



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: PROJECT LABOR AGREEMENTS

DATE: October 16, 2018

APPROVED:

DATE: 10/16/2018

RECOMMENDATION

1. Negotiate the final language of the Project Labor Agreement (PLA) consistent with Staff direction;
2. Publish the final agreement on the city website immediately upon completion of final negotiation and drafting;
3. Consult with the Treatment Plant Advisory Committee regarding the specific terms of the PLA at the next available opportunity;
4. Execute immediately after consultation with TPAC, barring any unforeseen objection or issue raised at that hearing;
5. Adopt Councilmember Jones' recommendations F.1., G.1., and G.2., regarding reporting and assessing impacts to small businesses and disadvantaged workers.

DISCUSSION

On April 3, 2018, the Council directed staff to negotiate a project labor agreement on city construction projects with the Building and Trades, consistent with a term sheet that parties had negotiated in the prior several months.

Since that time, the negotiators for the Building Trades and the City— represented by Public Works Director Matt Cano and Deputy City Attorney Glenn Schwarzbach—have diligently negotiated the specific language of the final project labor agreement, which I'm told is close to final completion. I'd like to thank them, along with David Bini, Ben Field, and all of the participants who have worked many hours to reach an agreement.

A. Remaining Issue: Upgrades and Rehabilitation Projects

All of the deal points have been agreed to, as I understand it, but one issue has lingered: whether certain facility "upgrades" or "rehabilitation" will be considered "maintenance" projects for purposes of an exclusion from PLA requirements for "City Capital Maintenance Projects." (CCMP)

The Building Trades have contended that, although the parties agreed that building maintenance projects would remain exempt from PLA's, some building "upgrades" or "rehabilitation projects" should be covered by PLA's. City Staff disagrees, asserting that an upgrade of an HVAC system, replacing seats in a theater, or replacing a roof clearly falls within the CCMP exemption negotiated with the parities.

I believe City Staff has the far better argument, and one that accords with the negotiated language of the April term sheet—which Council approved—and with the intent of the people (of whom I was one) who negotiated that document.

As with any judge interpreting a contract, we would do best to begin with a close review of the language of the original term sheet agreed upon by the parties, which was attached to the memorandum that I submitted to the Rules Committee on March 21st (<https://sanjose.legistar.com/View.ashx?M=F&ID=6149999&GUID=2F0C8441-8C9B-4CAE-8659-99CD317B2A6A>). That agreement specifically excludes any "City Capital Maintenance Project" (CCMP) from a project labor agreement requirement. Exhibit B to the term sheet defines CCMP as:

"City Capital Maintenance Projects shall be defined as: Existing infrastructure/assets that require repair, maintenance, or upgrades that extend the useful life of the asset."...

The language is clear: if we're building a new asset worth more than \$3 million in construction, it's covered by a PLA. If we're merely repairing, maintaining, or upgrading an existing facility, then it's not covered by a PLA. The word "upgrades" is explicitly mentioned in the definition. Accordingly, examples of exempted CCMP projects—several of which are specified in the term sheet beneath the initial definition— include street repaving, roof replacement, or water and sewer line replacement.

Several Councilmembers and I issued memoranda prior to our April 3rd vote. In my memorandum, I responded to an argument of Councilmember Khamis', asserting, "For example, while Councilmember Khamis quotes from my 2017 memorandum pointing to the problems of raising costs for "road repaving" and 'park rehabilitation,' *the contemplated agreement explicitly excludes capital maintenance and repair projects such as these.*" [emphasis added]

All of these memoranda and documents were made public, and we heard extensive public testimony from dozens of members and leaders of the Building Trades at that April 3rd hearing. Never during that testimony did anyone disagree with either the CCMP language in the term sheet, nor my written characterization of that language.

After the Building Trades raised this issue in September, Staff constructed a compromise to further define the difference between a project that would fit within the CCMP exclusion, and one that would be governed by a PLA. That definition, as described in the City Manager's memo, provides that the parties' agreement:

“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.”

Staff’s formulation of this definition is generous, in light of the pre-existing written agreement of the parties. The Council should approve Staff direction.

B. Impact on Bond Measures on November Ballot

In the ballot materials accompanying Measures T and V, some individuals opposing those measures have raised issues regarding the impact of these project labor agreements on our November bond measures. Accordingly, the Council may have questions about how their actions today could affect those \$1.1 billion bond-funded projects, if they are approved by the voters.

The overwhelming majority—certainly more than 80%—of the dollars from Measures T and V will fund projects that will not be covered by PLA’s. Council’s action today should not have significant impacts on those projects, for several reasons:

- The Measure T opponents offered arguments relating to PLA’s, but those were initially signed by an organization, Associated Builders and Contractors, that has since withdrawn its opposition to Measure T after further discussions about the content and applicability of the PLA provisions to these measures.
- None of the projects funded by the \$450 million in bonds authorized by Measure V will be subjected to a PLA, because the City and Building Trades specifically exempted all affordable housing in their agreement.
- With regard to the construction authorized by Measure T, none of the \$300 million in street repaving would be covered by a PLA, under the terms of the CCMP exclusion.
- None of Measure T’s \$50 million authorized for purchase of land in Coyote Valley for flood retention and prevention involves any construction, so it would also be exempt.
- Of the remaining \$300 million in Measure T proceeds, many contemplated upgrade, repair, or maintenance projects, such as bridge repairs and storm sewer line or outfall replacement, would not be covered by PLA’s under the terms of the CCMP exclusion.
- Of that subset of construction projects on “new” facilities or infrastructure within that \$300 million pool, only those projects exceeding \$3 million in cost will be subject to a PLA. In the past, that \$3 million threshold has applied to about 10% of all city public works projects since 2012.

The total aggregate valuation of these projects, therefore, constitute a fraction of the remaining \$300 million in Measure T not excluded for other reasons, and certainly less than 20% of the aggregated \$1.1 bond program. Accordingly, our vote today should not conflate these PLA requirements with these ballot measures. We expect that large, complex construction projects—such as the future airport expansion, and any additions to the Convention Center—will be subject to PLA's. However, those are not projects authorized by these bond measures anyway.