

# **CITY OF LOS ANGELES**



## **RULES AND REGULATIONS**

### **IMPLEMENTING**

## **PERMANENT SUPPORTIVE HOUSING AND FACILITIES INFRASTRUCTURE STABILIZATION ORDINANCE**

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The Department of Public Works, Bureau of Contract Administration (“BCA”) promulgates these Rules and Regulations as the Designated Administrative Agency (“DAA”) pursuant to Sections 10.51.1(g) and 10.51.5 of the Los Angeles Administrative Code (“LAAC”). Each Awarding Authority shall cooperate to the fullest extent with the BCA in the administration of the Proposition HHH Project Labor Agreement (“HHH-PLA”). The BCA may amend or revise these HHH-PLA Rules and Regulations from time to time, consistent with applicable law.

**SCOPE OF BCA AUTHORITY**

Under LAAC Sections 10.51.4, 10.51.5 and 10.51.6, the BCA administers, monitors, enforces and provides educational outreach and training for the HHH-PLA. When necessary to carry out its function as the DAA, the BCA may conduct inquiries, investigations and outreach to determine compliance with the HHH-PLA.

**DEFINITIONS**

For purposes of these Rules and Regulations, the definitions set forth in LAAC Section 10.51.1 are incorporated herein by reference. In addition, the following definitions shall apply in these Rules and Regulations:

“**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.

“**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.

“**Awarding Authority**” means any board or commission of the City, or any employee or officer of the City, that is authorized to award or enter into any contract on behalf of the City.

“**Bureau of Contract Administration (BCA)**” means the designated bureau within the City to serve as the Designated Administrative Agency responsible for administering the HHH-PLA and Policy.

“**City**” means the City of Los Angeles, a municipal corporation, and all City Awarding Authorities.

“**Construction Contract (Contract)**” means a City contract which has been certified by the City Controller, awarded by the Awarding Authority, and is necessary to complete

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the Covered Project.

**“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 City or any of its Contractors or Subcontractors/owner operators of any tier, with respect to the construction of any part of a Covered Project.

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

**“Covered Project(s) or Project”** means a project which is covered by the HHH-PLA or so designated by the Awarding Authority. The Awarding Authority may identify, via resolution, additional projects that are appropriate for coverage by the HHH-PLA and the Policy.

**“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 HHH-PLA and/or Policy.

**“Developer”** means a person, firm, partnership, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity entering into a Contract with the City to develop a HHH-PLA Covered Project.

**“Employment Hiring Plan (EHP)”** means a C/S/E’s detailed hiring plan in achieving the targeted hiring percentages as described in Article VII of the HHH-PLA and Policy.

**“Facilities”** means HHH-PLA covered development projects that are directly related to an existing or new Proposition HHH funded Permanent Supportive Housing (“PSH”) project or an existing or proposed City initiative to support homeless individuals.

**“FHWA Project”** means a HHH-PLA Project that is funded in whole or in part by the Federal Highway Administration (FHWA).

**“Housing and Community Investment Department Los Angeles (HCIDLA)”** means the Awarding Authority for Proposition HHH funding on all covered PSH projects.

**“HHH-PLA”** means the Proposition HHH Project Labor Agreement entered into between the City and Unions, applicable to Covered Projects.

**“Jobs Coordinator”** means the Prime Contractor’s designated person, agent or agency that will facilitate the Local Resident hire referral process with the C/S/E, Unions and

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other referral organizations.

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

**“Letter of Assent”** means the document that each C/S/E (of any tier) must sign and submit to the City’s Inspector of Public Works, which formally binds them to adherence to all the forms, requirements and conditions of the HHH-PLA and Policy.

**“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.

**“Local Resident”** means either: (i) an individual whose primary place of residence is in the City and is in a zip code within a 5-mile radius surrounding a project’s location where the annual household income or the individual’s annual household income is less than the County of Los Angeles’ medium annual household income; or (ii) an individual whose primary place of residence is within the City and is within a zip code having at least two census tracts (or portions thereof) in which the median annual household income is less than 50 percent of the County of Los Angeles’ median annual household income, and/or at least two census tracts (or portions thereof) where the rate of Unemployment exceeds 200 percent of the County of Los Angeles’ Unemployment rate as reported by the most recent U.S. Census Bureau data; or (iii) an individual whose primary place of residence is within the City and is within the zip code having at least two census tracts (or portions thereof) in which the median annual household income is less than the County of Los Angeles’ median annual household income and/or at least two census tracts (or portions thereof) where the rate of Unemployment exceeds 100 percent of the County of Los Angeles’ Unemployment rate as reported by the most recent U.S. Census Bureau data.

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; or (ii) Valid driver’s license or State ID card with a City of Los Angeles address; or (iii) Medical card with current address; or (iv) Utility bill with eligible household member’s name on it; or (v) Voter’s registration card; or (vi) Other proof of residence address deemed acceptable by BCA.

**“Long-Term Unemployment”** as defined by the Bureau of Labor Statistics means being jobless for 27 weeks or more.

**“Office of the City Administrative Officer (CAO)”** means the Awarding Authority for Proposition HHH funding on all covered Facilities projects.

**“Policy”** means the Rules and Regulations for Implementing the Proposition HHH-PLA.

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**“Project Work”** means construction work performed as part of a Covered Project.

**“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.

**“Reporting Period”** means the BCA’s indicated reporting period for measuring the targeted hiring efforts of the C/S/Es’. These reporting periods shall be at the BCA’s determination of 10%, 30%, 50%, 70% and 90% construction completion phases.

**“Tier 1”** means the zip codes within a 5-mile radius surrounding the project’s location, containing qualified workers where either the annual household income or the qualified worker’s annual household income is less than the County of Los Angeles’ median annual household income, as identified in Article 7.4 of the HHH-PLA.

**“Tier 2”** means the zip codes within the City, identified in Article 7.5 of the HHH-PLA, having at least 2 census tracts (or portion thereof) in which the median household income is less than 50% of the County of Los Angeles’ median annual household income, and/or where the Unemployment rate exceeds 200% of the County of Los Angeles’ Unemployment rate as reported by the most recent available U.S. Census Bureau data.

**“Tier 3”** means zip codes within the City, identified in Article 7.6 of the HHH-PLA, having at least 2 census tracts (or portion thereof) in which the median household income is less than the County of Los Angeles’ median annual household income, and/or where the Unemployment rate exceeds 100% of the County of Los Angeles’ Unemployment rate as reported by the most recent U.S. Census Bureau data.

**“Total Development Cost (TDC)”** means a covered Facilities project’s total development cost.

**“Transitional Worker”** means any individual whose primary place of residence is within the City of Los Angeles, and who prior to commencing work on a project has been certified as satisfying at least one of the following Criteria (1): having Veteran status; having a documented history of involvement with the criminal justice system; being homeless. If the Jobs Coordinator or Employer is not able to identify anyone using Criteria (1), Criteria (2) may be used. Criteria (2) is an individual facing two or more of the following barriers to employment: having a household income less than 50% of Los Angeles County’s median annual household income, receiving public assistance, lacking a GED or high school diploma, being a custodial single parent, suffering from Long-Term Unemployment, being emancipated from the foster care system, or being an Apprentice with less than 15% of the apprenticeship hours required to graduate to journey level in a program described in Article I, Section 1.3 of the HHH-PLA.

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**“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 to work.

**“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 HHH-PLA, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed in the HHH-PLA and who have through their officers executed the HHH-PLA.

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**REGULATION #1: COVERAGE OF PROJECTS**

**Departmental Determination of Coverage**

An Awarding Authority is responsible for making an initial determination of whether a project is eligible to receive Proposition HHH funding. Upon funding approval, projects will be covered under the HHH-PLA based on the project threshold criteria established within Section 2.2 of the HHH-PLA.

**(a) Covered Projects**

Except as provided otherwise herein, this Policy applies to all projects covered by the HHH-PLA. The Awarding Authority may designate additional projects for coverage under the Policy and HHH-PLA based on specific findings that coverage will advance the City'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.

**(b) Federal Highway Administration (FHWA) Projects**

In the event that the Awarding Authority determines that a project to which this Policy applies is an FHWA project, BCA shall modify or not enforce any aspect of the Policy or HHH-PLA in accordance with a valid and binding instruction from the U.S. Department of Transportation.

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**REGULATION #2: IMPLEMENTATION**

Prior to bid or proposal, the Awarding Authority staff shall review each Covered Project's bid or proposal specifications to ensure the following provisions are incorporated:

**(a) The Request for Proposal Package Authorization specifies that the Covered Project contains the HHH-PLA and Policy**

Any Request for Proposal (RFP) of Proposition HHH funding is presumed to be covered by the HHH-PLA and must incorporate the HHH-PLA and the Policy for the C/S/E and/or Developer's reference.

**(b) The Bid or Proposal specifications require all Contractors submitting bids or proposals to agree to the terms of the HHH-PLA and Policy**

The Awarding Authority shall determine if the Request for Proposal is subject to the HHH-PLA using the guidelines discussed in Regulation #1.

1. If the RFP to be performed with Proposition HHH funding is subject to the HHH-PLA, the Awarding Authority shall incorporate adherence to the HHH-PLA into the standard Contract language.
2. Unless otherwise provided for in Regulation #3, if the Awarding Authority believes that the RFP is exempt or not covered by the HHH-PLA, prior to releasing the award, the Awarding Authority must provide written confirmation to the BCA stating the justification(s) as to why the project should be exempt.

**(c) 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 HHH-PLA and Policy and/or require compliance with the HHH-PLA and Policy terms through a Letter of Assent or any other form or legally enforceable obligation to the City.**

**(d) The Construction Contract shall include provisions establishing Liquidated Damages amounts as described in Regulation No. 10 of this Policy.**

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**REGULATION #3: EXEMPTIONS AND/OR MODIFICATIONS**

A Contract may not be subject to the HHH-PLA if it meets certain requirements. When a Contract is not subject to the HHH-PLA, the C/S/Es (of any tier) working under the conditions therein will not be subject this Policy.

**(a) Contracts that are not subject to the HHH-PLA**

- (1) Provisions of the HHH-PLA conflict with federal or state law – LAAC Section 10.51.7(a):** Contracts or authority for expenditures that do not meet these thresholds are not subject to the HHH-PLA.
- (2) Governmental Entities – LAAC Section 10.51.7(b):** Contracts with governmental entities are not subject to the requirements of the HHH-PLA.
- (3) Provisions of the HHH-PLA conflict with federal or state grant funding or terms thereof – LAAC Section 10.51.7(c):** Contracts are exempt, only if a separate funding source has established provisions or rules that **forbid** the inclusion of the HHH-PLA and/or Local Hire provision. If requested, the Developer must present the reason(s) to the BCA prior to final determination to exclude the Covered Project.
- (4) Awarded under emergency or urgent circumstances – LAAC Section 10.51.7(d):** Such Contracts are exempt from the HHH-PLA and this Policy. However, the BCA shall receive a detailed justification, in writing, from the Awarding Authority, as to the emergency or urgent status of an otherwise Covered Project.

**(b) Workers not covered by the HHH-PLA and this Policy**

- (1) C/S/E's non-construction employees:** The HHH-PLA and 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.
- (2) 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 Regulation No. 9 of this Policy.

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**REGULATION #4: TARGETED HIRING**

**Targeted Hiring for HHH-PLA Projects – LAAC Section 10.51.3:**

All C/S/Es shall retain authority in making individual hiring decisions, but are obligated to follow targeted hiring procedures to make reasonable efforts to achieve specific hiring opportunities for Local Residents, Apprentices and Transitional Workers. 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 or zip code is within the Tier 1 five-mile radius of the Covered Project's location. After Unions, C/S/Es and the Jobs Coordinator have exhausted the available pool of Local Residents whose primary place of residence is within Tier 1, they may refer Local Residents whose primary place of residence is within a Tier 2 or Tier 3 zip code.

**(b) At least 50% of all Apprentice hours shall be performed by Local Residents.**

Apprentices must be employed on each project in accordance with the requirements mandated by Section 1777.5 of the California Labor Code. The hours performed by Apprentices in each individual craft shall not exceed the ratio to journey person established by the applicable craft union's State DAS approved apprenticeship standards.

**(c) At least 10% of total work hours shall be performed by Transitional Workers.**

Transitional Workers shall reside within any zip code areas within the City of Los Angeles. Transitional Workers may be applied towards the 30% Local Resident requirement of the HHH-PLA and this Policy.

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**REGULATION #5: RESPONSIBILITIES OF THE BCA**

The following delineate the responsibilities of the BCA in their role of the Designated Administrative Agency for the HHH-PLA and this Policy, in accordance with LAAC Sections 10.51.4, 10.51.5 and 10.51.6.

The responsibilities include:

- (a) Monitor and enforce the targeted hiring measures of the HHH-PLA and Policy and issue Notices of Non-Compliance where appropriate.**
- (b) 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 plan.**
- (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) Post Local Resident hire status reports on the BCA website (<http://bca.lacity.org>) for Covered Projects.**
- (e) Report to the City designated entity on an as-needed basis the status of all Covered Projects.**
- (f) Determine the withhold amount from payment(s) as disputed funds and make recommendation(s) for assessment of Liquidated Damages.**

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**REGULATION #6: RESPONSIBILITIES OF THE 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 BCA for approval by the BCA Director or his/her designee. Each C/S/E shall also complete an EHP Acknowledgement that describes how it will meet the targeted hiring requirements set forth in the HHH-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, complete each of the following:**

- Read and understand the requirements of the HHH-PLA and Policy;
- Submit their Employment Hiring Plans at least 20 business days prior to their Subcontractors' start of work and;
- 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:**

- Recommend a Jobs Coordinator for approval by the BCA, on a per project basis.
- Upon BCA's approval of its Jobs Coordinator, notify its Subcontractors (of any tier) the identity and contact information of the Jobs Coordinator.
- Provide within 10-calendar days upon request by the BCA 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 VII of the HHH-PLA and 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 HHH-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 HHH-PLA must be raised at the pre-job conference upon disclosure of the work assignments.

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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 HHH-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 do not refer a Local Resident and/or Transitional Worker within the 48-hour referral window.**

**(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 BCA 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 BCA or its designated representatives records and information that are deemed relevant to monitoring and enforcement of the provisions of the HHH-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 BCA or its designated representatives deem necessary in order to monitor compliance with the provisions of the HHH-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 BCA 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 its designated representatives, the Prime Contractor and its C/S/Es (of any tier) must provide documentation of their Local Resident, Apprentice and Transitional Workers targeted hiring participation level efforts within 10-calendar days of the request for documentation.

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**REGULATION #7: RESPONSIBILITIES OF THE UNIONS**

- (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 Transitional 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 project radius, and then Tier 2 and Tier 3 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 project radius before referring an individual residing in the Tier 2 and Tier 3 zip codes.**
- (e) Track retention of Local Residents and/or Transitional Worker Apprentices participating in joint Labor/Management Apprenticeship Programs and provide BCA with the necessary information as requested.**

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**REGULATION #8: RESPONSIBILITIES OF THE JOBS COORDINATORS**

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:

**(a) Criteria for Selecting a Jobs Coordinator:**

- i. Developing, creating, designing and marketing specific programs targeting Local Residents and/or Transitional 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 Resident worker, Transitional 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 transitional (formerly known as disadvantaged) status of workers.
- vii. Establishing a referral and retention tracking mechanism for placed Local Resident and/or Transitional 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 Resident workers and/or Transitional Workers.
- ix. Liaising with the various building trades crafts for referral and placement of Local Resident hire and/or Transitional Workers.

**(b) Jobs Coordinator Responsibilities.**

The Jobs Coordinator shall:

- i. Coordinate the Local Resident hire referral process with the C/S/Es, Unions, City Work Source Centers, Faith and Community Based Organizations, and other

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organizations that can provide qualified Local Resident hire referrals.

- ii. Certify the Transitional 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' who 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 Resident hire effort, documentation and other reports as they relate to the Local Resident and/or Transitional Worker targeted hiring requirements.
- viii. Work closely with BCA staff, the building trades and C/S/Es in achieving the targeted hiring.

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

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**REGULATION #9: COMPLIANCE**

The BCA or its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of the HHH-PLA and the Policy. The Prime Contractor is ultimately responsible for it and its C/S/Es (of any tier) compliance with the HHH-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 HHH-PLA and Policy have been satisfied for a Covered Project, then the Prime Contractor and its Subcontractors (of any tier) working on that Covered Project shall be deemed to be in compliance.**
  
- 2. If the targeted hiring requirements of the HHH-PLA and the Policy have not been satisfied for a Covered 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 HHH-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 HHH-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 BCA.
  - (b) Requests to Unions, through Craft Request Forms, of sufficient numbers of Local Residents and Transitional Workers.
  - (c) Documented contact with the Jobs Coordinator in each instance when the relevant Union did not refer qualified Local Residents or Transitional Workers within the 48 hours following the C/S/E's request and the C/S/E's fair consideration of any Local Resident or Transitional Worker subsequently referred by the Jobs Coordinator.
  - (d) Maintained accurate records documenting the C/S/E's compliance efforts, including, but are not limited to:
    - i. A listing by name and address of all Local Resident recruitment sources contacted by the C/S/E;
    - ii. The date of the Local Resident 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 Transitional Workers hires made

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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.

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**REGULATION #10: ENFORCEMENT**

The Prime Contractor for every Covered Project agrees:

1. To be liable to the City 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 HHH-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 will cause harm to the City 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 journeyman project wage for each hour the Covered 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 BCA to develop a plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate compliance 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, the DAA shall recommend that the City designated entity assess Liquidated Damages and any amount recovered shall be returned to its funding source.

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**5. Liquidated Damages Appeal:**

- (a) The Prime Contractor may appeal the assessment of Liquidated Damages before the City designated entity. Prior to the hearing to address assessment of Liquidated Damages, the Prime Contractor shall be provided a summary of the information upon which the assessment recommendation 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 hearing to determine assessment of Liquidated Damages, the Prime Contractor may provide evidence that it has made all of the showings required under Section VII of the HHH-PLA. 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): A violation of the HHH-PLA or this Policy by any Prime Contractor and/or C/S/E may result in a recommendation to the City designated entity that the Contract of the offending Prime Contractor and/or C/S/E be terminated per Section 00405 of the Master General Conditions.**

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**REGULATION #11: 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.

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**APPENDIX A**

The forms listed below have been approved by the BCA for use in conjunction with these HHH-PLA Rules and Regulations. Forms may be revised and updated as necessary in which case the updated forms must be used.

<b>NO.</b>	<b>FORM NAME</b>
	TBD