



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** CWA/PLA TASK FORCE REPORT

**DATE:** September 22, 2017

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## RECOMMENDATION

- (a) Accept the Community Workforce Agreement/Project Labor Agreement (CWA/PLA) Task Force (Task Force) Report; and
- (b) Provide further direction to City staff.

## OUTCOME

Provides Task Force recommendations regarding community workforce agreements (CWAs) and project labor agreements (PLAs).

## BACKGROUND

At the December 13, 2016 City Council meeting, pursuant to Item 3.10 (Community Workforce Agreements), the City Manager was directed to establish a six-member, date limited task force to study the opportunities and impacts of implementing requirements for CWAs and PLAs on City capital projects and to report back to the City Council before June 30, 2017.

Assistant City Manager David Sykes was appointed Chair, and Councilmember Chappie Jones was appointed to represent the Council. Other members of the Task Force included:

Josué Garcia – Santa Clara & San Benito Counties Building and Construction Trades Council;

Victor Gomez – The Silicon Valley Organization;

Mark Reynosa – Associated General Contractors of California; and

Sal Ventura\* - South Bay Labor Council. *\*Note: at the May 22, 2017 Task Force Meeting, it was announced that Bill Guthrie was unable to continue and was replaced by Sal Ventura for the remainder of the Task Force's work.*

The Task Force met a total of six times (January 23, March 27, May 22, June 26, July 31 and August 28, 2017). The February and April meetings were cancelled due to the flood and attendance conflicts. The agendas and minutes from all Task Force meetings are available at <http://www.sanjoseca.gov/index.aspx?nid=5350>.

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City staff also provided two Task Force Updates via Information Memos. The Information Memos are available at:

<http://www.sanjoseca.gov/DocumentCenter/View/69845>

<http://myemail.constantcontact.com/CWA-PLA-TASK-FORCE-UPDATE.html?soid=1126946575015&aid=uP0OXQ0Y6Ho>

At the July 31, 2017 Task Force meeting, a two-member Ad Hoc Committee was formed for the purpose of developing a detailed recommendation for the Task Force to consider at its August 28, 2017 meeting. The two members from the Task Force selected to serve on the Ad Hoc Committee were Josué Garcia and Mark Reynosa with support from City staff. The Ad Hoc Committee met twice, on August 10 and August 14, 2017. The discussions centered on various issues for consideration related to single project labor agreements or a multi-project community workforce agreement. The Ad Hoc Committee reached agreement and consensus on many issues, however some were left unresolved. Specific details on the deliberations are provided in the analysis section of this report. The Task Force, at its August 28 meeting, approved the Ad Hoc Committee's recommendations.

## **ANALYSIS**

A PLA is a multi-employer, multi-union pre-hire agreement designed to systemize labor relations at a construction site. Pre-hire agreements are collective bargaining agreements providing for union recognition, compulsory union dues, and mandatory use of union hiring halls prior to the hiring of any employees. CWAs are a subset of PLAs that can include local hire and/or targeted hire provisions. These agreements set out the terms under which building trades unions agree not to strike or picket the job, thus potentially avoiding construction delays.

CWAs have been implemented by local government, special quasi-governmental taxing authorities and non-profit organizations across the country. The Cities of Los Angeles, San Francisco, Oakland, Cleveland and New York have led efforts to negotiate and implement CWAs. In September 2016, the Valley Transportation Authority adopted a policy on CWAs and is currently negotiating the specific provisions of the CWA. In January 2017, Santa Clara County adopted a PLA Policy and entered into a PLA with the Santa Clara and San Benito Counties Building & Construction Trades Council for public works projects over \$2 million.

In April 2017, Renne Sloan Holtzman Sakai LLP (RSHS) was hired as a special consultant to the City Attorney's Office. At the June 26, 2017 Task Force meeting, RSHS provided an overview of CWAs, PLAs and the local hire concept. For the July 31, 2017 Task Force meeting, RSHS discussed with the Task Force issues for consideration in implementing requirements for CWAs and PLAs. The July 31<sup>st</sup> Task Force meeting discussion was used as a framework for the Ad Hoc Committee's further review and study of the issues to consider. Staff has prepared a matrix (see attached) to summarize the Ad Hoc Committee deliberations, the members' individual thoughts on the areas where there was no consensus, as well as City staff input. The Task Force ultimately adopted the Ad Hoc Committee recommendations as deliberated, and accepted a lack of consensus on certain elements.

## Recommendations

The Task Force recommendations where there is agreement and consensus include:

- PLA vs CWA  
No single-project PLA – Rather wrap around multi-project labor agreement known as a CWA.
- Project Type
  - ✓ Projects subject to a CWA **only** apply to **Capital Improvement Program (CIP) public works construction projects.**
  - ✓ CWA does **not** apply to:
    - Federally-funded CIP public works construction contracts;
    - City-funded affordable housing loan agreements; or
    - Private construction projects.
- Duration  
Duration would be five (5) years with an annual reporting requirement in the form of an Information Memo including metrics and goals, an 18-month formal check-in with the City Council, and an option to extend the CWA.
- Local Hire  
No local hire requirement – defer issue to separate policy work (Current Council Priority #2 via CED Committee) subsequent to completion of the Labor Market Study.
- Targeted Hire  
Include a good faith tiered targeted hire program for apprentices from underrepresented groups with a 25% good faith goal for apprentices from underrepresented groups – similar to Santa Clara County PLA and VTA CWA policy.
- Liquidated Damages  
Impose liquidated damages for any CWA work stoppages.

The Task Force accepted four areas where there was no agreement or consensus, which include:

- Threshold  
Minimum dollar threshold for projects subject to a community workforce agreement.
- Exceptions/Exemptions  
Inclusion of possible exceptions/exemptions.
- CWA Exemption for Small Businesses  
Inclusion of exemption for small businesses with subcontract value of ≤\$250k.
- Core Workforce
  - ✓ CWAs/PLAs usually include a core workforce provision.

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- ✓ Core workforce provisions typically specify that a contractor can only use a certain percentage of his/her own workforce on a project and must pull the rest of the workforce from the union hall.

### **EVALUATION AND FOLLOW-UP**

Should Council provide direction to City staff to develop and implement a CWA for City-funded CIP public works construction contracts, the CWA would be brought back to Council for formal approval.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the October 3, 2017, City Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the CWA/PLA Task Force.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP10-068(b), Municipal Code or Policy Change.



DAVID SYKES  
Chair, CWA PLA Task Force and  
Assistant City Manager

For questions, please contact David Sykes, Assistant City Manager at 408-535-8185.

Attachment: CWA/PLA Ad Hoc Committee Deliberations Matrix

**CWA/PLA Ad Hoc Committee Deliberations**

■ = Divergent Positions on the Issue

Issue for Consideration	Josué Garcia	Mark Reynosa	Staff Input
Single Project PLA	No	No	-
Wrap Around Multi Project PLA (CWA)	Yes	Yes	-
Types of Projects Subject to CWA	City-funded public works construction contracts	City-funded CIP public works construction contracts	Does not include federally-funded CIP public works construction contracts, City-funded affordable housing loan agreements or private construction projects
<p>Minimum \$ Threshold for Projects Subject to CWA</p>	<p>\$2 million &amp; above to align with Santa Clara County &amp; VTA</p> <ul style="list-style-type: none"> <li>▪ Purpose of PLA/CWA is to put people to work. The lower the threshold the more people we can put to work. Out of 396 projects awarded in the last 5 years, 72 projects were above \$2 million, but only 18 projects were above \$6 million – an average of 3.6 projects per year. If we cover only 3 or 4 projects each year, the opportunities for disadvantaged workers will be very limited.</li> <li>▪ Alignment with County &amp; VTA is important for regional consistency and, more so, in creating a regional workforce pipeline.</li> <li>▪ \$2 million is double the usual threshold. Among cities in our region with wraparound PLAs, all of them have a threshold of \$1 million or below.</li> </ul>	<p>\$6 million &amp; above</p> <ul style="list-style-type: none"> <li>▪ Higher threshold projects avert loopholes &amp; the City's monitoring resources and increases City's financial resources to directly fund and provide to local targeted vocational training programs for all industries.</li> <li>▪ Increases competition and competitive bidding on higher threshold projects as well as increases small &amp; targeted local business opportunities on below threshold projects.</li> <li>▪ Diversification of craft &amp; local targeted workforce opportunities (multiple trades) on higher threshold projects where below threshold projects would have limited, if any targeted hire opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prefer higher \$ threshold to better align with nature &amp; type of projects [multiple-trade &amp; vertical building projects]</li> <li>▪ May also allow greater small &amp; local business participation for projects below threshold</li> </ul>
Duration of CWA	5 years with roll over option & annual reporting requirement	5 years with annual reporting requirement & metrics/goals	-

Issue for Consideration	Josué Garcia	Mark Reynosa	Staff Input
Local Hire Requirement	No	No	Defer issue to separate policy work subsequent to completion of Labor Market Study
Good Faith Tiered <sup>a</sup> Targeted Hire Program for Apprentices from Underrepresented Groups <sup>b</sup>	Yes	Yes	Similar to County PLA & VTA CWA Policy
Goal % for Above Consideration	25%	25%	Similar to County PLA & VTA CWA Policy
Possible Exemptions/Exceptions to CWA	<p>Opposed to built-in exemptions that would eliminate projects from even being considered for a PLA unless it is an emergency project or a specialty sole-source contract.</p> <ul style="list-style-type: none"> <li>▪ OK with a built-in exemption for emergency work (i.e., emergency projects where there is not enough time to go to Council)</li> <li>▪ Oppose a blanket exemption based on number of bidders. The number of bidders is driven by the market the type of project and City specifications. US Berkeley statistical analysis shows PLAs do not reduce the number of bidders.</li> <li>▪ OK with exemption for specialty contracts that are documented to be sole source (i.e., there is only one qualified company that performs that type of work and there are not qualified workers in the area to do the work.) Construction trucking that is covered by a prevailing wage determination should <u>not</u> be exempt.</li> </ul>	<p>Yes, including off-ramps for the number of bidders, City's proprietary interests and not in best interest of City</p> <ul style="list-style-type: none"> <li>▪ Clear exemptions avert loopholes, non-compliance issues &amp; City's economic resources.</li> <li>▪ Increases City's CIP budget where increased project management, CWA administration costs &amp; any non-compliance exposure, due to CWA challenges, are put into bids.</li> <li>▪ Provides projections for the City &amp; the small &amp; targeted local business community in a cyclical construction industry and protections for unforeseen emergencies (flooding &amp; earthquake reconstruction).</li> </ul>	<p>Seek flexibility should CWA not be in City's best interest. Create exemption process acceptable to stakeholders. Examples could include: bid variances; lack of bidders; emergencies; specialty contractor; trucking</p>

Issue for Consideration	Josué García	Mark Reynosa	Staff Input
<p>CWA Exemption for Small Businesses with Subcontract Value of ≤\$250K</p>	<p>Yes, but only for targeted hire requirement</p> <ul style="list-style-type: none"> <li>▪ Targeted hiring of a new entry-level worker may be difficult for small businesses who have only a few employees. The other PLA requirements do not have any relationship to business size.</li> <li>▪ On other PLAs, small contractors continue to bid projects.</li> <li>▪ Creating loopholes in PLAs will not help small businesses win bids; the PLA comes into effect only after they bid and win the project. Instead, the City can create incentives and supports for small and disadvantaged businesses, such as a bid preference and technical assistance with bonding, insurance, m paperwork, etc. VTA has an effective model with a goal of 17% of contracts going to MBE/diverse businesses.</li> </ul>	<p>Yes</p> <ul style="list-style-type: none"> <li>▪ Levels competition.</li> <li>▪ Provides more opportunity and less CWA administration and project management costs for small businesses.</li> <li>▪ Increases City's resources to develop, fund and maintain educational and mentoring programs for local &amp; small targeted businesses.</li> </ul>	<p>May run counter to encouraging small &amp; disadvantaged contractors from bidding on City projects</p>

Issue for Consideration	Josué Garcia	Mark Reynosa	Staff Input
Contractors' Core Workforce <sup>d</sup> Requirements	<p>Yes, using the local union hall increases the % of local workers and helps to ensure compliance with worker protection laws.</p> <ul style="list-style-type: none"> <li>▪ Small (and large) non union contractors have the ability to hire from the local union hall. There is no restriction or limitation on non union contractors working under the PLA.</li> <li>▪ Hiring from the local union hall provides an added layer of worker protections and increases the employment opportunities for local workers.</li> <li>▪ OK with including the process as an item to be negotiated in the PLA, with the goal of ensuring the local hiring hall process is straightforward, easy for contractor to understand and does not add administrative burdens.</li> </ul>	<p>Yes, Collective Bargaining Agreement (CBA) may dictate who can work on a CWA project. CBAs already contain local union hall obligations.</p> <ul style="list-style-type: none"> <li>▪ Increases opportunity for local targeted workers to stay employed with a single contractor and to not be removed from project by local union hiring hall rules.</li> <li>▪ Provides the opportunity for targeted workers who travel from outside areas to not be removed from project by local union hiring hall rules.</li> <li>▪ Increases safety on projects by lowering worker turnover by the limitations within local union hiring hall rules.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requirements limiting a contractor's ability to use their own workforce seem inefficient and unnecessarily limit business operations</li> <li>▪ May run counter to encouraging small &amp; disadvantaged contractors from bidding on City projects</li> </ul>
CWA Imposition of Liquidated Damages for Work Stoppages	Yes, to be negotiated	Yes, \$25k per day (similar to VTA)	\$ amount to be determined during negotiation of CWA [CWA liquidated damages range from \$10k to \$25k per day]

<sup>a</sup> **Tiered** – Tier One includes Santa Clara County and Tier Two includes the Counties of Alameda, Contra Costa, Santa Cruz, San Benito, San Mateo and San Francisco

<sup>b</sup> **Underrepresented Groups** – Current or past County client (County Social Services, Re-entry and/or Foster Care Program), veterans of US military service, homeless, unemployed or low-income individuals, at-risk youth, or survivor of human trafficking.

<sup>c</sup> **Apprentices Goal** – The California Labor Code requires all public works contracts valued at \$30,000 or more carry an obligation to hire apprentices. This duty applies to all contractors and subcontractors on a project even if their part of the project is less than \$30,000. The apprentice ratio is generally 16.7%. The Good Faith Tiered Targeted Hire Program for Apprentices Goal of 25% is a subset of the Labor Code requirement; i.e., Of the 16.7% required apprentice hours, 25% of those hours are to be apprentices from underrepresented groups.

<sup>d</sup> **Core Workforce** – A contractor's own employees must meet "core employee" requirements. The requirements may vary but the concept is that a contractor, under a CWA, is only allowed to use a limited percentage of their own workforce and must pull the rest from the union hall.