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Title:	Report regarding consideration of a Project Labor Agreement (Project Stability Agreement) specifically for the Measure W Community Civic Campus project. (Marian Lee, Assistant City Manager and Dolores Montenegro, Kitchell Program Manager)		
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Report regarding consideration of a Project Labor Agreement (Project Stability Agreement) specifically for the Measure W Community Civic Campus project. *(Marian Lee, Assistant City Manager and Dolores Montenegro, Kitchell Program Manager)*

RECOMMENDATION

It is recommended City Council receive information, engage in discussion and direct staff and legal council to prepare a Project Labor Agreement specifically for the Measure W Community Civic Campus project. The Project Labor Agreement will be subject to approval by City Council at a subsequent meeting.

BACKGROUND/DISCUSSION

Given the large size and complexity of the Community Civic Campus project, estimated at \$157M - \$173M, it is worthy of considering a Project Labor Agreement (PLA). This staff report provides information about what a PLA is, the debatable pros and cons associated with PLAs, and examples of project-specific PLAs entered by our sister cities.

This item was first presented to the Measure W Subcommittee on September 20, 2017. The subcommittee members were asked consider whether a PLA would be appropriate to pursue for the Community Civic Campus project. Based on information provided (included in this staff report) and discussion during the subcommittee meeting, the subcommittee members recommended that the City Council consider a project-specific PLA for the Community Civic Campus project.

What is a PLA?

A PLA is a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects. It is an agreement designed to create an enforceable commitment

between the construction parties to use a “skilled and trained workforce” to perform all work on the project. A PLA will:

- Define prevailing wages and negotiated benefits;
- Ensure a steady supply of skilled labor on the project (agreement not to strike); and
- Expeditiously resolve worker grievances (high speed arbitration).

See Attachment 1 for more specific information about required elements of a PLA, example of findings that can be included in the PLA, and typical provisions.

Debatable Pros and Cons

There is considerable debate between opponents and proponents of PLAs. Opponents say PLAs result in an anti-competitive bidding process and increases project costs. Proponents say PLAs ensure decent wages, a quality workforce, project safety, and timely completion.

PLA proponents argue that utilizing the agreement has several advantages, including the following:

- PLAs provides uniform wages, benefits, overtime pay, hours, working conditions, and work rules for work on major construction projects;
- PLAs provide contractors with a reliable and uninterrupted supply of qualified workers at predictable costs;
- PLAs ensure that a project will be completed on time and on budget due to the supply of qualified labor and relative ease of project management;
- PLAs ensure no labor strife by prohibiting strikes and lockouts and including binding procedures to resolve labor disputes;
- PLAs make large projects easier to manage by placing unions under one contract, the PLA, rather than dealing with several unions;
- PLAs may include provisions to recruit and train workers by requiring contractors to participate in recruitment, apprenticeship, and training programs for women, minorities, veterans, and other under-represented groups;
- PLAs reduce misclassification of workers and the related underpayment of payroll taxes, workers compensation, and other requirements; and
- PLAs may improve worker safety by requiring contractors and workers to comply with project safety rules.

On the other hand, PLA opponents argue that utilizing a PLA creates several disadvantages, including the following:

- PLAs increase costs by mandating union wages and work rules and inhibiting competition;
- PLAs are anti-competitive because non-union contractors may choose not to bid (thus potentially reducing the bidding pool) because of the perception that their members would be required to join a union if the PLA required hiring through the union hiring hall;
- PLAs are perceived as being inherently unfair to non-union contractors and non-union employees, requiring that they rely on labor that is potentially previously unknown to them;

- PLAs are an unnecessary mandate (if imposed as a City Adopted Policy);
- PLAs assume that there will be adequate unemployed labor resources available at the union halls;
- PLAs hinder the use of non-union contractor training programs that may operate more efficiently and are job specific, instead of union apprenticeship programs of a fixed duration; and
- PLAs are unnecessary if pre-qualification procedures are included that screen contractors who bid on public projects.

PLA critics also note that the issue is not always that PLAs are detrimental. Sometimes, they argue, having a PLA is not proof of an improved situation. For example, the available evidence does not show that PLA construction projects are safer than non-PLA projects.

It is worth noting that the City of South San Francisco supports labor rights, prevailing wage, and the creation of quality jobs in its community. Based on comparables, there is no distinguishable difference between prevailing wage requirements and union labor wages. The financial impact to entering into a PLA for the Community Civic Campus project will depend on the final negotiated terms.

Project-Specific PLAs in Other Cities

Several neighboring cities have entered into project-specific PLAs. The following are a few key projects (with PLAs) in our area that have been completed or are under construction:

- City of San Francisco, Airport Expansion, \$2.5B
- City of San Jose, Civic Center, \$300M
- City of San Mateo, Main Library, \$64M
- San Mateo County, Skylonda Fire Station, \$8M
- City of Hayward, Library/Community Learning Center, \$65M

The projects listed above, as well as many others throughout the state, have benefited from PLAs. The upsides have been expressed by project contractors and owners. PLA negotiations take time and effort, but when done successfully it mitigates risk in areas of labor and effectively contributes to successful project completion.

Summary Considerations

The purpose of entering into a PLA is to address potential costly and time-consuming construction issues, which includes labor strife delays, supply of skilled labor, and resolution of worker grievances. These issues should be considered in determining whether to negotiate and enter into a PLA for the Community Civic Campus project. This project is the City's single largest capital improvement program that will involve complex and multiple contracts (Design Bid Build for the Library and Recreational facility, and two Design Builds for the Police and Fire facilities) and will include many different trades and contractors working together in the same general areas (including adjacent sites) and within the same timeline. Because of the magnitude of this project, the City should carefully consider whether a PLA is an appropriate and fit option for contracting work.

It should be noted that the design-build project delivery method requires an enforceable commitment to hire a skilled and trained workforce. A PLA is a complex but practical option to meet this requirement. A PLA is *not*

statutorily required under the Public Contract Code in order to award a design-build contract; a PLA is simply one option that would relieve the public entity and the design-build contractor of further obligations regarding the “enforceable commitment” requirement.

FISCAL IMPACT

There is no impact to the City’s budget.

CONCLUSION

The Measure W Subcommittee recommends that the City Council give direction to staff and legal council to prepare a project-specific PLA for the Community Civic Campus project. Having a PLA will provide the project with labor stability, which is critical to minimizing risk as they related to labor availability and support for the project. If directed by City Council, the PLA, after preparation and negotiations complete, will be brought back to City Council for review and approval.

Attachment: PLA Required Elements/ Example Findings / Typical Provisions

ATTACHMENT 1

PLA Required Elements, Example Findings, Typical Provisions

Required Elements

A public entity may use, enter into, or require a PLA *only if* the PLA includes the following taxpayer protections:

- Prohibit discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.
- Permit all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements.
- Protocol concerning drug testing for workers who will be employed on the project.
- Guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.
- Dispute resolution by a neutral arbitrator.

Example Findings

The law does not require the public entity make a specific set of findings prior to entering or requiring a PLA, but it is good practice to include them in the contract. Examples of findings include:

- The timely and successful completion of the project is of the utmost importance to the public entity, to meet its needs and avoid costs resulting from delays.
- A large number of workers of various skills would be required in the construction work on the project.
- The use of skilled and trained labor on construction work increases the safety and quality of the completed work.
- The potential of work disruption resulting from multiple contractors and bargaining units present on the job site is substantial, and a commitment to maintain continuity of work is required.
- The interests of the public entity, the unions and contractors, and the public would be best served if the work on this project is not interrupted by activities like strikes and work stoppages.
- The contractors and unions desire to mutually establish stable wages, hours, and working conditions for workers employed on the project.
- The PLA is not intended to replace, modify, or otherwise interfere with existing local or national collective bargaining agreements in effect.

Typical Provisions

In addition to the protection clauses required by the California Public Contract code, a PLA will generally contain provisions addressing the following:

- The type of work covered (i.e. activities for the Project, on/off site work).
- Type of work and employees *not* covered (i.e. furnishing supplies, marginal employees, non-construction work, public employees).

- Requiring the parties to enter into an Agreement to Be Bound. All future subcontractors on the projects are also required to enter into the same agreement.
- Provision barring unions from striking and contractors from locking out workers. Typically, certain building trades councils would prefer that a PLA require (1) that contractors hire workers through a union hall or (2) that employees to become union members after being hired. However, a PLA can state that the agreement applies to all contractors and subcontractors on a project regardless their status as union or non-union.
- Requiring the parties to initial arbitration procedures to resolve alleged PLA breaches or conflicts.
- Establishing a grievance and arbitration procedure for project disputes.
- Requiring a Pre-Construction Conference to announce craft assignments and discuss the scope of work, and other issues, prior to commencement of the project construction.
- Provisions recognizing unions signatory to the PLA as the sole bargaining representative for employees working pursuant to the PLA.
- Setting a referral procedure for contractor to hire workers for the project subject to the PLA.
- Wages and benefits (prevailing wages will be required).
- Requiring contractor to employ apprentices from certain approved programs, in compliance with the ratio determined by the applicable Labor Code sections.