

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ADOPTING A POLICY REGARDING  
CONSTRUCTION CAREERS**

**WHEREAS**, to advance its purposes set forth in Section 652 of the Charter of the City of Los Angeles, the Los Angeles Harbor Department (Harbor Department) engages in and supports numerous construction projects on Port-owned property; and

**WHEREAS**, the Harbor Department desires to ensure that such construction projects proceed in a timely and economically efficient manner; and

**WHEREAS**, the Harbor Department desires to ensure that employment and training opportunities created by such construction projects provide quality opportunities to the labor pool in neighborhoods surrounding the Port; and

**WHEREAS**, these objectives will be advanced by targeting construction employment and training opportunities in ways calculated (i) to mitigate the harms caused by geographically-concentrated poverty in specified areas, (ii) to fight unemployment and underemployment in vulnerable populations and neighborhoods, including under-represented populations, populations with employment barriers and youth, (iii) to advance the skills of the local labor pool, including youth, to enable workers to earn wages that will assist them in moving out of poverty, (iv) to provide links to career paths for vulnerable populations and targeted workers, and (v) to facilitate timely delivery of Port construction projects; and

**WHEREAS**, there is a substantial concentration of census tracts with high rates of unemployment, ranging from 12.7% to as high as 85%, within a ten mile radius of the Port; and

**WHEREAS**, these objectives will also be advanced, and the proprietary interests of Port will be protected, by avoidance of labor misunderstandings, grievances and conflicts on certain Port construction projects; and Project Labor Agreements minimize the possibilities for such misunderstandings, grievances, and conflicts, thereby promoting project cost containment, and timely and economical project completion; and

**WHEREAS**, Project Labor Agreements have the capacity to provide additional benefits, including facilitation of efforts to target construction job opportunities as described above; prompt generation of tax flow and other income to the City; and local economy boosts by generating local construction and related jobs and job training; and

**WHEREAS**, the Harbor Department wishes to continue developing its capacity and operations in a sustainable manner, for the benefit of all stakeholders; and

**WHEREAS**, Project Labor Agreements have various, significant environmental benefits, including prompt and reliable completion of construction projects that will improve the environmental aspects of Port-related operations, and reduction in vehicle emissions caused by long commutes by workers; and

**WHEREAS**, the Harbor Department has entered into a Project Labor Agreement (PLA) applicable to projects within the Department's Capital Improvement Program; and

**WHEREAS**, the PLA is not intended to have an adverse impact on the policy of the Harbor Department to maximize business opportunities for minority, women and other business enterprises in Harbor Department contracts; and

**WHEREAS**, the PLA reflects a commitment by all parties to diversity in workforce hiring that reflect levels of minority, women and other worker utilization at levels that are representative of the relevant workforce of these groups in the Greater Los Angeles area as determined by the U.S. Census Bureau; and

**WHEREAS**, the PLA will help advance the skills of the local labor pool, especially the youth, by maximizing opportunities to be indentured into federal- and/or state-certified joint labor/management apprenticeship programs; and

**WHEREAS**, the Harbor Commission, through the PLA, seeks to create career opportunities through apprenticeship participation, retention, and graduation; and

**WHEREAS**, the Harbor Commission wishes to adopt a policy to promote the policy objectives and protect the proprietary interests described above through targeted local hiring requirements, applicable in situations the Port deems appropriate as described in this Policy;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

The Harbor Department adopts the following Construction Careers Policy:

## **SECTION I. DEFINITIONS**

1. "Apprentice" means any worker who is indentured in a bona fide Labor/Management construction apprenticeship program, registered and approved by the State of California Department of Industrial Relations, Division of Apprenticeship Standards (DAS) or in the case of Projects with federal funding, indentured in a bona fide Labor/Management apprenticeship program approved by the US Department of Labor (DOL) and California DAS.
2. "Apprenticeship Program" means any Labor/Management construction apprenticeship program certified and approved by the California DAS or in the case of Projects with federal funding, approved by the US Department of Labor (DOL) and California DAS.
3. "Area Median Income" (AMI) means the area median income for the Los Angeles –

Long Beach Metropolitan Statistical Area, as determined annually by the U.S. Department of Housing and Urban Development.

4. “Awarding Authority” means the City of Los Angeles, acting by and through the Board of Harbor Commissioners, or any employee or officer of the Board or Harbor Department that is authorized to award or enter into any contract on behalf of the Board.

5. “Board” means the Los Angeles Board of Harbor Commissioners.

6. “Bureau of Contract Administration” (BCA) means the designated bureau within the City’s Department of Public Works which may provide support services to the Harbor Department in administering the Policy and the PLA.

7. “City” means the City of Los Angeles, a municipal corporation, and all City awarding authorities.

8. “Construction Contract” means a City contract which has been certified by the City Controller, awarded by the Board, and is necessary to complete the Project.

9. “Contractor/Subcontractor/Employer (C/S/E)” means any individual firm, partnership, owner operator, or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a contract with the Harbor Department or any of its contractors or subcontractors/owner operators of any tier, with respect to the construction of any part of the Project(s) under contract terms and conditions approved by the Board.

10. “Core Worker” means a verifiable member of a C/S/E’s core workforce for the purpose of the PLA and this Policy if the worker’s name appears on the C/S/E’s active payroll for 60 of 100 working days prior to award of the construction contract and meets all standards required by applicable local, state or federal law or regulation.

11. “Covered Project(s)” or “Project” means a project or projects that have been included in the “Capital Improvement Program (CIP) Project List” included as Attachment “E” to the PLA, or so designated by the Board. The Board may identify additional projects that are appropriate for coverage by the Agreement and include such projects by Board Resolution. The Board shall request an annual review of the Harbor Department Capital Improvement Program to identify any new projects appropriate for coverage by the Agreement.

12. “Craft Request Form” means the document through which a C/S/E shall request workers from the Union and/or Jobs Coordinator, in the form set forth in the PLA and/or Policy.

13. “Disadvantaged Worker” means any individual whose primary place of residence is within a Tier 1 or Tier 2 zip code and who, prior to commencing work on a Covered Project, has been certified by the Jobs Coordinator as either (a) having a household income less than 50% of the AMI, or (b) facing one of the following barriers to employment: being homeless; receiving public assistance; lacking a GED or high school diploma; having a history of involvement with

the justice system; being a single parent; or suffering from chronic unemployment or underemployment as defined in the Policy.

14. “Employment Hiring Plan” (EHP) means a C/S/E’s detailed hiring plan as described in BCA’s Targeted Hiring Guidelines for Contractors and the Policy.

15. “Engineer” means the Chief Harbor Engineer of the City of Los Angeles Harbor Department, Construction Division, or its authorized representative.

16. “Executive Director” shall mean the Executive Director of the City of Los Angeles Harbor Department, or his or her designee.

17. “FHWA Project” means a Covered Project that is funded in whole or in part by the Federal Highway Administration (FHWA).

18. “Harbor Department” means the city of Los Angeles Harbor Department.

19. “Jobs Coordinator” means the Prime Contractor’s designated person, agent or agency that will facilitate the local hire referral process with the C/S/E, Unions and other referral organization, such as those listed in the BCA’s Targeted Hiring Guidelines for Contractors. The Jobs Coordinator must be able to demonstrate or document to the BCA that it has the requisite qualification and/or experience to fulfill the duties and responsibilities as outlined in the Policy.

20. “LA/OCBTC” (Trades Council) means the Los Angeles /Orange Counties Building and Construction Trades Council.

21. “Letter of Assent” means the document that each C/S/E (of any tier) must sign and submit to the Engineer or designated administrator, which formally binds them to adherence to all the forms, requirements and conditions of the PLA and this Policy.

22. “Liquidated Damages” means disputed funds withheld from the Prime Contractor until they are found to be in compliance, the contract is terminated, or the Covered Project is completed.

23. “Local Resident” means an individual whose primary residence is within the Tier 1 or Tier 2 zip code areas. Any of the following are acceptable forms of proof of residency: (i) Copy of a current residential lease with the eligible household member’s name listed on it; (ii) Valid driver’s license or State ID card with a City of Los Angeles address; (iii) Medical card with current address; (iv) Utility bill with eligible household member’s name on it; (v) Voter’s registration card; or (vi) Other proof of residence address deemed acceptable by BCA.

24. “PLA” means the Project Labor Agreement entered into between the Harbor Department of the City of Los Angeles and Unions, applicable to Covered Projects.

25. “Policy” means this Harbor Department Construction Careers Policy.

26. “Port” means the Port of Los Angeles.

27. “Project Work” means construction work performed as part of a Covered Project.
28. “Prime Contractor” means any individual firm, partnership, owner-operator, or corporation, or combination thereof, including joint-ventures, that is an independent business enterprise and that has entered into a Construction Contract with the Harbor Department.
29. “Reporting Period” means the Harbor Department’s indicated reporting period for measuring the targeted hiring efforts of the C/S/Es. These reporting periods shall be at the Harbor Department’s determination of 10%, 30%, 50%, 70% and 90% construction completion phases.
30. “Targeted Hiring Guidelines” means the document provided by the Department to assist C/S/E’s in implementing the targeted hiring procedures.
31. “Tier 1” means the zip codes identified in Article 7.4 of the PLA, which fall within an approximate ten mile radius of the Port and in which the rate of unemployment is in excess of 125% of the County of Los Angeles’ unemployment rate at the time of application and/or are within the area of Port-related operations and activity.
32. “Tier 2” means the zip codes within the City, identified in Article 7.5 of the PLA, where the rate of unemployment is in excess of 100% of the County of Los Angeles’ unemployment rate at the time of application.
33. “Underemployment” means a situation in which a worker (i) is employed only part-time when one needs and desires full-time employment, and/or (ii) is inadequately employed at a low-paying job that requires less skill or training than one possesses.
34. “Unemployment” means, in accordance with the Bureau of Labor Statistics definition, a situation in which a person does not have a job, has actively looked for work in the prior 4 weeks, and is currently available for work and chronic Unemployment means unemployment lasting 27 weeks or longer.
35. “Union(s)” or “Signatory Unions” means the Los Angeles/Orange Counties Building and Construction Trades Council affiliated with the Building & Construction Trades Department (AFL/CIO) Craft International Unions or any other craft labor organization signatory to the PLA, 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 the PLA.

## **SECTION II. COVERAGE OF PROJECTS**

### **1. Covered Projects:**

(a) Except as provided otherwise herein, this Policy applies to all Covered Projects awarded by the Board.

(b) The Board may identify additional projects that are appropriate for coverage by the Policy and the PLA and include such projects by Board Resolution based on specific findings that such coverage will advance the Harbor Department's legitimate proprietary and policy interests and promote the public interest in assuring completion of the project in question in a safe and cost-effective manner while minimizing or negating any adverse impact to the public welfare.

2. FHWA Projects: In the event that the Harbor Department determines that a project to which this Policy applies is an FHWA Project or other grant-funded project, the Department shall modify or not enforce any aspect of the Policy or PLA in accordance with a valid and binding instruction from the U.S. Department of Transportation or applicable funding authority.

### **SECTION III. IMPLEMENTATION**

Prior to bid, Harbor Department staff shall review each Covered Project's bid specifications to ensure the following provisions are incorporated:

1. That the Request for Bid Package Authorization from the Executive Director specifies that the Covered Project contains the PLA and this Policy;
2. That the Bid specifications require all contractors submitting bids or proposals agree to the terms of the PLA and this Policy;
3. That a provision exists in the prime contract obligating the Prime Contractor and all its C/S/Es (of any tier) to comply with the terms of the PLA and this Policy and require compliance with PLA and Policy terms through a Letter of Assent or any other form or legally enforceable obligation to the City.
4. That the Construction Contract shall include provisions establishing liquidated damages amounts as described in Section VIII of this Policy.

### **SECTION IV. EXCLUSIONS AND/OR MODIFICATIONS**

1. Funding Source: this Policy shall not apply to construction contracts or projects where the funding source has established provisions or rules that forbid the inclusion of a PLA and/or Local Hire provision. If the project is listed as part of the CIP, Harbor Department staff must present the reason(s) to the Board prior to final determination to exclude the Covered Project.
2. This Policy shall not apply to work performed by a C/S/E's executives, managerial employees, engineering employees, supervisors (except those covered by State or Federal Prevailing Wage rates and/or Schedule A collective bargaining agreements), office and clerical employees, or any other employee not performing construction craftwork.
3. Out-of-State Workers: hours worked by residents of states other than California shall not be included in calculation of total hours of project work for purposes of determining

compliance with the Section 5 below.

## **SECTION V. TARGETED HIRING**

### **1. Requirements for Covered Projects:**

The Prime Contractor shall ensure that the following targeted hiring requirements are met for each Covered Project:

(a) At least 30% of total hours worked on each project shall be performed by Local Residents. For any hour of Project Work for which a C/S/E seeks to meet this 30% requirement, the C/S/E, Unions and the Jobs Coordinator must first refer individuals whose primary place of residence is within a Tier 1 zip code. After Unions, C/S/Es and the Jobs Coordinator have exhausted the available pool of Local Residents whose primary place of residence is within a Tier 1 zip code, they may refer Local Residents whose primary place of residence is within a Tier 2 zip code.

(b) At least 20% of total hours worked on each project shall be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journeyman established by the applicable craft union's State DAS approved apprenticeship standards. A minimum of 50% of all apprentice hours shall be performed by Local Residents.

(c) At least 10% of total hours worked on each project shall be performed by Disadvantaged Workers residing within Tier 1 or Tier 2 zip code areas described in Articles 7.4 and 7.5 of the PLA respectively. Hours of project work performed by Disadvantaged Workers may be applied towards the 30% Local Resident requirement of the PLA and/or this Policy.

## **SECTION VI. RESPONSIBILITIES OF HARBOR DEPARTMENT, C/S/Es, UNIONS, and JOBS COORDINATOR**

### **1. Harbor Department Responsibilities:**

(a) Work with BCA or the Harbor Department's designated PLA administrator to monitor and enforce the targeted hiring measures of the PLA and Policy and issue Notices of Non-Compliance where appropriate.

(a) Review, approve or disapprove submitted Employment Hiring Plans prior to a C/S/E's estimated start of work. Approval of a C/S/E to work on a Covered Project is contingent on the C/S/E's submittal of an approved EHP.

(c) Ensure, prior to a C/S/E's approval to work on a Covered Project, its submittal of a duly signed Letter of Assent.

(d) Work with BCA or the Harbor Department's designated PLA administrator to post local hire status reports on the BCA website (<http://bca.lacity.org>) for Covered Projects.

(e) Inform the Board on a quarterly basis regarding the status of all Covered Projects.

(f) Determine any withholding from payments as disputed funds and make recommendations for assessment of Liquidated Damages.

2. Prime Contractor and C/S/Es:

(a) Employment Hiring Plan (EHP): Prime Contractor shall ensure that its C/S/Es (of any tier), at least 20 business days prior to starting their work on the Covered Project, shall submit their plan(s) to the Harbor Department for approval by the Executive Director or his/her designee. Each C/S/E shall include in its EHP a description of how it will meet the targeted hiring requirements set forth in the PLA and Policy. No C/S/E (of any tier) shall be approved to work on a Covered Project without an approved EHP.

(b) PLA and Policy: Prime Contractor shall ensure that its C/S/Es (of any tier), prior to start of work, (i) read and understand the requirements of the PLA and Policy; (ii) submit their Employment Hiring Plans at least 20 business days prior to their subcontractors' start of work and (iii) sign and submit their Letters of Assent prior to start of work. No C/S/E (of any tier) shall be approved to work on a Covered Project without having submitted a signed Letter of Assent.

(c) Prior to start of work on the project, the Prime Contractor shall:

(i) Recommend a Jobs Coordinator for approval by the Harbor Department.

(ii) Upon Department's approval of its Jobs Coordinator, notify its subcontractors (of any tier) who the Jobs Coordinator is.

(iii) Provide within 10-calendar days upon request by the Department or its designated representative, documentation of their Jobs Coordinator's qualifications.

(d) The Prime Contractor and its C/S/Es (of any tier) shall coordinate with the Jobs Coordinator for services to support their efforts in meeting the targeted hiring percentages as described in Article 7 of the PLA and Section 5 of the Policy.

(e) Pre-Job Conference: The Prime Contractor and its C/S/Es (of any tier), prior to start of work, shall hold a pre-job conference. The purpose of the pre-job conference is to determine craft personnel needs, schedule of work for the contract and all other matters as described in the PLA and the Policy. All work assignments shall be disclosed by the Prime Contractor and/or C/S/Es (of any tier) at the pre-job conference. Any formal jurisdictional dispute(s) raised under Article 14 of the PLA must be raised at the pre-job conference upon disclosure of the work assignments. If the Prime Contractor and/or C/S/Es intend to change the work assignment after the pre-job conference or to make an assignment of work not previously known, the Prime Contractor and/or C/S/Es must notify the appropriate affected craft union(s) prior to the commencement of work.



(f) Craft Request Form: The Prime Contractor and its C/S/Es (of any tier) shall only use the Craft Request Form (Attachment “C” of the PLA) and the procedures written therein to request workers from the affected Union(s). All C/S/Es must transmit a concurrent Craft Request transmittal of such request to the Jobs Coordinator.

(g) The Prime Contractor and its C/S/Es (of any tier) must satisfactorily document their contact with the Jobs Coordinator when the Unions have not been able to refer a Local Resident and/or Disadvantaged Worker within the 24-hour window of referral.

(h) The Prime Contractor and its C/S/Es (of any tier) shall maintain proof of transmittal of the Craft Request forms to the Union hiring halls and Jobs Coordinator. Upon request by the Harbor Department or its designated representative, copies shall be provided within 10-calendar days of request.

(i) The Prime Contractor and its C/S/Es (of any tier) shall make available to the Harbor Department, BCA, or designated representatives, records and information that are deemed relevant to monitoring and enforcement of the provisions of the PLA and the Policy.

(j) The Prime Contractor and its C/S/Es (of any tier) shall cooperate fully and promptly with any inquiry or investigation the Harbor Department, BCA or designated representatives deem necessary in order to monitor compliance with the provisions of the PLA and the Policy.

(k) The Prime Contractor and its C/S/Es (of any tier), within 60 calendar days after concluding work on the Covered Project, shall submit to the Harbor Department a verified statement of the number of journeypersons and apprentices who worked on the project, their classifications and the hours worked (per California Labor Code 1777.5(e)).

**Upon request of the BCA, or the Harbor Department, the Prime Contractor and its C/S/Es (of any tier) must provide documentation of their Local Resident, Apprentice and Disadvantaged Workers targeted hiring participation level efforts within 10-calendar days of the request for documentation.**

### 3. Union Responsibilities:

(a) Ensure that its dispatchers properly adhere to the use of the Craft Request Form and the procedures written therein.

(b) Refer Local Residents and/or Disadvantaged Workers requested through the Craft Request Form regardless of their place on the hiring hall list and normal referral procedures.

(c) Exert their best efforts to recruit and identify Local Residents residing in Tier 1, and then Tier 2 zip code areas, as well as those referred by the Jobs Coordinator for entrance, indentureship into a union apprenticeship program, and assisting such individuals in graduating into eligible journeypersons.

(d) Upon receiving a request from a C/S/E for a Local Resident, exhaust the available list of individuals residing the Tier 1 zip codes before referring an individual residing in the Tier 2 zip codes.

(e) Track retention of Local Residents and/or Disadvantaged Worker apprentices participating in joint Labor/Management apprenticeship programs and provide the Harbor Department with the necessary information as requested.

#### 4. Jobs Coordinator:

(a) Criteria for Selecting a Jobs Coordinator: The Jobs Coordinator plays an integral part in the success of its partners in obtaining the targeted hiring percentages. It is the responsibility of the Prime Contractor to designate a Jobs Coordinator possessing, but not limited to, the following demonstrable experience and qualifications:

(i) Developing, creating, designing and marketing specific programs targeting Local Residents and/or Disadvantaged Workers for construction opportunities at the Covered Project (e.g. handouts and fliers for “walk-ins” demonstrating program entrance procedures).

(ii) Coordinating services for contractors to assist in their local worker, disadvantaged worker and apprentice utilization.

(iii) Educating and assisting contractors on incentives provided by State or federal programs for On-the-Job Training and employer tax credits.

(iv) Conducting orientations, job fairs and community outreach meetings to the local community.

(v) Providing supportive services such as skills training, child care, transportation, education remediation, assistance with union fees and tools.

(vi) Screening and certifying the disadvantaged status of workers.

(vii) Establishing a referral and retention tracking mechanism for placed local and/or disadvantaged workers and apprentices.

(viii) Networking with the various Work Source Centers, community and faith based organizations and other non-profit entities that provide qualified local workers and/or disadvantaged workers.

(ix) Liaising with the various building trades crafts for referral and placement of local hire and/or disadvantaged workers.

(b) Jobs Coordinator Responsibilities. The Jobs Coordinator shall:

(i) Coordinate the local hire referral process with the C/S/Es, Unions, City Work Source Centers, Faith and Community Based Organizations, and other organizations that can provide qualified local hire referrals.

(ii) Certify the Disadvantaged Worker's status.

(iii) Maintain a database of pre-qualified Local Residents for referral to work on a Covered Project and/or indentureship into a bona fide Labor/Management apprenticeship program.

(iv) Facilitate relationships among approved apprenticeship programs and the C/S/Es to enable prompt referral.

(v) Be the point of contact to provide information about available job opportunities on Covered Projects.

(vi) Educate and provide financial incentives information to the C/S/Es whom hire eligible workers under Work Opportunity Tax Credit (WOTC) and On-the-Job Training (OJT) and other benefits for which a C/S/E may be eligible based on their implementation of the Local Hire requirements.

(vii) Assist the C/S/Es with their local hire effort documentations and other reports as it relates to their Local Resident and/or Disadvantaged Worker targeted hiring requirements.

(viii) Work closely with Harbor Department staff, the building trades and C/S/Es in achieving the targeted hiring.

**Parties with responsibilities under the PLA and/or Policy, shall maintain those responsibilities regardless of the performance of the Jobs Coordinator at the tasks described in the PLA and the Policy.**

## **SECTION VII. COMPLIANCE**

The Harbor Department or its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of the PLA and the Policy. The Prime Contractor is ultimately responsible for its and its C/S/Es (of any tier) compliance with the PLA and Policy requirements.

1. If, after taking into account all hours of Project Work performed up to that point in time of the Reporting Period, the targeted hiring requirements of the PLA and Policy have been satisfied for a Project, then the Prime Contractor and its subcontractors (of any tier) working on that Project shall be deemed to be in compliance.

2. If the targeted hiring requirements of the PLA and the Policy have not been satisfied for a Project, the Prime Contractor nonetheless may be deemed to be in compliance if it demonstrates

both (a) that it and each of its C/S/Es (of any tier) have complied with all other requirements of the PLA and the Policy, and (b) that it and each C/S/E (of any tier) have either (i) satisfied the targeted hiring requirements of the PLA and this Policy with regard to the Project Work that it has performed or (ii) satisfactorily demonstrated the following:

(a) Adherence to procedures contained in its Employment Hiring Plan as approved by the Harbor Department.

(b) Requests to Unions, through Craft Request Forms, of sufficient numbers of Local Residents and Disadvantaged Workers to meet the targeted hiring percentages set forth in Section 5 of the Policy for that C/S/E's Project Work.

(c) Documented contact with the Jobs Coordinator in each instance when the relevant Union did not refer qualified Local Residents or Disadvantaged Workers within the 24 hours following the C/S/E's request and the C/S/E's fair consideration of any Local Resident or Disadvantaged Worker subsequently referred by the Jobs Coordinator.

(d) Accurate records documenting the C/S/E's compliance efforts that include (but are not limited to):

(i) A listing by name and address of all local recruitment sources contacted by the C/S/E;

(ii) The date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested;

(iii) The number of Local Residents and/or Disadvantaged Workers hires made as a result of the contact;

(iv) The identity and address of the worker(s) hired pursuant to the contact;

(v) Documentation when a referral was not hired (reason for non-hire) and/or premature termination.

## **SECTION VIII. ENFORCEMENT**

The Prime Contractor for every Project agrees:

1. To be liable to the Harbor Department for Liquidated Damages as provided in this section;
2. That the Prime Contractor and its C/S/Es (of any tier) commitment to comply with the targeted hiring requirements of PLA and Policy is a material element of the Covered Project;
3. That the failure of the Prime Contractor and its C/S/Es (of any tier) to comply with the targeted hiring requirements in accordance with Section VII of this Policy will cause harm to the Harbor Department and the public which is significant and substantial but extremely difficult to

quantify. The harm to the City includes the difficult-to-quantify harm that the community and its families suffer as a result of high unemployment and concentrated poverty;

4. Liquidated Damages: Due to the difficulty of estimation of damages for violation(s) of requirements of this Policy, Construction Contracts shall have provisions establishing liquidated damage to be assessed as follows:

(a) The Prime Contractor shall pay liquidated damages equal to the average journey person project wage for each hour the Project fell short of the targeted hiring, or \$500 per day, whichever is greater.

(b) If the Covered Project's targeted hiring requirements are out of compliance during any Reporting Period, the Prime Contractor shall meet with the Harbor Department or their designated representative to develop a recovery plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate the recovery compliance plan or Liquidated Damages shall be withheld.

(c) Before Liquidated Damages are sought, the Prime Contractor shall be notified of the proposed Liquidated Damages and served with a summary of the information upon which the Liquidated Damages are based.

(d) Liquidated Damages shall be withheld from all subsequent monthly progress payment request(s) as disputed funds until such time as Prime Contractor is found to be in compliance, the Covered Project contract is terminated, or the Covered Project is completed.

(e) Should the Covered Project be terminated or completed before the Prime Contractor is found to be in compliance, recommendation shall be made to the Board to assess Liquidated Damages and the amount of the Liquidated Damages shall be returned to the fund from whence they came.

5. Liquidated Damages Appeal:

(a) The Prime Contractor may appeal the assessment of Liquidated Damages before the Board. Prior to the Board hearing to address assessment of Liquidated Damages, the Prime Contractor shall be provided a summary of the information upon which the recommendation assessment is based.

(b) The Prime Contractor must request an appeal in writing within 10-calendar days of receipt of the Liquidated Damages assessment summary. At the Board hearing to determine assessment of Liquidated Damages, the Prime Contractor will be allowed to provide evidence that it has made all of the showings required under Section 7 of the Policy. Failure to submit a written request for an appeal within the time frame stipulated in this Section will be deemed a waiver of the right to appeal and the recommendation for assessment of Liquidated Damages will be implemented.

6. Termination of Contract(s): Consistent, substantial violations of the PLA and/or this Policy by any Prime Contractor and/or C/S/E may result in a recommendation to the Board that the contract of the offending Prime Contractor and/or C/S/E be terminated per Section 00405 of the Master General Conditions.

**SECTION IX. APPLICABLE LAW AND SEVERABILITY**

The provisions of this Policy shall not be applicable where prohibited by federal or state law, or where the application would violate or be inconsistent with the terms and conditions of a grant or a contract with an agency of the United States or the State of California, or the valid instructions of an authorized representative of any of these agencies with respect to any grant or contract. If enforcement of any provision of this Policy is enjoined by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held

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ROSE M. DWORSHAK  
Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_, 2011

CARMEN A. TRUTANICH, City Attorney

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

THOMAS A. RUSSELL  
General Counsel