



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** PROJECT LABOR AGREEMENT  
NEGOTIATIONS

**DATE:** October 5, 2018

Approved

Date

10/5/18

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a project labor agreement with the Santa Clara and San Benito Counties Building and Construction Trades Council for an initial term of five years and to require inclusion of the project labor agreement in certain City public works construction contracts exceeding \$3,000,000, a threshold that would be adjusted annually by the consumer price index.

## OUTCOME

Approve a standard project labor agreement (PLA), consistent with the parameters set forth in this memorandum, that the City would include in certain Public Works construction contracts that exceed a specified threshold amount.

## BACKGROUND

### A. General Information on PLAs

A PLA is a pre-hire collective bargaining agreement that applies to a specific construction project or series of construction projects for the duration of the project(s). It is between the owner of the project(s) and a group of unions. A PLA typically contains provisions addressing wages and fringe benefits, union recognition, compulsory union dues, mandatory use of union hiring halls before hiring employees, use of apprentices, and procedures for resolving labor disputes. A PLA typically bars unions from striking and contractors from locking out workers.

The owner and unions enter a PLA **before** the owner solicits bids for construction of the project(s). The PLA is included in the bid documents, and the winning bidder is required to abide by the terms of the PLA. Through the bid documents and the resulting construction contract, the PLA is made applicable to all contractors and subcontractors working on the project(s).

Public entities, such as the City, generally can use PLAs when acting in their proprietary capacity as a market participant. Factors supporting the use of a PLA include the following: (1) the need for timely and successful completion of the project(s); (2) the project(s) involve a large number of workers of various skills that will be represented by signatories to the PLA; and (3) the project(s) will involve the use of multiple contractors and bargaining units on the job site at the same time over an extended period of time.

PLAs 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 PLAs. In September 2016, the Santa Clara Valley Transportation Authority adopted a policy on PLAs and is currently negotiating the specific provisions of its PLA. 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 certain capital projects.

#### B. Council Direction to Negotiate a PLA

At the City Council meeting on October 24, 2017, staff was directed to negotiate a PLA with specific terms with the Santa Clara & San Benito Counties Building and Trades Council (BTC). On December 10, 2017, the Mayor and Councilmembers received a letter dated December 10, 2017, from the BTC requesting that the Council reconsider their decision to impose the various parameters of the agreement that were outlined in the October 24, 2017, City Council direction. As a result, staff continued to meet with the BTC and returned to the City Council meeting on April 3, 2018, for further discussion and direction.

At the April 3, 2018, City Council meeting, the City Manager and City Attorney were directed to negotiate a PLA with all affected labor unions. The direction was subject to two requirements. One requirement was that the PLA would apply to City-funded capital contracts greater than \$3 million, with the threshold increasing annually by the consumer price index.

The other requirement was that the following projects would be except from the PLA:

“Existing infrastructure/assets that require repair, maintenance, or upgrades that extend the useful life of the asset. They include:

- Street maintenance: Sealing, slurry, repaving, re-surfacing, on-call maintenance contracts
- Sewer Maintenance: Repairs, rehabilitation, lining, maintenance at storm and sanitary pump stations
- Muni Water: Water tank and water pipeline maintenance
- Airport pavement maintenance
- On-call maintenance contracts for various repairs: Roof, pavement work, City facilities, parks

## ANALYSIS

PLAs involve numerous complicated issues and the balancing of different interests among various parties. In May 2018 representatives of the City and local labor organizations, including the BTC, began negotiating a PLA. Although there are still numerous details and provisions that need to be negotiated, City staff and the BTC have reached agreement on significant core issues, as discussed further below. Staff is requesting the City Council to authorize the City Manager to negotiate and execute a PLA consistent with the following discussion.

### A. Threshold Amount

Assuming a sufficient proprietary interest, the PLA will apply to any public works construction contract awarded, and paid for in whole or in part, by the City in which the engineer's estimate exceeds \$3 million. The \$3 million will be adjusted annually based the local consumer price index.

For design-build contracts, City staff has agreed to include design costs in determining whether the contract meets the threshold.

### B. Covered work

City staff and the BTC generally agree the PLA will apply to all work within the craft jurisdiction of one of the labor organizations if the work is required (1) by a public works construction contract; (2) by a change order issued pursuant to the public works construction contract; and (3) during the public works construction contract's warranty period.

City staff and the BTC also agree on clarifications and refinements to the projects that the City Council directed be exempt from PLAs, as referenced above in the "background" section of this memorandum. After extensive discussions about this issue, BTC and City staff have agreed to limit the exclusion to the list of bulleted items, to provide further definition to these items, and to add building rehabilitation to the list.

It is staff's intent that the building exemption is intended to exempt any project that rehabilitates or upgrades an existing building that does not increase the square footage of the building by more than 10%. So, if a building project over \$3 million increases the square footage of a building by more than 10% or completely demolishes (and rebuilds) the entire exterior of the building then it would have a PLA. As an example, the recently completed nearly \$18 million project to rehabilitate the convention center exhibit hall with upgrades such as new ceiling, lighting, sound and rigging systems would be exempt from a PLA.

The revised list is included in the Attachment to this memorandum. By the action requested in the memorandum, City staff is requesting the Council to approve the modification to its previous direction.

City staff and the BTC are having ongoing discussions about other exclusions from covered work, such as for work by City employees, work performed by employees of a manufacturer or vendor in order to maintain a warranty or guarantee, work jointly funded by any federal, state or other local entity unless such other entity agrees the applying the PLA.

#### C. Core Workers – Number & Eligibility

A “core worker” is an existing worker on the workforce of a contractor or subcontractor. PLAs generally contain provisions allowing contractors and subcontractors to use a certain number of core workers under limited conditions.

BTC originally proposed allowing contractors/subcontractors to use up to five core workers. City staff agreed to BTC’s original proposal allowing contractors/subcontractors to use up to five core workers as this is typical of other PLAs in the State. After back and forth discussion, City staff and the BTC also agreed to the following requirements to qualify as a core worker:

1. Appearance on the Contractor/Employer’s active payroll for at least the 90 of 120 working days prior to award of a Construction Contract;
2. Possession of all licenses and certification required by applicable state and federal law for the Project Work;
3. Has worked at least 2,000 hours in the appropriate construction craft during the past four years.

#### D. Core Worker Distribution

Typical of PLA requirements, core workers must be referred from the union hiring hall. After reviewing PLAs throughout the State and back and forth discussion, City staff agreed with the BTC on the following referral process:

1. A worker is referred to from the applicable union hiring hall out-of-work list,
2. Then a core worker is referred from the union hiring hall,
3. Followed by a worker from the hiring hall out-of-work list, and
4. This process continues until the contractor/subcontractor’s requirements are met or until the contractor/subcontractor has hired five core workers for the trade or craft, whichever occurs first.

Once five Core Workers have been hired, any additional employees necessary for the affected trade or craft will be hired exclusively from the hiring hall out-of-work list. In the event the contractor/subcontractor reduces the workforce, any reduction will take place in the reverse order, starting with a core worker and in the same ratios as was applied to the hiring process.

#### E. Apprenticeship

City staff and the BTC have agreed to language in the PLA that would allow the use of apprentices from any California state-approved apprenticeship program.

#### F. Targeted Hiring

City staff and the BTC agree conceptually to “targeted worker” provisions aimed at increasing the use of underrepresented workers. Underrepresented workers include persons who are homeless, recently housed, or at risk of losing their homes; persons currently receiving public assistance; persons formerly incarcerated or currently participating in a reentry program; persons who have been continuously unemployed for the previous one year; persons having a family or household with a low income; persons who have been emancipated from the foster care system; military veterans; at-risk youth; or survivors of labor trafficking.

City staff and BTC are having on-going discussions about the targeted worker provisions and generally agree that the BTC would be responsible for recruitment of targeted workers and the contractor’s responsibility would be to submit a request to BTC.

#### G. Small Business Exemptions

At the June 19, 2018, City Council meeting, Council deemed Local Hire/Local Business/Apprentice Utilization Program and Disadvantaged Business Enterprises (DBE) as the second and fifth highest priority, respectively. Consistent with these Council priorities, City staff made numerous proposals aimed at encouraging greater participation of small, local and DBE subcontractors. These proposals included exemptions or carve-outs for such businesses, and exemptions from core worker requirements for low value, small business subcontracts. After several discussions, staff and BTC could not reach agreement on any small or local business exemptions or carve-outs. Accordingly, City staff’s recommendation includes requesting Council approval to move forward with a PLA that does not include any exemptions or separate processes for small/local or DBE Contractors/Employers. However, it is important to note that BTC agreed with the importance of small business inclusion on City projects and by agreeing to setting the project threshold at \$3 million there will be a large number of city projects that do not have PLAs and thus no additional perceived barriers to small business inclusion.

#### H. PLA Term

After a review of standard agreement language throughout the State, City staff and BTC agreed to a five year term for the PLA. At the expiration of the five year term, the PLA can extend for an additional five years, subject to approval by the City Council. This will give the City Council the opportunity to decide if it wants to continue the PLA for another five years.

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

Per council direction from April 3, 2018, staff will return to the City Council within two years for a review of the projects with project labor agreements implemented at that time.

**PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the October 16, 2018, City Council Meeting.

**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/  
Matt Cano  
Director of Public Works

Attachment: Project Labor Agreements Project Exemption Listing

For questions, please contact Matt Cano, Public Works Director at (408) 535-8300.

## ATTACHMENT

### Project Labor Agreements Project Exemption Listing

This Agreement shall not apply to the following projects where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate for the project are for the following:

1. Street maintenance: Street sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, re-surfacing, on-call maintenance contracts
2. Sewer maintenance: Repairs, rehabilitation, lining, maintenance of storm and sanitary sewers and pump stations
3. Muni Water: Water tank, pipeline maintenance, and repair.
4. Airport pavement maintenance: Sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, and re-surfacing
5. On-call contracts for various repairs and minor projects such as: roof, pavement work, City facilities, parks. Each specific project within the on-call contract would be under the City's Minor Public Works project dollar threshold;
6. Building maintenance or rehabilitation

The installation of new public amenities, that did not exist previously, shall not be included in calculating this fifty percent (50%) threshold.

With respect to Item 6, a building maintenance or rehabilitation project shall not be excluded under this Addendum if the project increases the square footage of the building(s) by more than ten percent (10%) or if the exterior of the building will be entirely demolished.