Projects under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

4.2 Covered Project; Scope. The Project is defined as: (list all aspects of the construction work involved.)

All Public Works construction projects with projected cost to the City of Santa Fe, of at least \$500,000.

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4.3 Acknowledgment by Contractors. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this CWA by executing the Letter of Assent (Attachment A) prior to commencing work. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this CWA shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, 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, and the National Agreement of the International Union of Elevator Constructors with the exception of Articles 8, 9, and 10 of this CWA, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obliged to sign any other local, area, or national agreement.

4.4 Construction of Agreement. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

4.5 Parties to the Agreement; No Third-Party Obligations. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

4.6 Applicability to Subsequent Parties. The City and/or the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Agreement, should it be designated the successful bidder.



4.7 Agreement; General Limitations. Items specifically excluded from the scope of this Agreement include but are not limited to the following:

- a) Work of non-manual employees, including but not limited to, superintendents, supervisors, engineers, field engineers, surveyors, inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, emergency medical and first aid technicians and other professional, engineering, administrative, supervisory and management employees.
- b) Equipment and machinery in the care, custody and control of the City.
- c) All off-site manufacture and handling of materials, equipment or machinery, except at areas dedicated solely to the Project, and transportation from any location off the Project site, including any off-site dedicated area.
- d) All employees of the City's Covered Project administrator, design team or any other consultant of the City not performing manual labor within the scope of this agreement.
- e) Any work performed on or near or leading to or on site of work covered by this Agreement and undertaken by State, County, City or other governmental bodies, or their contractors and/or public utilities or similar organizations or their contractors;
- f) Maintenance of leased equipment;
- g) Any work performed by or under the direction of City which is not within the scope of the Project;
- h) Work by any employee of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranties or guarantees; and work pursuant to any contract separately awarded by the City (but not including that to the General Contractor), including infrastructure work adjacent to, but not on, the Project footprint.
- i) Non-construction support services contracted by the City or Project Labor Administrator in connection with the Project;
- j) Employees of the City or any other affiliate or division of the City, and all work performed by them.

4.8 Agreement; Specific Limitations. The provisions of this Agreement shall not apply to the City and nothing contained herein shall be construed to prohibit or restrict the City or its employees from performing any work that is not included as a Covered Project by this Agreement on the Project site. As areas and systems of the Covered Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the City, the Community Workforce Agreement will not have further force or effect on such items or areas or phase, except when the Project Contractor or Contractors are directed by the City to engage in repairs, modifications, check-out, and

warranty functions required by its contract with the City during the term of this Agreement.

4.9 City's Right to Terminate or Suspend. It is understood that the City, as its sole option, may terminate, delay and/or suspend any or all portions of the Covered Project at any time.

4.10 Several Liability; No Joint Employment. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the City, Contractor(s) or any employer.

#### **ARTICLE 5 – UNION RECOGNITION**

5.1 Union Recognition. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all trade and craft employees within their respective jurisdictions working on the Covered Project within the scope of this Agreement.

#### **ARTICLE 6 – MANAGEMENT RIGHTS**

6.1 Self-Management by Contractors. The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, limit on production by workers or restrictions on the full use of tools or equipment.

#### **ARTICLE 7 – WORK STOPPAGES AND LOCKOUTS**

7.1 Work Disruption and Stoppages. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.

7.2 Prohibited Activities; Work Disruption and Stoppages. The Union and its applicable Local Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and

shall undertake all reasonable means to prevent or terminate any such activity. No employee shall engage in activities, which violate this Section. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

7.3 Vicarious Liability; Limitations. Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct order and use the best efforts of his office to cause the Local Union or Unions to cease and violations of this Section. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Section. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

## **ARTICLE 8 – DISPUTES AND GRIEVANCES**

8.1 Party Representatives. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

8.2 Dispute Resolution; Purpose. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

8.3 Grievance; Definition. Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

### 8.3.1 Step 1.

(a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her Local Union representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The representative of the Local Union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative

in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

8.3.2 Step 2. The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. The Contractor shall keep meeting minutes. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

8.3.3 Step 3.

(a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, both parties shall request the Federal Mediation and Consolation Service to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the Federal Mediation and Consolation Service shall govern the conduct of the arbitration hearing. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where an extension is agreed. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

8.4 Notice. The Project Contractor and City shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE 9 – JURISDICTIONAL DISPUTES**

9.1 Project Work Assignments. The assignment of work will be solely the responsibility of the Contractor 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.

9.2 Dispute Plan; Incorporation by Reference. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and 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 Contractors and Unions parties to this Agreement.

9.3 Dispute Plan; Work Disruption and Stoppages. 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.

#### **ARTICLE 10 – SUBCONTRACTING**

10.1 Subcontracting. The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

#### **ARTICLE 11 – UNION SECURITY**

11.1 Union Membership. All present employees of the Company employed on this Project, coming under the jurisdiction of the Union(s), shall as a condition of continued employment, become and remain members of the representative Local Union by the seventh (7<sup>th</sup>) day following the date of employment on this Project, and remain members in good standing during the life of this agreement.

11.2 Union Membership. All employees coming under the jurisdiction of the Union hired on this Project after the date of the signing of this agreement, shall, as a condition of continued employment, become and remain members of the respective Union by the seventh (7<sup>th</sup>) day following the date of their employment and shall remain members in good standing during the life of this agreement.

11.3 Good Standing; Definition. For the purpose of this Agreement, Good Standing shall be interpreted to mean the payment or tendering of application fees and periodic Union dues to an authorized agent of the Union. The Contractor will discharge any employee who fails to pay or tender the employees' application fees and periodic Union dues to such authorized agent upon the written request of the Union itemizing the delinquent's account with the Union. The Union agrees to furnish one copy of the delinquents account to the Contractor and one copy to the employee whenever it request as discharge.

## **ARTICLE 12 – REFERRAL PROCEDURE**

12.1 Compliance with Existing Referral Systems. For Local Unions now having a job referral system, the Contractor agrees to comply with such system and it shall be used exclusively by each Contractor signatory to this Agreement-; except as otherwise specifically provided in this Article 12.

12.2 Referral System; Operation. Such job referral system will be operated in a non-discriminatory manner and in full compliance with federal, state and local laws and regulations which require equal employment opportunities and non-discrimination, and referrals shall not be affected by rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of Union membership, policies or requirements.

a) A Contractor who is not signatory to a current local collective bargaining agreement with a Union having jurisdiction over Project work may employ members of its “regular employee workforce” as defined in Article 12.2 (b) below, and such other employees as it requires for Project Work on the Covered Project, in the following order by craft:

- (i) for the first ten (10) employees, five (5) may be directly hired, without following the procedures of 12.1, above, from among the Contractor’s own “regular employee workforce”;
- (ii) for the next thirty (30), fifteen (15) may be hired directly, without reference to the procedure of 12.1, above, from among the Contractor’s own “regular employee workforce” on an alternating basis (one from its own “regular employee workforce”, then one under the referral procedures of 12.1) until the Contractor has a maximum, by craft, of 20 of its “regular employee workforce”; and
- (iii) after the 40 employees are hired as set forth above, all further employees required shall be hired using the job referral system referred to in 12.1, above.

b) For the purpose of this Agreement, a member of the Contractor’s “regular employee workforce” shall:

- i) possess any license required by state or federal laws for the Project Work to be performed;
- ii) have been an “active” employee on the Contractor’s payroll for at least ninety (90) of the one hundred and eighty (180) working days, immediately prior to the date that the contractor is awarded a contract for work on the Project. “Active” employee means [insert definition]; and,

- iii) have the ability to safely perform the basic functions of the applicable trades.

c) The Union, within whose jurisdiction such Contractor's "regular employee workforce" will be working, shall be notified of such employee's employment prior to the commencement of work by the employee on the Covered Project, including the information necessary for such employee to be enrolled in the appropriate benefit programs established pursuant to that Union's local collective bargaining agreement. Upon the request of the Union, the Contractor shall furnish a representative of the Project Labor Administrator with satisfactory evidence of the employee qualifications as a member of the Contractor's "regular employee workforce."

d) Any layoff shall be in reverse order job referral as set forth in 12.2 and shall maintain the same numerical relationship of employment categories as are established for initial hiring under 12.2. The eligible Contractor may, at any time, replace an employment position held, or eligible to be held, by a member of its "regular employee workforce" with another member of such workforce.

12.3 a) For the purposes of employment on the Project under this Agreement, residents of the State of New Mexico, as defined below, shall receive preference in the following manner:

- i) under 12.1, above, residents shall be referred under a Union's referral procedure prior to the referral of any non-resident; and
- ii) if the Union referral procedure operating under 12.1 above does not have a qualified resident for referral, the Contractor, if he has a qualified resident on his "regular employee workforce", may employ such individual before the Union may refer a non-resident; and
- iii) under 12.2, above, if the Contractor does not have a qualified New Mexico resident among its "regular employee workforce" it shall request a referral of a resident from the appropriate Union referral procedure under 12.1, above, before employing a non-resident. If the Union is unable to refer a qualified resident, then the Contractor may employ a qualified non-resident member of its "regular employee workforce".

b) A "resident" of the State of New Mexico shall be defined in accordance with Section 1-1-7 NMSA 1978, and the cases interpreting this provision, and has either (1) paid resident income taxes to the State for the year preceding his employment on the Covered Project; or (2) for at least three (3) months preceding employment on the Project, has paid utility bills or been subject to and/or paid realty taxes in his own name on residential property in the State.

12.4 Equal Employment Opportunity; Non-Discrimination. All of the foregoing hiring procedures, including related practices affecting apprenticeship and training, will be operated to facilitate the ability of the Contractors to meet any and all equal employment/affirmative action obligations. The Contractor may reject any applicant.

12.5 Non-Union Employee Referral. In the event that the Local Union is unable to fill any request for employees within forty-eight (48) hours after such a request is made by the contractor (Saturdays, Sundays, and Holidays excepted), the Contractor shall inform the Union of the name of any applicant hired from other sources and refer the applicant to the Local Union for dispatch to the project.

12.6 Labor Provision by Unions. The Local Unions will exert their utmost effort to recruit sufficient numbers and skilled craft workers to fulfill the manpower requirements of the contractor including calls to Local Unions in other areas when its referral lists have been exhausted. The parties to this agreement support the development of increased numbers of skilled construction workers from the residents of the area of the Project to meet the needs of the Project and the requirements of the industry in general. The Unions agree to encourage the referral of qualified residents as journeymen to the Project and entrance into apprenticeship and training programs operated by the Local Unions signatory to this agreement.

12.7 Employee Selection; No Referral System. In the event that a signatory Local union does not have a job referral system as set forth above, the contractor shall give the Union equal opportunity to refer applicants. The Contractor shall notify the Union of employees hired from a source other than the Union.

12.8 Affirmative Action Programs. In the event the Local Unions either fail, or are unable, to refer qualified minority or female applicants in percentages equaling the Contractor's affirmative action goals, the contractor may employ qualified minority or female applicants from any other available source. The Contractor shall inform the Union of the name and social security numbers of any applicant hired from other sources and refer the applicant to the Local Union for dispatch to the Project.

### **ARTICLE 13 – DUES CHECK-OFF**

13.1 Dues Collection and Payment. The Contractor agrees to deduct Union dues weekly in the amount specified in writing by the respective Union on the basis of individually signed payroll deduction authorizations and forward the aggregate of such deductions to the Union on the tenth (10<sup>th</sup>) day of the following month.

13.2 Application Fees Collection. The contractor shall also deduct from the employees who are not members of one of the respective local unions all application fees. As required by each Local union's membership requirements.

13.3 Indemnification for Fee Collection. The Union shall indemnify the Contractor and the City against any and all claims, demands, suits, or other forms of liability that



arise out of or by reason of action taken at the request of the Union by the Contractor for the purpose of complying with the provisions of this article.

13.4 For each craft worker who executes a written check off authorization, the Engineering Procurement & Construction Contractor (EPC) and/or Sub Contractor shall deduct five cents (\$0.05) per hour worked for the purposes of administering this Agreement by the NMBCTC, and remit same on or before the fifteenth (15<sup>th</sup>) day of the month following the month for which the deductions were made directly to the New Mexico Building and Construction Trades Council, 122 Tulane SE, Albuquerque, New Mexico 87106. The EPC or Sub Contractor may submit with a monthly check, in lieu of an original report, a copy of a remittance report otherwise prepared for submission to the respective employee benefit funds of the particular craft.

#### **ARTICLE 14 – HOLIDAYS**

14.1 Holidays. The holidays observed will be in accordance with the current Collective Bargaining Agreements of each affiliated Local Union. There shall be no paid holidays unless worked. In the event the employee is required to work on said holiday the terms and conditions of the Collective Bargaining Agreements shall apply. In the event, the holiday falls on Sunday, the following Monday shall be observed as such holiday. In the event the holiday falls on Saturday, the Friday before shall be observed as such holiday.

#### **ARTICLE 15 – SAFETY AND HEALTH**

15.1 Safe Work Environment. It shall be the responsibility of each contractor to ensure safe working conditions and employee compliance with any safety rules contained herein, established by the Employer. It is understood that employees have an individual obligation to use diligent care to perform their work in a safe and workman like manner and to protect themselves, the property of the Contractor, and the City.

15.2 Project Conditions; Determination by City or Project Contractor. Employees shall be bound by the safety, security, visitor rules, and environmental compliance requirements established by the Project Contractor or the City. The rules and regulations will be published and posted in conspicuous places throughout the work site. An employee's failure to satisfy his obligation under this Article will be subject to discipline including discharge.

15.3 Drug and Alcohol Policy. The use, sale, transfer, purchase, and or possession of a controlled substance, alcohol, or firearms while on the City's premises are prohibited.

15.4 Health and Safety Precautions; Project Suspension. A Contractor or the City may suspend all or any portion of the job to protect the life and safety of an employee. In such cases employees will be compensated only for the actual time worked, provided however, that where the contractor requests employees to remain at the site and available for work the employees will be compensated at their basic rate of pay.

15.5 Water and Sanitary Facilities. The Contractor shall provide adequate supplies of drinking water and sanitary facilities for all employees.

15.6 Safety Equipment. The contractors shall provide all safety equipment required for the safe performance of job assignments.

#### **ARTICLE 16 – WAGES AND BENEFITS**

16.1 Work Classifications. All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates of that classification as established in compliance with the applicable prevailing wage rate determination. Such wages shall be adjusted only as required by the applicable prevailing rate law or regulation; or by the agreement of the City, project administrator, Contractor and applicable Union.

16.2 Pay Schedules. All employees covered by this agreement shall be paid weekly no later than the end of the employee's work shift Friday or in the case of the optional four ten schedule, no later than the end of the work shift of the last day of the regularly scheduled workweek by check drafted on a local area bank. Electronic transfer subject to the provisions above shall be considered as an acceptable method of payment of wages provided the Contractor and the Employee have mutually agreed it to. All references to withholding of pay will be addressed as per current Collective Bargaining Agreements

16.3 Pay Rates. Waiting time shall be paid at the regular hourly straight time rate of pay, eight hours a day exclusive of holidays to any employee not receiving their paycheck as provided above. Any employee who is discharged or laid off shall be paid all wages immediately upon termination.

16.4 Employee Benefit Funds.

a) The Contractor shall pay contributions to the established Employee Benefit Funds in the amounts designated in the appropriate local collective bargaining agreement and make all employee authorized deductions in the amounts established in the local agreement; provided, however, that the Contractor and Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employees, such as pension and annuity, health and welfare, vacation, apprenticeship and training funds, shall be included in this requirement, and then only to the extent that such are a part of the applicable prevailing wage determination. Under no circumstances is a Contractor required to make a payment in excess of that required pursuant to the applicable prevailing wage determination; except as set forth in (b), below; and provided, however, that a Contractor is not prohibited from voluntarily making payments to Employee Benefit Funds that are established in a local collective bargaining agreement to which the Contractor is signatory as required by that agreement.

(b) In order to maintain and protect health benefits established for the employees (and their families) covered by this Agreement, Contractors agree that they shall adjust the level of contributions to the Health and Welfare Plans to which they are

required to contribute pursuant to (a) above, provided that the Administrator of the Fund(s) certifies (i) that the level of benefits has not increased since the effective date of this Agreement; (ii) that an increase in the contribution is necessary to maintain the current level of benefits (iii) that such increase in contribution levels is required of all contractors contributing to the Fund pursuant to the applicable local collective bargaining agreement; and provided that (iv) such increase, together with any previous increases, does not exceed the percentage increase since the effective date of this Agreement in the Medical Care component of the Consumer Price Index – All Urban Consumers, published by the United States Department of Labor. Such increase may not be sought sooner than one year after the award date of the contract to the General Contractor, and no more than once each twelve months thereafter.

The Administrator of a Fund seeking such increase shall notify the Project Labor Administrator at least sixty days prior to proposed effective date of the increase, providing such information as the Project Labor Administrator requests to establish the need for, and the amount of, the contribution increase. The Project Labor Administrator will advise the Contractors no later than fifteen days prior to the effective date of the amount of increase, if any, which they will be obligated to make pursuant to this provision. Any disputes under this provision will be resolved on an expedited basis pursuant to Article 8.

c) Contractor adopts and agrees to be bound by the written terms of legally established trust agreements specifying the detailed basis on which payments are to be made into and benefits paid out of such trust funds. The Contractor authorizes the parties to such trust funds to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed. The Contractors shall make regular and timely contributions as required by this Article on the time schedules established by the applicable local collective bargaining agreement and delinquency in remittance of contributions is a breach of this agreement.

d) The Contractor is not obligated to sign any other local, area or national collective bargaining agreement as a condition of performing work within the scope of this Agreement; provided, however, that the Contractor may be required to sign a uniformly applied, non-discriminatory participation agreement at the request of the Trustees or administrator of a Trust Fund established pursuant to Section 302 of the Labor Management Relations Act and to which such Contractor is bound to make contributions under this Agreement, provided that such participation agreement does not attempt to bind the Contractor beyond the terms and conditions of this Agreement and/or expand the Contractor's obligations to make contributions pursuant to this Agreement.

#### 16.5

a) A Contractor that is not a signatory to an existing collective bargaining agreement with any Union having jurisdiction over a Covered Project and that has established and/ or is making employer contributions to a retirement plan for its employees, may continue to make employer contributions to such plan on behalf of each of its "regular employee workforce" employed under this Agreement pursuant to 12.2

above, and for such other employees of the Contractor working under this Agreement who meet the criteria below, in lieu of making employer contributions to a retirement plan pursuant to 16.4 herein, provided the following conditions are met:

(i) such Contractor's plan is a bona fide plan and in effect at the time that the Contractor commences Project work and has been in effect and applicable to the Contractor's "regular employee workforce", whether working on private or public projects, for the preceding twelve (12) months;

(ii) the Contractor contribution amount represents the actual cost of the benefit (expressed as an hourly contribution) to the Contractor, and that is consistent with applicable laws relating to wages and employee benefits; and

(iii) the employee on whose behalf the Contractor contribution is made is an active participant in the Contractor plan at the time of his initial employment on the project, or was an active participant in the plan at the time of his last employment with the Contractor.

b) Any difference between the total hourly contribution to a Contractor retirement plan under this section and the Contractor contribution due to the corresponding fund shall be paid directly to the employee as part of his paycheck for wages earned on the Project.

c) For purposes of this Article 16.4, a bona fide retirement plan qualifying for recognition under 14.4(a), shall be a tax-qualified plan, subject to ERISA, and have a current SPD available for review. The Contractor shall advise the Project Labor Administrator and the affected Union(s) at least five (5) working days prior to exercising its rights under this section 14.4, and provide the Project Labor Administrator with such information as is necessary to demonstrate the appropriateness of the Contractor's utilization of this section.

16.6 Trust Funds; Employee Benefit Funds. Contractor adopts and agrees to be bound by the written terms of legally established trust agreements specifying the detailed basis on which payments are to be made into benefits paid out of such trust funds. The Contractor authorizes the parties to such trust funds to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed.

16.7 Contractor Contributions; Employee Benefit Funds. Contractors shall make regular and timely contributions required in amounts and on the time schedule set forth in the appropriate appendix "A". Delinquency in remittance of contributions is a breach of this Agreement.

## **ARTICLE 17 – APPRENTICESHIP**

17.1 Apprenticeship; Purpose. The parties recognize the need to maintain continued support of programs designed to develop adequate numbers of competent workers in the construction industry and the contractor will employ apprentices in their respective trades or crafts to perform work within their capabilities and customarily performed by the trade or craft in which they are indentured.

17.2 Apprentices; Provision by Unions. The Unions agree to cooperate with the contractor in furnishing apprentices as requested up to the maximum ration allowable under the applicable registered Bureau of Apprenticeship Training Standards/New Mexico State Apprenticeship Council, and there shall be no restrictions on the use of apprentices provided they are properly supervised by a journeyman and capable of performing the work assigned.

17.3 Apprenticeship Program; State Approval. Every contractor and sub-contractor employing apprentices must have a State Apprenticeship Council approved apprentice program.

## **ARTICLE 18 – UNION REPRESENTATION**

18.1 Union Access to Project Site. Authorized representatives of the Union shall have access to the project during working hours or whenever workmen are present on the worksite. They shall comply with visitor and security rules established for the project.

18.2 Union Stewards. Each craft signatory to this Agreement may place one working steward for each employer per shift to act as a representative of the Union in connection with union business. The employer shall not discriminate against a steward for the proper performance of his/her Union duties. Each craft may have a steward on the job when work of that craft is being performed. The steward will remain on the job as long as he/she is qualified, willing, and able to perform the work. In the event of overtime or shift work, the union may name one of the employees performing the overtime or shift work to act as steward.

18.3 Notice of Termination; Union Stewards. If a steward is to be laid off or terminated for cause, the employer will notify the union in writing prior to taking such action.

18.4 Exemption for City-Performed Project Work. On work where City's personnel may be working in close proximity to construction activities the Union agrees that Union representatives, stewards, and individual workers will not interfere with the City's personnel or with the work being performed by the City's personnel except in the case of damage to equipment, or danger to personnel.

## **ARTICLE 19 – WORK RULES**

19.1 Work Rules. The following work rules are applicable to all work covered by this Agreement. In addition to the following, supplemental trade or craft specific work rules as established in Appendix “A” are hereby incorporated into this Agreement.

19.2 Supervisor Selection. The selection of foreman, general foreman and area general foreman shall be entirely the responsibility of the Employer. The Employer will give primary consideration to qualified persons available through the referral procedure.

19.3 Performance Limitations. There shall be no limit on production by employees or restrictions on the full use of tools or equipment. There shall be no restrictions on the efficient use of manpower other than as may be required by safety regulations.

19.4 Security Procedures; Tools and Equipment. Security procedures for control of employer provided tools, equipment, and materials shall be solely the responsibility of the Employer. The Employer shall provide for a secure storage of trade or craft personnel’s hand tools.

19.5 Tools. Employees shall be required to provide only the tools listed in the appropriate Appendix “A”.

19.6 Time Reporting; Adherence. Employees shall be at their place of work at the scheduled starting time and shall remain at their work place performing assigned work until quitting time, however sufficient time shall be allowed for pick up and securing of tools and equipment.

19.7 Reporting Compensation; No Work Available. An employee reporting for work and for whom no work is available will receive two hours pay at the regular straight time rate of pay for reporting unless he/she has been notified by the employer not to report prior to leaving home. When the conditions set forth above in this paragraph occur on an overtime day or on shift work, the premium rate shall apply.

## **ARTICLE 20 – HOURS OF WORK, OVERTIME, SHIFT PROVISIONS**

20.1 Work Schedule. The standard day shift shall be eight consecutive hours established between the hours of 6:00 am and 5:00 pm, exclusive of a thirty minute unpaid meal period scheduled between 11:00 am and 1:00 pm. A thirty minute unpaid meal period shall be provided no later than five hours from the beginning of the shift and every five hours thereafter.

20.2 Premium Pay Rate; Overtime for Meal Periods. In the event employees are required to continue work for more than five consecutive hours without a thirty-minute meal period they shall be paid at the rate of time and one half until they are provided a thirty-minute meal period.

20.3 10-Hour Work Schedule. In the interest of efficiency and productivity, the Employer may schedule work based on four ten-hour days each week established Monday through Thursday. The Unions will be notified seven calendar days prior to establishing changes in the weekly work schedule. Should the Employer elect to work the four day ten hour schedule, starting and quitting times shall be determined between the consecutive hours of 6:00 am and 6:00 pm,

20.4 Make-Up Day; 10 Hour Work Schedule. In the event that it is not possible to work Monday through Thursday on the four-day work schedule because of conditions beyond the Employers control, except in the instance of a holiday, Friday shall be available as a voluntary make up day at the straight time rate of pay. The Friday make up day will be scheduled as a full ten-hour workday. All employers electing to work the make up day shall provide work for all employees voluntarily electing to work.

20.5 Overtime. All hours worked before or after the established workday of eight hours Monday through Friday and all times worked on Saturday shall be paid at the rate of time and one-half. All hours worked on Sundays and Holidays shall be at the rate of double time. When work is scheduled under the provisions of Article XVII above, overtime shall be paid for work in excess of ten hours per workday. There shall be no pyramiding of overtime pay.

20.6 Shift Rates and Incentives. If two or three shifts are scheduled, the first shift (day) shall be paid at the straight time rate of pay. The second shift (swing) shall be paid at 10% above the straight time rate of pay. The third shift (graveyard) shall be paid at 15% above the straight time rate of pay. Overtime shall be calculated on the shift rates as defined above. There shall be no requirement for a day shift when either the swing or graveyard shift is worked. Shifts shall be established for a minimum of five consecutive workdays.

20.7 Security Delays; Compensation. It will not be a violation of this Agreement when the Employer or the City considers it necessary to shut down the project to avoid the possibility of danger to employees or for reasons related to security. In such cases, employees shall be compensated for a minimum of two hours or for actual hours worked.

## **ARTICLE 21 – PRE-JOB CONFERENCE**

21.1 Pre-Job Conference. All Contractors and Subcontractors will arrange and conduct a pre-job conference with the appropriate Trades Council and Unions at least three (3) days prior to commencing their work. The Project Contractor shall advise the City, Council, Unions, and any other interested party in advance of all such conferences, and representatives of the City, Council, and Unions may participate if they wish.

## **ARTICLE 22 – LABOR/MANAGEMENT COOPERATION**

22.1 Labor Management Committee. The parties to this agreement will form a joint committee consisting of representatives selected by the council and the project labor

administrator, to be chaired jointly by individuals designated by the project labor administrator and the council. The purpose of the committee is to promote harmonious and stable labor management relations on the project, to insure effective and constructive communication between labor and management parties to maximize the potential for highest quality and efficiency on the project.

22.2 Committee Meetings. The committee shall meet on a schedule determined by the committee, or at the call of the joint chairs, to discuss administration of the agreement, the progress of the project, general labor management problems that may arise, the projects schedule, or any other matters consistent with this agreement. Substantive grievances or disputes arising under Articles 7, 8, and/or 9 shall not be reviewed or discussed by this committee but shall proceed to the provisions of the appropriate article.

22.3 Meeting Schedules; Agendas; Notice. The Project Labor Administrator shall be responsible for the scheduling of meetings, the preparation of agenda items with input from the unions, contractors and City and for advising and coordinating the meeting. Notice of the date time and location of meetings shall be given to committee members at least three (3) days prior to the meeting.

### **ARTICLE 23 – GENERAL SAVINGS CLAUSE**

23.1 Legality of Agreement; Provision Suspension. Any provisions in this Agreement which are in contravention of any federal, state, or local regulation or laws affecting all or part of the limits covered by this Agreement shall be suspended in operation within the limit to which such law or regulation is applicable for the period during which such law or regulation is in effect.

23.2 Severability; Savings Clause. Such suspension shall not affect the operation of any such provision covered by this agreement to which the law or regulation is not applicable. Nor shall it affect the operations of the remainder of the provisions of the Agreement within the limits to which such law or regulation is applicable. The Employer and the Unions agree that if and when any provision of this Agreement is held or determined to be illegal or void, the parties to this Agreement will promptly enter into lawful negotiations concerning those provisions.

### **ARTICLE 24 CITY GENERAL PROVISIONS**

#### **24.1 STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.



B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

#### 24.2. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

#### 24.3 CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

#### 24.4 ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

#### 24.5. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### 24.7 INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

#### 24.8 INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

#### 24.9 NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

#### 24.10 THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

#### 24.11 RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

#### 24.12 APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent

jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

24.12 AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

24.13 SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

## **ARTICLE 25 HELMETS TO HARDHATS**

25.1 The Contractors 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 Employers and the Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

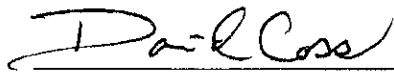
25.2 The Unions and Contractors agree to coordinate with the center to create and maintain an integrated database of veterans interested in working on a Covered Project and of apprentice and employment opportunities for the Covered Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**Specific Covered Project Agreements will be executed on an individual project basis in the future by signature of the City and the New Mexico Building and Construction Trades Council, as designee for all of the Unions and applicable Appendix A will be attached.**

Entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 in Santa Fe, New Mexico and effective \_\_\_\_\_, 2012

For the City of Santa Fe

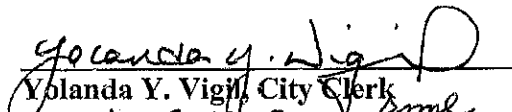
For the New Mexico Building and  
Construction Trades Council




David Coss, Mayor



Attest:

  
Yolanda Y. Vigil, City Clerk  
cc mtg. 2-28-12  
Ord. # 2012-12  
Approved as to Form:

  
Geno Zamora, City Attorney

Approved:

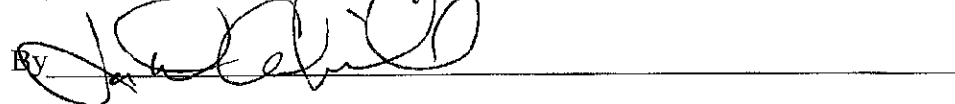
 4/18/12  
Dr. Melville L. Morgan, Finance Director

For the Local Unions:

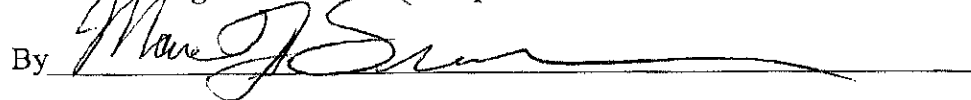
International Association of Heat and Frost Insulators and Asbestos Workers #76

By 

International Union of Bricklayers and Allied Craft Workers #3

By 

Southwest Regional Council of Carpenters

By 

International Brotherhood of Electrical Workers # 611

By 

International Union of Elevator Constructors #131

By NO LONGER A MEMBER OF THE NEW MEXICO BUILDING AND CONSTRUCTION  
TRADES COUNCIL

International Association of Bridge, Structural, Ornamental, and Reinforcing  
Ironworkers #495

By Jimmy Romero

Southwest Laborers District Council L.I.U.N.A. # 16

By Edin Almy

International Union of Operating Engineers #953

By Pat J Vigil

International Union of Painters and Allied Trades #823

By Robert Vigil

International Association of Plasterers and Cement Masons #254

By Robert Vigil

United Association of Plumbers and Pipe Fitters #412

By Shannon G. Martin

International Union of Roofers and Water Prooferers #123

By Gabe Leon

Sheet Metal Workers International Association #49

By Tim Almy

International Brotherhood of Teamsters #492

By L. H. Rahl

Road Sprinkler Fitters U.A. Local Union # 669

By Justin Andree

International Association of Bridge, Structural, Ornamental and Reinforcing  
Ironworkers #847

By Wm Tracy Scogg

# Attachment A

## Letter of Assent

To be signed by all contractors (including all subcontractors of whatever tier) who is awarded work covered by the Community Workforce Agreement, prior to commencing work.

(Contractors Letterhead)

Project Labor Administrator  
c/o: (XXXXXXXXXXXXXX)

Attn: \_\_\_\_\_

Re: (XXXXXXXXXXXXXX)  
Community Workforce Agreement

Dear Sir,

This is to confirm that \_\_\_\_\_ agrees to be a party to and bound by the (XXXXXXXXXXXXXX), Community Workforce Agreement, effective \_\_\_\_\_, 20\_\_.

As such, agreement may be amended by the negotiating parties or by interpretation pursuant to its terms. Such obligation to be a party and bound by this agreement shall extend to all work covered by the agreement undertaken by this company and any and all subcontractors of whatever tier to be similarly bound for all work within the scope of this agreement and will sign an identical Letter of Assent prior to commencing work.

Sincerely,

Name of company

By \_\_\_\_\_  
Name and title of authorized executive

Copies of this letter must be submitted to the Project Labor Administrator.