

# **Bureau of Contract Administration Policies and Procedures to Enforce Measure JJJ**

On November 7, 2016, the voters of the City of Los Angeles passed Measure JJJ, cited as “The Build Better LA Initiative.” The Measure provides that development projects with 10 or more residential units may only receive general plan amendments or certain zoning changes if the project (a) includes a component of affordable housing or the Developer pays in-lieu fees into the City’s Affordable Housing Trust Fund, and (b) complies with Labor Standards regarding using licensed contractors, paying prevailing wages and hiring workers from local and disadvantaged areas and state-approved – and in the case of a project which receives federal funds – federally-approved Apprenticeship Programs. Administrative responsibilities for the Labor Standards required by the Measure are placed – by the Measure – on the Department of Public Works, Bureau of Contract Administration (BCA). These Labor Standards include both the monitoring and enforcement of the payment of prevailing wages by contractors working on any residential housing projects created under the measure, as well as the employment of Apprentices and a 30% Local Hire and 10% Transitional Hire requirement on said projects.

As stated in the measure, it is the intent of Measure JJJ to create jobs for City residents that pay good, family supporting wages. Therefore, in order for this to occur and for the BCA to perform its voter mandated responsibility, the BCA, in consultation with the Mayor’s Office, the City Attorney’s Office, the City Planning Department and the Housing and Community Investment Department has enacted the following policies and procedures:

## **ARTICLE 1**

### **DEFINITIONS**

1.1 “Affordable Housing Trust Fund” means a special fund within the Treasury of the City of Los Angeles for the purposes of receiving and disbursing monies to address the affordable housing needs of the City of Los Angeles.

1.2 “Apprentice” means any worker who is indentured in a bona fide construction apprenticeship program, registered and approved by the State of California Department of Industrial Relations (DIR) Division of Apprenticeship Standards (DAS) or in the case of Projects

with federal funding, indentured in a bona fide construction apprenticeship program approved by the U.S. Department of Labor (DOL) and the California DAS.

1.3 “Apprenticeship Program” means any comprehensive plan containing, among other things, apprenticeship program standards, committee rules and regulations, related and supplemental instruction course outlines and policy statements for the effective administration of that apprenticeable occupation that is certified and approved by the California DAS or in the case of Projects with federal funding, approved by the U.S. DOL and the California DAS.

1.4 “Bureau of Contract Administration” (BCA) means the designated bureau within the City’s Department of Public Works responsible for administering and enforcing the labor standards required by Measure JJJ. BCA staff will review the payrolls and other documents submitted by the Developer/Contractor/Subcontractor to the Developer/Contractor’s Designee on a quarterly – or as determined by the BCA – basis. The BCA will also approve the Developer/Contractor’s Designee.

1.5 “Certificate of Occupancy” means a document that is issued pursuant to a building permit for new construction, additions, and changes of occupancy after all the necessary construction has been approved by the inspector. It is evidence that the Department of Building and Safety has determined that the construction work was done according to the requirements of the code for the given occupancy to be housed in the building.

1.6 “Certified Payroll” (CPR) means a weekly payroll reporting the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman or apprentice, employed in connection with the public work. A Certified Payroll must be signed and affirmed by a person with the authority to so sign and affirm, under penalty of perjury that the records are originals or are full, true and correct copies of the originals and depict truly, fully and correctly the information contained thereon including the amounts disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill. If the Developer/Contractor decides to employ a Designee to monitor the Labor Standards of the project, all payrolls will need to be submitted in hard copies on the Form LA-1-131. If the Developer/Contractor opts to have BCA monitor the Labor Standards, all payrolls will be submitted via the OCPS system. Use of LCP Tracker or similar non-City payroll systems is not permitted.

1.7 “City” means the City of Los Angeles, a municipal corporation.

1.8 “Construction Contract” means a contract to perform Construction Work on a Covered Project.

1.9 “Construction Work” or “Project Work” means the actual physical labor performed at a Covered Project site by building and construction trade workers. It does not include work performed by administrative, clerical, security, or technical personnel, material suppliers engaged in delivering materials or supplies, off-site fabrication, or any other worker not performing trade work.

1.10 “Contractor” or “Prime Contractor” or “General Contractor” means any individual firm, partnership, owner operator, or corporation, or combination thereof, including joint ventures, which is licensed by the State of California and is an independent business enterprise, and has entered into a contract with a property owner, an awarding body, a Developer or any of its Contractors or Subcontractors of any tier, with respect to the construction of any part of the Project(s).

1.11 “Department of Industrial Relations” (DIR) means the State of California department responsible for the monitoring and enforcement of labor and workforce regulations. A division of the DIR also issues the state prevailing wage determinations.

1.12 “Department of Labor” (DOL) means the department of the federal government responsible for the monitoring and enforcement of labor and workforce regulations on the national level. The DOL also issues the federal prevailing wage determinations.

1.13 “Designee” means the person, agent or agency employed by the Developer/Contractor to collect and organize the payroll documents and Monitor the Project (as defined herein). The Designee shall also interview workers at the job site and perform Source Document Reviews of the Developer/Contractor/Subcontractors’ payroll documents at the offices of the Developer/Contractor/Subcontractor or other location as determined by the Designee. The Developer/Contractor has the option of choosing its own Designee to monitor Labor Standards on the Project or to use the services of the BCA.

1.14 “Developer” means the owner of the Project, and if different from the owner, any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which develops or causes to be developed a Residential Project and, if applicable, provides off-

site affordable units, together with their successors and assigns, but does not include a lender, any governmental entity or the general contractor working for any developer.

1.15 “Economically Disadvantaged Area” means a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated by the parties upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

1.16 “Extremely Economically Disadvantaged Area” means a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$32,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated by the parties upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

1.17 “Good Faith Effort” means a display of actions by a Developer/Contractor/Subcontractor which demonstrate that the Developer/Contractor/Subcontractor made a concerted effort to achieve the Labor Standards requirements of the Project. Achievement of the following may qualify the Developer/Contractor/Subcontractor as having made a Good Faith Effort: timely collection of CPRs and other payroll documents; interviewing at least 20% of the total construction work force; conducting a Source Document Review on at least 10% of the contractors/subcontractors on the project; hiring a Jobs Coordinator; providing documentation verifying that diligent attempts were made to employ the requisite workers when workers meeting the necessary requirements were not available. BCA shall make the determination of whether the Developer/Contractor/Subcontractor achieved the Good Faith Effort.

1.18 “Jobs Coordinator” means the Prime Contractor’s designated person, agent or agency that will facilitate the Local Resident and Transitional Worker hiring process with the Contractor, Subcontractor(s) and any referring agencies or organizations. Employment of a Jobs Coordinator is one factor in determining whether or not a Developer/Contractor/Subcontractor has made a Good Faith Effort to achieve the Labor Standards requirements of a Project(s).

1.19 “Labor Standards” means that all Construction Work on a Covered Project shall be performed at all tiers by contractors which (a) are licensed by the State of California and the City of Los Angeles; (b) shall make a good faith effort to ensure that at least 30% of their respective workforces’ Construction Workers’ Project Work hours shall be performed by permanent

residents of the City of Los Angeles of which at least 10% of all their respective workforces' Construction Workers' Project Work hours shall be performed by Transitional Workers whose primary place of residence is within a 5-miles radius of the Covered Project; (c) employ only Construction Workers who possess all licenses and certifications required by the State of California and the City of Los Angeles; (d) pay their Construction Workers performing Project Work the wages prevailing in the project area determined pursuant to California Labor Code § 1770; and (e) have at least 60% of their respective construction workforces on the Covered Project from: (1) workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program, and (2) registered apprentices in an apprenticeship training program approved by the State of California or an out-of-state, federally-approved apprenticeship program.

1.20 "Local Resident" means an individual whose primary residence is within the City of Los Angeles.

1.21 "Long-Term Unemployment" or "Chronic Unemployment" as defined by the Bureau of Labor Statistics means being jobless for 27 weeks or more, or as defined therein.

1.22 "Monitoring the Project" means ensuring that the Labor Standards of the Project(s) are met by collecting and reviewing the Certified Payrolls and other payroll documents (as defined in Section 16000 of the California Code of Regulations) in a timely manner; reviewing payroll documents for accuracy and correctness at the Developer's/Contractor's/Subcontractor's place of business or other location to be determined by the Designee; interviewing workers at the job site(s), and any other activities necessary to verify compliance.

1.23 "Office of Policy, Research and Legislation (OPRL)" means the division of the State of California, Department of Industrial Relations which determines the Prevailing Wage Rates for the State of California.

1.24 "On-Line Certified Payroll System" (OCPS) means the electronic payroll submission system created and maintained by the Bureau of Contract Administration.

1.25 "Payroll Records" means all time cards, canceled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or

in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a Project.

1.26 “Developer’s First Submittal of a Proposal for a Project” means the date on which a Developer or Contractor first files a Submittal of a Proposal for a Project for a Measure JJJ case at the Development Services Center of the Department of City Planning. The First Submittal of a Proposal will be used in lieu of the Advertisement Date of a Project to ascertain the proper Prevailing Wage Rate Determination as provided in Section 16204 of the California Code of Regulations.

1.27 “Prevailing Wage Rate Determination” means the (generally) bi-annual posting of prevailing wage rates by the state’s Office of Policy, Research and Legislation or the Federal DOL. Federal rates may be found at <https://www.wdol.gov/dba.aspx>. State rates are available at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

1.28 “Prevailing Wage Rates” means the hourly wage rates that OPRL and/or the DOL has determined must be paid to Workers in a given craft or classification. These rates will include any predetermined increases where such increases have been determined.

1.29 “Project(s)” or “Covered Project(s)” or “Residential Project(s)” means the construction, erection, alteration of, or addition to a structure. The term Project shall not include interior or exterior improvements that do not increase the floor area over that of an existing structure, and shall not mean any construction for which a building permit or demolition permit is required to comply with an order issued by the Department of Building and Safety to repair, remove, or demolish an unsafe or substandard condition, or to rebuild as a result of destruction by fire, earthquake or natural disaster, provided that the development is not prohibited by any provision of the Los Angeles Municipal Code and the development does not increase the square footage beyond what previously existed on the site.

1.30 “Residential Rates” means the prevailing wage rates that have been published by the OPRL and may be paid to workers on a residential prevailing wage project that does not include any federal funds.

1.31 “Source Document Review (SDR)” means reviewing Certified Payrolls and other payroll documents at the Developer’s/Contractor’s/Subcontractor’s place of business or other location to be determined by the Designee. These records shall be kept open at all reasonable hours to the inspection of the Developer/Contractor’s Designee or to the Bureau of Contract Administration.

1.32 “Subcontractor(s)” means any individual firm, partnership, owner operator, or corporation, or combination thereof, including joint ventures, which is licensed by the State of California and is an independent business enterprise, and has entered into a contract with the Prime Contractor, Developer or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Project(s).

1.33 “Transitional Worker” means an individual who, at the time of commencing work on the project, resides in an Economically Disadvantaged Area or Extremely Economically Disadvantaged Area of the City or within a 5-mile radius of the project, and faces at least two of the following barriers to employment: (1) being homeless, (2) being a custodial single parent, (3) receiving public assistance, (4) lacking a high school diploma or GED, (5) having a criminal record or history of other involvement with the criminal justice system, (6) suffering from chronic unemployment, (7) being emancipated from the foster care system, (8) being a veteran, or (9) being an apprentice with less than 15% of the apprenticeship hours required to graduate to journey level in a program as described in Section 1.3 above.

## **ARTICLE II**

### **SCOPE OF AGREEMENT**

2.1 Parties: These Policies and Procedures shall apply and are limited to all Developers/Contractors/Subcontractors (“D/C/S”) (of any tier) performing construction, alteration, demolition, modification or expansion on a Covered Project, and the City of Los Angeles, acting through its Bureau of Contract Administration.

2.2 Project Description: These Policies and Procedures shall apply to all Residential construction, alteration, demolition, modification, or expansion projects subject to Measure JJJ.

2.3 Exclusions:

2.3.1 These Policies and Procedures shall be limited to construction Work on a Residential Project which has received a discretionary General Plan amendment pursuant to Subdivision B of Section 11.5.6 of the Los Angeles Municipal Code, or a zone change or height-district change, and is not intended to, and shall not apply to any construction Work performed at any time prior to the passage of Measure JJJ.

2.3.2 These Policies and Procedures are not intended to, and shall not, affect or govern the award of residential contracts which do not receive either a discretionary General Plan

amendment pursuant to Subdivision B of Section 11.5.6 of the Los Angeles Municipal Code, or any zone change or height-district change.

2.3.3 These Policies and Procedures are not intended to, and shall not, affect the operation or maintenance of any building, structure or facility whether related or not to covered Projects.

2.3.4 These Policies and Procedures, except for the requirement to pay prevailing wages, are not intended to, and shall not, apply to affordable housing developments of 25 units or less in which all the units in the development except for managers' units will be affordable to – and occupied by – Lower Income households (as defined in Section 50079.5 of the Health and Safety Code).

2.3.5 These Policies and Procedures, except for the requirement to pay prevailing wages, are not intended to, and shall not, apply to developments that have been issued award letters for state and/or local funding, which must include City of Los Angeles Affordable Housing Trust Fund award letters issued prior to November 30, 2016.

2.3.6 These Policies and Procedures are not intended to, and shall not, affect any off-site work (i.e.: fabrication, testing, etc.) whether related or not to Covered Projects.

2.3.7 These Policies and Procedures shall not apply to a D/C/S's executives, managerial employees, engineering employees, supervisors, office and clerical employees, or any other employee not performing construction craftwork.

2.3.8 These Policies and Procedures shall not apply to material suppliers or delivery by any means of material, supplies, or equipment required to any point of delivery.

2.3.9 These Policies and Procedures shall not apply to City employees.

2.3.10 These Policies and Procedures shall not apply to the work of persons, firms and other entities that perform consulting, planning, scheduling, management or other supervisory services on the Project, provided such entities do not perform craft employee construction Work on the Project with their own employees or to customer service work performed post completion by an entity other than the Contractor or Subcontractor that performed the original construction Work.

2.3.11 The Policies and Procedures that pertain to a Local Hire requirement shall not apply to a Project if a federal funding source has established provisions or rules that forbid the

inclusion of a Local Hire requirement. In that event, all other requirements of these Policies and Procedures shall remain in effect.

2.3.12 Out-of-State Workers: Hours Worked by residents of states other than California shall not be included in the calculation of total hours of Project Work for purposes of the percentage requirements set forth by Measure JJJ.

2.3.13 Notwithstanding the foregoing, demolition and asbestos abatement shall constitute Work covered by these Policies and Procedures when such Work is part of a Covered Project.

2.4 A D/C/S, as appropriate, has the absolute right to award contracts or subcontracts on a Project(s) to any Contractor or Subcontractor notwithstanding the existence or non-existence of any agreements between such Contractor or Subcontractor and any Union parties, provided only that such Contractor or Subcontractor is ready, willing and able to comply with these Policies and Procedures should such Contractor or Subcontractor be awarded Work covered by these Policies and Procedures.

### **ARTICLE III**

#### **EFFECT OF AGREEMENT**

3.1 By accepting a general plan amendment or zoning change from the City for a Project(s), the Developer and/or Contractor agrees to be bound by each and every provision of these Policies and Procedures.

3.2 Commencement of Work on the Project(s) by the D/C/S will be contingent upon the submittal of its proof that it is licensed as a contractor by the State of California.

3.3 At the time that any D/C/S enters into a subcontract with any Subcontractor of any tier to perform Work on the Project, the D/C/S shall provide a copy of these Policies and Procedures to said Subcontractor and shall require the Subcontractor as a part of accepting the award of a construction subcontract to agree in writing to be bound by each and every provision of these Policies and Procedures prior to the commencement of Work. This written agreement will be submitted to the BCA and the Designee prior to the Subcontractor beginning Work on the Project.

3.4 Approval of any Contractor or Subcontractor of any tier to perform Work on the Project(s) will be contingent upon the submittal of its proof that it is licensed as a contractor by the State of California, that it is registered with the Department of Industrial Relations as

required by California Labor Code Section 1725.5 and that it agrees to these Policies and Procedures.

3.5 These Policies and Procedures shall only be binding on the signatory D/C/S hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any of those entities either prior to, simultaneously with, or subsequent to, the execution of these Policies and Procedures.

3.6 In the event the Contractor or Subcontractor(s) fails to meet the licensing, registration and approval requirements on a project, penalties will be assessed as specified in Article VII of these Policies and Procedures.

## **ARTICLE IV**

### **TARGETED HIRING GOALS**

4.1 There are two classifications of targeted hiring goals for projects that are subject to the requirements of Measure JJJ. The first classification requires that all Contractors and Subcontractors make a Good Faith Effort to ensure that the two targeted hiring goals in this classification are met for each Project(s). To achieve the desired levels of participation for this classification:

4.1.1 At least 30% of total Work hours shall be performed by Local Residents residing within the City of Los Angeles and within 5 miles of the covered Project(s).

4.1.2 At least 10% of the total Work hours shall be performed by Transitional Workers as defined in Article 1.33 of these Policies and Procedures. These hours may also be applied toward the 30% Local Resident targeted hiring goal.

4.1.3 A Developer/Contractor shall be determined to have made a Good Faith Effort to achieve the first classification of targeted hiring goals for the project if, after taking into account all hours of Project Work performed on the project, the targeted hiring goals of Measure JJJ have been satisfied.

4.1.4 If all the targeted hiring goals of Measure JJJ have not been satisfied, the Developer/Contractor nonetheless may still be deemed to have made a Good Faith Effort if they demonstrate both (a) that they and each of their subcontractors (of any tier) have complied with all other requirements of Measure JJJ, and (b) that they and each of their subcontractors (of any tier) have either (1) satisfied the targeted hiring goals of Measure

JJJ with regard to the Project Work that they have performed, or (2) presented satisfactory documentation of the following:

(a) Attempts to hire the required number of Local Residents and Transitional Workers. Satisfactory documentation may include requests to Unions, work source centers, advertisements in local newspapers or on the internet, or by other means.

(b) Documented contact with a Jobs Coordinator in each instance when the relevant Union does not refer qualified Local Residents or Transitional Workers within 48 hours of the D/C/S's request and documentation attesting to the D/C/S's fair consideration of any Local Resident or Transitional Worker subsequently referred by the Jobs Coordinator.

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

1. A listing by name and address of all local recruitment sources contacted by the D/C/S;
2. The date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested;
3. The number of Local Resident and/or Transitional Worker hires made as a result of the contact;
4. The identity and address of the worker(s) hired pursuant to the contact;
5. Documentation when a referral was not hired (reason for non-hire) and/or premature termination.

4.2 The second classification mandates that the Prime Contractor is responsible for ensuring that all subcontractors, owner-operators, vendors and suppliers who provide personnel to work at the job site are in compliance with the remaining targeted hiring goals for the Project(s) to achieve the following desired levels of participation:

4.2.1 100% of all construction workers shall possess all licenses and certifications required by the State of California and the City of Los Angeles.

4.2.2 At least 60 % of the construction workforces on the project are:

(a) Workers who have graduated from a Joint Labor Management Apprenticeship Training Program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program, and

(b) Registered apprentices in an Apprenticeship Training Program approved by the State of California, or an out-of-state, federally-approved Apprenticeship Program.

4.2.3 Apprentices must be employed on each project in accordance with the requirements mandated by Section 1777.5 of the California Labor Code. The D/C/S agree that at least 50% of all Apprentice hours worked on the Project(s) will be worked by Apprentices whose place of residence is in the City of Los Angeles and within 5 miles of the covered Project(s).

4.2.4 In the event the Contractor or Subcontractor(s) fails to meet the targeted hiring participation and/or local apprenticeship hiring participation levels as specified in Section 4.2 of these Policies and Procedures on a Project(s), penalties will be assessed as specified in Article VII of these Policies and Procedures.

4.3 The employer retains authority in making individual hiring decisions.

4.4 Each worker shall be pre-screened and/or pre-qualified to determine their eligibility in order for them to qualify as a resident of the City of Los Angeles and/or as a Transitional Worker. To qualify a worker under this section, someone with authority from the D/C/S shall verify and certify that the individual's primary place of residence is within the City and that such individual satisfies the criteria set forth in Section 1.31 above. Proof of a worker's status as a resident of the City of Los Angeles and/or as a Transitional Worker shall be kept on file in the office of the Designee responsible for verifying the status of a worker(s) and shall be kept open to review by the BCA. The Developer or Contractor may wish to employ a Jobs Coordinator to assist in the pre-screening and/or prequalifying process.

4.5 Apprentices

4.5.1 Apprentices must be employed on each Project in accordance with the requirements mandated by Section 1777.5 of the California Labor Code. In the event that an Apprentice Program is not able to provide Apprentices for a specific craft, this requirement shall be waived for that craft.

4.5.2 All apprentices shall work under the direct supervision of a journeyman from the trade in which the apprentice is indentured. A journeyman shall be defined as set forth in the California Code of Regulations, Title 8 [apprenticeship] section 205, which defines a journeyman as a person who has either completed an accredited apprenticeship in his or her craft, or who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation.

4.5.3 All apprentices working on Measure JJJ projects must be registered in either a State and/or Federally Approved Apprenticeship Program. Proof of registration in an approved program must be attached to the first payroll on which the apprentice is listed. Upon request by the BCA, the D/C/S shall provide adequate proof evidencing the worker's qualification as a journeyman. Any non-registered "apprentice(s)" shall be paid the journeyman rate for the craft they are working in.

4.5.4 Apprentices shall be employed on a Project(s) in a ratio to the number of journeymen employed as specified in Section 1777.5 of the California Labor Code and Section 230.1 of the California Code of Regulations. In the event that a greater number of apprentices than is allowed is employed on the Project(s), apprentices who have attained the highest levels of apprenticeship among all the apprentices who worked on the Project(s) shall be reclassified as journeymen. This will be done only until the proper ratio is attained.

4.5.5 The ratio of apprentices to journeymen shall be determined at the end of the Project(s) and shall be based on the total hours worked on the project by craft. The ratio will not be based on individual days worked.

4.5.6 A Contractor or Subcontractor who fails to employ Apprentices in the proper ratio as required by Section 4.5.4 of these Policies and Procedures and Section 1777.5 of the California Labor Code shall forfeit as a civil penalty not more than one hundred dollars (\$100) for each calendar day of noncompliance. A Contractor or Subcontractor who commits a second or subsequent violation within a three year period shall forfeit as a civil penalty not more than three hundred dollars (\$300) for each calendar day of noncompliance.

4.6 In the event the Los Angeles City Council modifies or adjusts the Labor Standards mandated by Measure JJJ, these Policies and Procedures will be modified to reflect that adjustment.

4.7 Any covered Project(s) awarded under the requirements of Measure JJJ shall continue to be covered hereunder, until completion of the Project, notwithstanding any modification or adjustment of the Labor Standards by City Council as specified by Section 4.5 of these Policies and Procedures.

## **ARTICLE V**

### **WAGES AND BENEFITS**

#### **5.1 Wages**

5.1.1 All Workers covered by this Agreement shall be classified in accordance with work performed, and paid the hourly wage rates for those classifications in compliance with the applicable Prevailing Wage Rate Determinations established pursuant to the California Labor Code by the Department of Industrial Relations or as established by the U.S. DOL, if any federal funds are involved in the project.

5.1.2 If a prevailing wage rate increases during the term of this Agreement under state or federal law, the D/C/S shall pay the rate as of its effective date including any increase(s) as of their effective date(s).

5.1.3 The correct Prevailing Wage Rate Determination shall be that which is in effect on the date of the Developer's First Submittal of a Proposal for a Project(s) subject to Measure JJJ. (See Section 1.26)

5.1.4 Prevailing wage rates shall include both the base rate and any "Employer Payments" (or Fringe Benefits).

5.1.5 Residential prevailing wage rates shall be used whenever available. If no residential prevailing wage rate for a particular craft or classification has been determined, the commercial prevailing wage rate shall be in effect.

#### **5.2 Certified Payrolls (CPRs).**

5.2.1 Certified Payrolls shall be submitted weekly by any and all Developer(s), Contractor(s) or Subcontractor(s) of any tier who employ Workers on a Project. CPRs shall be submitted to the person, agent or agency designated to monitor the payment of Prevailing Wages on behalf of the Developer/Contractor. CPRs shall be submitted for all Workers and shall contain all the information for the Workers mandated by Section 226 of the California Labor Code.

5.2.2 CPRs as defined in Article 1.6 of these Policies and Procedures shall be an accurate record of the days and hours worked and wages earned.

5.2.3 CPRs shall be certified under penalty of perjury by someone in authority to represent the company.

5.2.4 A Statement of Compliance, with an original signature, signed in ink, must be completed and submitted with each CPR no matter what form of payroll is submitted.

5.2.5 If the Developer/Contractor opts to have the BCA monitor compliance with the Labor Standards requirements, an electronic signature will be permitted on the Statement of Compliance. In order to electronically sign a Statement of Compliance, each D/C/S must complete and submit an E-Signature Authorization Agreement form.

5.2.6 Deductions listed as "OTHER" on CPRs, including deductions for a 401K plan, must be fully explained and an authorization for the deductions must be signed by the Worker and submitted with the first CPR on which the deduction is shown.

5.2.7 For a non-union worker, the portion of the prevailing wage identified as "Training" is due to the worker as part of their wages.

### 5.3 Fringe Benefits.

5.3.1 Fringe Benefits (Health & Welfare, Pension & Vacation) may be included as part of a non-union worker's hourly wage rate. Credit against the Prevailing Wage will be given for all amounts paid as Fringe Benefits provided that the contributions do not exceed the amounts set forth in the applicable prevailing wage determination.

5.3.2 Any Fringe Benefits not paid directly to workers shall be paid to a third party trust. No D/C/S shall retain control of any funds designated as Fringe Benefits for any worker(s) once that worker has earned those Fringe Benefits.

5.3.3 A Fringe Benefit Statement detailing any amounts paid for any Fringe Benefits and the name and address of the third party trust administering those funds must be provided to the person, agent or agency monitoring the payment of Prevailing Wages on the Project(s) with the first payroll. Any time the Fringe Benefit rates change a new Fringe Benefit Statement must be submitted.

5.3.4 Amounts designated in the Prevailing Wage Rate Determinations for "Training" shall be considered as part of a worker's hourly wage rate and paid weekly to that worker along with the remainder of their hourly wage rate.

5.4 Each D/C/S must maintain a copy of Certified Payroll Records and submit them to the BCA's Office of Contract Compliance within 10 calendar days of receipt of a written request.

5.5 In the event that the BCA receives a CPRA request for a D/C/S's payroll records, the BCA shall forward a copy of that request to the affected D/C/S along with a notice that the D/C/S shall submit the requested documents to the originator of the request within 10 calendar days of receipt of the written request. The original of the request will be sent to the Developer/Contractor.

## **ARTICLE VI**

### **IMPLEMENTATION**

6.1 All construction contracts identified as subject to Measure JJJ shall include the following provisions. Such provisions include, but are not limited to:

6.1.1 All persons who perform Work in the execution of a construction contract shall be paid the Prevailing Wage Rate applicable to their classification as mandated in Section 11.5.6(B)(2) of Measure JJJ, Article III, Section 377 of the Los Angeles City Charter and in Section 1720 et seq. of the California Labor Code.

6.1.2 All persons who perform Work in the execution of a construction contract shall possess all licenses and certifications required by the State of California and the City of Los Angeles.

6.1.3 Each D/C/S shall provide information concerning their experience and financial qualifications, including proof of a current State Contractor's License, Business Tax Registration Certificate, and ability to perform said contract or subcontract. This information shall be provided to the person, agent or agency monitoring the Labor Standards on the Project prior to the D/C/S beginning Work on the Project. No D/C/S shall begin working on the Project until all of that individual D/C/S's information has been submitted and received by the person, agent or agency designated to monitor the payment of Prevailing Wages on behalf of the Developer/Contractor.

6.1.4 All Contractors and Subcontractors shall have a current and valid contractor's license with the California State License Board.

6.2 Notification of Developer/Contractor/Subcontractor

6.2.1 Advisory notices shall be placed on the website for Planning, BCA and Housing and Community Development (HCID), alerting any potential D/C/S of the Labor Standards requirements of Measure JJJ.

6.2.2 Upon Point of Filing of an application with the Department of City Planning for a general plan amendment or certain zoning changes on a proposed residential project of 10 units or more that will qualify under Measure JJJ, the Developer/Contractor shall be provided with a notice that this Project is subject to the requirements of Measure JJJ. This notice shall include a summary of the requirements of the Measure and a notice that a Pre-Construction meeting must be held to discuss the Labor Standards requirements of Measure JJJ prior to commencement of Work at the Project site, along with contact information for the BCA and an explanation of the role of the BCA. The application shall be filed at the Development Services Center of the Department of City Planning.

6.2.3 At least thirty (30) working days prior to start of Work on a Project, the Developer/Contractor shall contact the BCA to schedule a pre-construction meeting to discuss the Labor Standards requirements of the Project(s).

6.2.4 At least ten (10) working days prior to start of Work on a Project, the D/C/S shall have a pre-construction meeting with the BCA to discuss the Labor Standards requirements of the Project.

6.2.5 Pre-Construction Meeting. The Developer/Contractor or their designee shall schedule and hold a pre-construction meeting with all parties prior to the start of Work by the Prime Contractor or any Subcontractor(s) for any Project(s) subject to the requirements of Measure JJJ. The purpose of the meeting will be to, among other things, ensure that the D/C/S are informed of the Labor Standards requirements (i.e.: payment of Prevailing Wages, Local Hire employment and employment of Apprentices and Transitional Workers) of the Project. The Subcontractors of any tier will be advised in advance of all such conferences by the Developer/Contractor and shall participate. The BCA's Office of Contract Compliance shall be advised in advance of all such pre-construction meetings and shall – at its sole discretion – be authorized to participate.

6.2.6 The Developer/Contractor shall review and sign a pre-construction agreement which shall detail the Labor Standards requirements of the Project(s) as well as provide details of the penalties that may be applied for non-compliance.

6.2.7 Project Progress Meetings.

6.2.7.1 A Project Progress Meeting to discuss the D/C/S's compliance with the Prevailing Wage, Apprenticeship and Labor Standards requirements of the Project(s) will be held upon 50% completion of the Project. The time, date and place of this meeting will be determined at the pre-construction meeting based on the expected number of days to complete the Project.

6.2.7.2 Upon completion of 75% of the Project a second Project Progress Meeting will be held to discuss the D/C/S's compliance with the Prevailing Wage, Apprenticeship and Labor Standards requirements of the Project(s). The time, date and place of this meeting will be determined at the 50% of completion meeting based on the expected number of days to complete the Project.

6.2.7.3 Additional Project Progress Meetings may be held at the request of the D/C/S or the BCA.

**ARTICLE VII**

**COMPLIANCE**

7.1 The Prime Contractor is responsible for the compliance of all Subcontractors of any tier with the labor standards requirements of the Project.

7.2 The Prime Contractor shall designate the monitoring and enforcement of all prevailing wage, apprenticeship and local hiring requirements to either a Designee of their choosing or to the BCA. In the event that the contractor chooses a Designee, the BCA retains final authority and may – at its sole discretion, overrule the Designee.

7.3 It shall be the responsibility of the Developer/Contractor or their Designee to investigate and monitor compliance with the Labor Standards provisions of Measure JJJ as mandated in Article V (Wages and Benefits) of these Policies and Procedures. The BCA shall review the compliance monitoring efforts of the D/C/S or their Designee as specified in Article V, including, but not limited to, the prevailing wage and apprenticeship requirements of the Measure, along with Local Resident and Transitional Worker hiring compliance by periodic review of CPRs, Fringe Benefit Statements and other payroll documents as defined in Section 16000 of the California Code of Regulations.

7.4 The Designee or BCA staff may visit the job site and interview employees. All interviews will be confidential to the extent permitted by law. No representative of the D/C/S may be present during any Worker interview.

7.5 Every Contractor or Subcontractor shall keep an accurate record showing the name of – and actual hours worked each calendar day and each calendar week by – each Worker employed in connection with the Project. The records shall be open for inspection by the BCA at all reasonable hours.

7.6 Certified Payrolls shall be submitted to the Developer/Contractor's Designee weekly. In the event a D/C/S fails to submit their CPRs and/or other payroll documents to the BCA within ten (10) calendar days of receipt of a written notice requesting the records enumerated in Sections 1.6 and 1.25 of these Policies and Procedures, the D/C/S shall forfeit \$100 per worker per day until strict compliance is effectuated. The BCA shall retain forfeited funds in compliance with Article X of these Policies and Procedures and deposit them in Revenue Account 4331JJ – Penalties and Forfeitures for Fund 100, Department 76 of the City's General Fund.

7.7 In the event a D/C/S fails to submit their CPRs and/or other payroll documents in response to a CPRA (public records) request within ten (10) calendar days of receipt of a written notice requesting the records enumerated in Sections 1.6 and 1.25 of these Policies and Procedures, the D/C/S shall forfeit \$100 per worker per day until strict compliance is effectuated. The BCA shall retain forfeited funds in compliance with Article X of these Policies and Procedures and deposit them in Revenue Account 4331JJ – Penalties and Forfeitures for Fund 100, Department 76 of the City's General Fund.

7.8 Upon discovery of a suspected violation of the Labor Standards, the Developer/Contractor or their Designee shall notify the BCA of the discovery in writing. Such notification shall be made within 10 calendar days of any discovery.

7.9 The BCA shall review the compliance activities of the D/C/S or the Designee as is deemed necessary by the BCA. Any files, documents, CPRs or other payroll documents presented by the Developer/Contractor or their Designee for compliance review by the BCA shall be presented in a logical and organized manner.

7.10 In the event a violation of prevailing wage law is determined, the BCA shall have authority to enforce prevailing wage law as specified in Sections 1720-1815 of the California

Labor Code. This may include the assessment of penalties as specified in Sections 1775, 1776 and 1813 of the Labor Code.

7.11 In the event a violation of prevailing wage law is determined, the BCA shall notify the D/C/S in writing. Such notification shall include the name(s) of any worker(s) affected, the date(s) of the violation, and any amount(s) owed, including penalties. Said notification shall also include contact information for the BCA and an offer to meet to discuss the violation.

7.12 In the event of an underpayment of wages, the contractor shall have 60 days to retribute those wages to the worker(s). If the contractor fails to pay the restitution within 60 days, liquidated damages in an amount equal to the unpaid wages shall be assessed. Those liquidated damages will be due the worker(s).

7.13 Failure to employ apprentices as required by Section 4.5 of these Policies and Procedures and Section 1777.5 of the California Labor Code shall result in the imposition of penalties of not more than \$100/day for each day that the Contractor or Subcontractor was employed on the Project as specified by Section 1777.7 of the Code.

7.14 Each D/C/S shall cooperate fully and promptly with any inquiry or investigation the BCA or the Developer, Contractor, or their Designee deems necessary in order to monitor compliance with the provisions of these Policies and Procedures.

7.15 Non-Compliance. The BCA shall determine whether a violation of the Labor Standards required by Measure JJJ has occurred. In the event that the BCA determines that a D/C/S has violated these Labor Standards requirements, the BCA shall have the following enforcement authority:

7.15.1 Failure to achieve the targeted hiring goals as specified in Sections 4.1 and 4.2 of these Policies and Procedures will result in the imposition of a penalty of up to the amount of \$500 for each day that the Contractor/Subcontractor was employed on the Project.

7.16 Any Contractor or Subcontractor who performs Work on the Project, but who fails to comply with the requirements of Article III of these Policies and Procedures shall be subject to the assessment of penalties at the rate of \$500/day for each day that the Contractor/Subcontractor was employed on the Project.

7.17 Any Contractor/Subcontractor suspected of being in violation of the Labor Standards required by Measure JJJ shall be notified of the suspected violation in writing and may request a meeting with the BCA to resolve the matter.

7.18 A D/C/S may appeal an assessment to the Board of Public Works. An appeal must be made in writing within 10 calendar days of receipt of the assessment summary. 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 will be implemented.

7.19 Prior to the Board hearing to address the assessment, the appellant shall be provided a summary of the assessment and the opportunity to meet with the BCA to discuss the assessment and present any mitigating evidence.

7.20 The appellant will be allowed to provide evidence that it was in partial or total compliance with the Labor Standards requirements of this Project(s) at the Board hearing to determine validity of the assessment.

7.21 The final decision as to whether a D/C/S has made a Good Faith Effort to comply with the targeted hiring goals specified in Sections 4.1 and 4.2 of these Policies and Procedures shall be made by the BCA.

## **ARTICLE VIII**

### **DEVELOPER/CONTRACTOR/SUBCONTRACTOR'S RESPONSIBILITIES**

8.1 The D/C/S agrees that it is jointly and severally liable for – and absolutely and unconditionally guarantees to Workers employed on a covered project – the prompt payment of Prevailing Wages, and is obligated to the performance of all Labor Standards requirements with Measure JJJ and these Policies and Procedures. Additionally, the D/C/S agrees that it is jointly and severally liable for non-payment or under payment of Prevailing Wages or any penalties assessed against it for failure to comply with Measure JJJ and/or these Policies and Procedures.

8.2 Project scheduling and the assignment of work will be solely the responsibility of the D/C/S performing the Work on a Project. Such work assignments will be in accordance with the craft designations and Scope of Work assignments as published by the DIR.

8.3 The Developer and Contractor shall document that all its Subcontractors of any tier are aware of – and agree to comply with – the Labor Standards requirements of the Project. All D/C/S on the Project shall submit a letter to the BCA or Designee stating that they are aware of – and agree to comply with – the Labor Standards requirements of the Project.

## **ARTICLE IX**

### **WITHHOLDING OF A CERTIFICATE OF OCCUPANCY**

#### **WITH OPTION TO OPEN AN ESCROW ACCOUNT IF NECESSARY**

9.1 In order to ensure that a D/C/S remains in compliance with the labor standards requirements on Measure JJJ projects, it is necessary to establish a means for the City to acquire and maintain some control over the funds.

9.2 To accomplish this necessary goal, if it is determined that a D/C/S has violated the Labor Standards requirements of a Project, the BCA shall notify the Department of Building & Safety in writing electronically to withhold any Certificate of Occupancy from the Developer until either the BCA has given its approval to issue the Certificate of Occupancy, or the Developer has created an Escrow Account in an amount sufficient to address the violation. This amount is to be determined by the BCA.

9.3 In the event that a D/C/S is required to create an Escrow Account, said account must be established in such a way that access to the funds contained therein may only be achieved by consent of both the D/C/S who created the account and the BCA.

9.4 Approval from the BCA to release the Certificate of Occupancy shall only be given once the BCA has verified that either: a) the Developer has established an Escrow Account as described in Section 9.2, or b) all CPRs have been submitted, the Labor Standards required by Measure JJJ have been met, and the D/C/S has complied with these Policies and Procedures, or c) in the event that the Developer/Contractor has neither established an Escrow Account nor have they complied with Measure JJJ or these Policies and Procedures, all applicable restitution, civil fines, forfeitures and/or penalties have been paid.

9.5 Any funds submitted to the BCA as restitution or penalties shall be submitted in the form of check or money order. The BCA shall not accept cash in any form.

9.6 Any funds collected as a result of the assessment of penalties for any Prevailing Wage, Apprenticeship, Local Hire or other Labor Standards violation(s) shall be retained by the City and deposited in Revenue Account 4331JJ – Penalties and Forfeitures for Fund 100, Department 76 of the City’s General Fund.

## **ARTICLE X**

### **ADMINISTRATIVE APPEAL**

10.1 A D/C/S may appeal to the Board of Public Works any penalty or assessment made by the BCA.

10.2 Deadline to Appeal. A D/C/S who receive a Notice of Violation may file with the Board of Public Works a notice of appeal within 30 calendar days of service of the Notice of Violation. To be considered timely, the notice of appeal must be postmarked no later than – or actually received by the BPW by – the 30<sup>th</sup> calendar day following service of the Notice of Violation. The notice of appeal must be in writing and must indicate a return address. The notice of appeal must specify in detail the basis for the appeal.

10.3. Hearing Date. As soon as practicable after receiving the written notice of appeal, the BPW shall schedule a hearing date to hear and decide the administrative appeal. Written notice of the time and place for the hearing shall be served by First Class mail, at the return address indicated on the written notice of appeal. Service of the notice of hearing on the D/C/S must be made at least ten (10) days prior to the date of the hearing.

10.4 Hearing Date. As soon as practicable after receiving the written notice of appeal, the BPW shall schedule a hearing date to hear and decide the administrative appeal. Written notice of the time and place for the hearing shall be served by First Class mail, at the return address indicated on the written appeal. Service of the notice of hearing on the D/C/S must be made at least ten (10) days prior to the date of the hearing.

10.5 Notice of Hearing. Except as otherwise provided by law, the failure of the D/C/S or any other person affected by the Notice of Correction to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this article. Service by First Class mail, postage prepaid, shall be effective on the date of mailing.

10.6 Failure to Appeal. Failure of the D/C/S to file an appeal in accordance with this section or to appear at the BPW hearing shall constitute a failure to exhaust administrative remedies. The Notice to Correct shall become final and enforceable as a judgment in civil court.

10.7 Submittals for the Hearing. No later than five (5) days prior to the hearing, the D/C/S and the DAA shall submit to the BPW, with simultaneous service by First Class mail on the Opposing party, written information, including, but not limited to the following:

1. the statement of the issues to be determined by the BPW;
2. a statement and summary of the evidence to be offered; and
3. the witnesses to be presented at the hearing.

10.8 Conduct of the Hearing. The BPW shall conduct all appeal hearings under this article. At the hearing, the DAA shall have the burden of proof by a preponderance of the evidence. The BPW may accept evidence on which a person would commonly rely on in the conduct of his/her business affairs, including, but not limited to, the following:

1. A Notice of Correction shall be prima facie evidence of the violation(s) specified therein, and those continuing through the date of the hearing;

2. The BPW may accept evidence and oral and written testimony under penalty of perjury relating to the violation(s) and the appropriate means of correcting the violation(s);

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The BPW may continue the hearing and request additional information from the DAA, D/C/S or any witness prior to issuing a written decision.

10.9 BPW's Findings and Determinations. Within thirty (30) days after the conclusion of the hearing, the BPW shall make findings based on the record of the hearing. The BPW may uphold or reject the violation(s) referenced in the Notice of Correction in whole or in part. The BPW also may uphold the Notice of Correction, but reduce, waive or conditionally reduce or waive the penalties and administrative fines stated therein if mitigating circumstances are shown and the BPW finds specific grounds for reduction or waiver in the evidence presented at the hearing. The BPW may impose penalties and fines for any additional violations occurring during the pendency of the appeal. The BPW may impose conditions and deadlines for the correction of violations or the payment of outstanding penalties and fines.

10.10 Enforcement Order. The BPW's findings pursuant to Section 10.9 shall constitute the Enforcement Order, which shall be issued by the BPW. The Enforcement Order shall specify the amount of restitution, administrative fines and penalties owed by the D/C/S. The Enforcement Order shall be final and shall be served on the D/C/S by certified mail. Pursuant to California Code of Civil Procedure Section 1094.5, the Enforcement Order shall be subject to judicial review in the appropriate superior court.

## **ARTICLE XI**

### **SAVINGS CLAUSE**

11.1 In the event any article, provision, clause, sentence or word of these Policies and Procedures is determined to be illegal or void as being in contravention of any applicable law, by

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

11.2 The provisions of these Policies and Procedures shall not be applicable where prohibited by federal or state law, or where the application would be inconsistent with terms and conditions of a grant or a contract with the agency of the United States, State of California, or the instruction of an authorized representative of any of these agencies with respect to any grant or contract.

## **ARTICLE XII**

### **TERM**

12.1 These Policies and Procedures shall be put into effect upon commencement of construction activities by any D/C/S on a Project subject to the requirements of Measure JJJ, and shall continue in full force and effect from the date of execution until 180 days following issuance of the Certificate of Occupancy. During the term of any Project, upon request by either Party or by mutual consent, the Parties will meet to discuss the progress of, and their experience with, the Project.