



COUNCIL REPORT

DATE: May 14, 2024
CATEGORY: Consent
DEPT.: City Manager's Office
TITLE: **Community Workforce Agreement**

RECOMMENDATION

Authorize the City Manager or designee to execute the Community Workforce Agreement with the Santa Clara and San Benito Counties Building and Construction Trades Council (Attachment 1 to the Council report).

BACKGROUND

On June 13, 2023, the City Council approved the Council Work Plan for Fiscal Years 2023-24 and 2024-25. Included among Priority A work plan items was direction to negotiate a Community Workforce Agreement (CWA).

A CWA is a prehire agreement between one or more labor organizations and a public agency that establishes the terms and conditions of work for the construction of one or more capital projects. In some contexts, a CWA is referred to as a Project Labor Agreement (PLA). CWAs are typically crafted to achieve some form of social policy goals through criteria for local hiring and/or access to apprenticeships. Most CWAs/PLAs include the following standard elements:

- Standards for wages and benefits;
- Provisions that prohibit workers from engaging in strikes, work stoppages, slowdowns, and other dispute mechanisms;
- Requirements that contractors hire workers who are referred from union hiring halls except for minor exceptions for "core workers";
- Requirements that nonunion workers pay dues or fees to the applicable union while employed on the project; and
- Dispute and grievance resolution procedures.

On [June 27, 2023](#), staff presented a Study Session to provide the City Council with an overview of CWAs, including major considerations associated with their adoption. At the conclusion of the Study Session, Council indicated support for the: (1) recommended CWA adoption process and schedule, including conducting a robust outreach process over the summer of 2023; and (2) recommended guiding principles for negotiating a CWA.

CWA Adoption Process

Below is the process and schedule presented to Council at the Study Session:

- Summer 2023—Conduct public outreach to stakeholders, including labor groups and contractors.
- September 2023—Provide Council with results of outreach and recommendations for potential provisions of CWA.
- September-December 2023—Negotiate with the Building and Construction Trades Council (BTC) with additional Council input as required as negotiations proceed.
- Early 2024—Council adopt the CWA and authorize the City Manager to execute the agreement.

Guiding Principles

Council endorsed the following two guiding principles:

1. Focus the social policy goals in the CWA on work force development, such as establishing or supporting a preapprenticeship/internship program for local residents.
2. Ensure that the City's capital projects will continue to be delivered in a timely and cost-effective manner.

Council also indicated support for staff to:

- Ensure outreach to Disadvantaged Business Enterprises (DBEs), the Day Worker Center, and union members living in Mountain View.
- Look at using the Public Safety Building as the first project.
- Add "Ensure that workers are cared for" as a guiding principle.
- Look at starting with pilot projects.

- Provide Council with additional information on the pros and cons of CWAs.
- Maximize the apprenticeship program and look for ways to tie into the American Rescue Plan Act funded apprenticeship program, including the Working Partnerships USA Trades Orientation Program.
- Provide the Council with updates on the summer 2023 outreach efforts.

Outreach Process

Staff developed a robust outreach plan which included the distribution of an online survey to construction contractors and interviews with a sample set of construction contractors, peer agencies that have CWAs, and community support organizations.

Contractor Survey and Interviews

For the online survey, staff identified contractors and subcontractors who previously worked on and/or bid on City projects in the last five years. This cohort of 156 firms was emailed a survey instrument developed by staff. Another 28 contractors/subcontractors without known email addresses were contacted by phone. Staff received 28 responses to the survey. Staff also interviewed a sample set of contractors, including both union and nonunion contractors, to gain further insights into how CWAs affect their decision to bid on projects and their work to construct projects. In addition, staff met with the Associated Builders and Contractors of Northern California.

Key findings from the survey and interviews were as follows:

- Over half of the contractors responding to the survey classified themselves as a small business, minority-owned business, and/or DBE.
- Approximately 25% of the survey respondents use their own work force and are nonunion. In the interviews, the nonunion contractors noted that they pay the same prevailing wages as the union contractors, offer commensurate benefits as union contractors, and do hire apprentices similar to the union apprenticeship program.
- Nearly 80% of the survey respondents have bid on a project with a CWA or PLA in the last 10 years.
- Around 43% of the survey respondents indicated they will not bid/be less inclined to bid on a project with a CWA/PLA; 36% will bid/be more inclined to bid; and for 21%, a CWA does not affect their decision to bid on a project. In the interviews, the nonunion contractors

who would not bid indicated that hiring through the union hall rather than using their own forces/hires presented a significant challenge and that there is plenty of other work available to them. The union contractors indicated that the CWA creates a more positive bidding outcome for them.

- Around 48% of the survey respondents indicated that a construction contract value of \$10 million or higher would make their business more likely to bid on a contract subject to a CWA. Around 48% also responded that being able to use at least five core construction workers will make them more inclined to bid.

Peer Agencies

Staff from four public agencies with CWAs were also interviewed. These included the City of San Jose and Valley Water. Since these two agencies are in Santa Clara County, their agreements are also with the Santa Clara and San Benito Counties BTC. The City of Dublin was interviewed because it is a midsized city with approximately the same population as Mountain View, and the City of Watsonville was selected because it is a small city with a CWA. Key findings include:

- San Jose and Valley Water have much larger capital improvement programs than Mountain View with far more projects and higher value projects put out to bid. They also have dedicated staff for labor compliance work, including managing the CWA requirements on projects. The CWA process is generally working well for them, but they did share with staff some refinements they want to make when the agreements are renewed.
- Staff from the smaller cities interviewed expressed concern about lack of participation from small, local, and nonunion contractors on CWA projects.

Community Support Organizations

Staff also conducted interviews with the following community support organizations and educational institutions: Working Partnerships USA, Day Worker Center of Mountain View, Mountain View Chamber of Commerce, and Mountain View Los Altos (MVLA) High School District. The purpose of these interviews was to better understand any synergies, opportunities, or concerns a CWA may cause for their organizations. Key findings include:

- Given the nature of services offered by the Day Worker Center and the commensurate skills associated with their members, the CWA will not present opportunities for their organization. They were supportive of the broader apprenticeship program for the community.

- Due to age restrictions and other programmatic elements of apprenticeship programs, the CWA will not present opportunities for MVLA. However, staff did discuss the potential for shadowing opportunities for students and other potential areas to partner.
- Discussions with the Chamber of Commerce concluded with their organization committing to inform their membership of the CWA discussion and to refer any questions for members to staff.
- Working Partnerships confirmed that they currently administer several community engagement/apprenticeship programs associated with existing CWAs and could offer similar services to the City if engaged.

The City has also received letters and emails from trade unions, contractors, and community organizations since the Council's June 2023 Study Session expressing support and concerns related to a CWA (Attachment 3).

Negotiation Process

Following the robust outreach process over summer 2023, staff initiated direct negotiations with the BTC. The City's negotiating team included Public Works Director Dawn Cameron, Assistant City Manager Arn Andrews, Senior Assistant City Attorney Mitesh Bhakta, and Jonathan Holtzman (Renne Public Law Group).

On October 26, 2023, staff held the first negotiation meeting with the BTC. At this meeting, staff presented a proposed CWA based on input from the City Council received at the June 27 Study Session and what staff learned during the outreach process. The general approach to the proposed CWA was as follows:

- The CWA would apply to five large capital projects due to start construction within the next two years (see Attachment 2). These five projects represent over \$230 million in construction contracts. As explained to the BTC representatives in the meeting, these projects were selected because, in staff's opinion, they can benefit the most from a CWA due to their size, diversity, complexity, and need for multiple trades to be involved, and they provided the greatest opportunity for maximizing apprenticeship hours.
- The BTC's template agreement was used as the base agreement, and staff proposed additional and modified terms based on the experiences of the peer agencies we interviewed. These terms included adding core worker provisions for contractors with nonunion standing work forces, exemptions for certain elements of work, and waiving the CWA if prohibited by a federal, state, or local grant being used for the project.

After the initial meeting, staff and BTC met on five additional occasions to negotiate terms: November 8, 2023; December 4, 2023; January 10, 2024; January 22, 2024; and April 3, 2024.

During the course of discussions with BTC, staff became aware that the Nor Cal Carpenters Union (Carpenters) had formally disaffiliated from BTC. To meet the deadline for completing the negotiations by early 2024, staff proceeded with the negotiations with the BTC, notwithstanding the absence of the Carpenters. As staff was completing the negotiations with the BTC, staff met with the Carpenters on January 2 and February 12, 2024 in the hope of finding a path forward for including them in the CWA.

Initially, the Carpenters expressed interest in being included and set what the City's negotiating team viewed as achievable conditions. While it is not the City's purview to resolve interagency disputes between trades, staff did attempt to broker an agreement between the BTC and the Carpenters as it relates to the proposed CWA. To date, these efforts have been unsuccessful.

On balance, staff believes that the BTC negotiated this agreement in good faith and the agreement should be approved. The BTC was not the moving party in the Carpenters' decision to withdraw from the BTC, and many of the advantages of a CWA (including work force development procedures) continue to be possible under the CWA as it stands. The Carpenters can be added as a signatory in the future should the BTC and Carpenters come to an agreement for Carpenters to participate.

ANALYSIS

Attachment 1 provides the recommended CWA. Key terms are summarized below.

Covered Projects

As previously mentioned, BTC has accepted a project-based proposal involving the five projects listed below and more fully described in Attachment 2:

- Shoreline Boulevard Bus Lane and Utility Improvements;
- Shoreline Boathouse Café Expansion;
- Public Safety Building;
- Plymouth/Space Park Realignment; and
- Charleston Transit Corridor.

Agreement Term

The CWA shall become effective on the day it is executed by the City and BTC and shall expire upon completion of all five projects. Three years after the effective date or three months prior to completion of the final project, whichever is earlier, the City and BTC shall meet and confer

regarding: (i) extension of the CWA to apply to additional projects; (ii) any proposed revisions; and (iii) whether the CWA should apply to projects over a certain dollar threshold rather than a list of projects.

Exclusions and Provisions

As stated above, the BTC’s template agreement was used as the base agreement, and staff proposed additional and modified terms based on the experiences of the peer agencies interviewed. The most noteworthy negotiated exclusions and provisions are listed in Table 1.

Table 1: Negotiated CWA Exclusions and Provisions

Section No.	Exclusion or Provision
2.4.2	The CWA shall not apply to the off-site manufacturing of complete modular buildings. Work to be performed by the City’s contractor under the construction contract scope of work (e.g., site preparation) will be subject to the CWA.
2.4.3	The CWA shall not apply to artwork and related work that is performed under a separate contract between the City and the artist. Work to be performed by the City’s contractor under the construction contract scope of work (e.g., site preparation) will be subject to the CWA.
2.4.13	The CWA shall not apply to work awarded by the City that is funded by any federal, state, other local or public agency that prohibits the use of project labor agreements on projects receiving its funding. The City will make a reasonable effort to defend the application of the CWA, including by making a written request to the funding source.
3.7	The BTC and unions agree to work cooperatively with the City to facilitate competitive bidding and encourage multiple bids for projects covered by the CWA. The BTC and the unions will use their best efforts to conduct outreach to interested contractors and provide information to those contractors to support bidding the work, and take any other reasonable steps to encourage submission of bids to the City.
8.4	The Contractor may use up to five core workers on project under a rotation system that calls for one union hiring hall worker for each core worker. ¹

¹ Core workers are the contractor’s standing work force or their own employees who work in the applicable craft or trade.

Section No.	Exclusion or Provision
8.5	It is in the interest of the parties to the CWA to facilitate employment of local area residents and to use resources in the local area in construction of the projects. The CWA sets a goal that no less than twenty percent (20%) of all hours worked on the projects shall be worked by residents of the local area, defined as the City of Mountain View. If there is an insufficient number of City residents to satisfy the goal, residents of Santa Clara County may count towards the goal.
10.1	Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the contractors/employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

Addendum C—Targeted Hire

The negotiated CWA recognizes the need to increase training and career opportunities for underrepresented and targeted individuals in the construction trades through apprenticeship and preapprenticeship programs and to develop a pipeline to ensure the continued availability of skilled, qualified, and readily available construction workers for future construction projects. Addendum C to the CWA incorporates a Targeted Hire Agreement into the CWA.

To increase construction career opportunities for individuals presently underrepresented in the building trades, the parties to the agreement agree to exert their best efforts to recruit, refer, and employ targeted workers as apprentices and to cooperate with the Community Workforce Coordinator to maximize the employment of targeted workers on the projects. The Community Workforce Coordinator is the Santa Clara County Trades Orientation Program operated by Working Partnerships USA and is responsible for the Approved Pre-Apprenticeship Program.

An underrepresented worker is an individual who, prior to commencing work on a project, has at least one of the following barriers to employment:

- Veteran of the U.S. military;
- Currently receiving public assistance;
- Emancipated from the foster care system;
- Participating in a reentry program or formerly incarcerated;

- Homeless, recently housed (within the past 12 months), or at risk of losing their housing;
- Continuously unemployed for the previous one year;
- Has family or household income below the current Housing and Urban Development (HUD) threshold for low-income households in Santa Clara County;
- Is a survivor of labor trafficking; or
- Is an at-risk youth.

Under the CWA, the parties have a goal of employing targeted worker(s) as apprentices on all projects to the maximum extent allowable under applicable hiring hall procedures, Union Master Agreement(s), and apprenticeship program standards for at least 25% of each participating contractor's apprentice hours on a project.

In addition, the Community Workforce Coordinator will provide an annual report regarding the achievement of the goals of the Targeted Hire Agreement, such as Approved Pre-Apprenticeship Program participation and graduation rates, and, to the extent known or ascertainable, placement of preapprentices with participating contractors and/or on the projects, placements in Union apprenticeship programs, and cities and counties of residence as well as any impediments to achieving such goals and compliance by all parties to the Targeted Hire Agreement.

FISCAL IMPACT

There is no direct fiscal impact to approving the CWA, and no appropriation of funds is requested.

Staff's research did indicate that there may be a workload impact for the City's project manager and staff to ensure contractor compliance with the CWA provisions and to participate in the Joint Administration Committee (JAC) comprised of City staff and BTC representatives that meets regularly to monitor projects under construction. This workload impact could increase the City's project costs. However, it is not yet known how much extra staff time will be required. The advantage of starting with the five projects will give staff an opportunity to assess the workload impacts prior to entering into discussions with the BTC to include more projects.

There is also the possibility that the CWA will lower the number of bids received on a project, which could lead to higher bids increasing project costs. The bidding results will also be evaluated as the five projects proceed to help inform the negotiations for the next CWA.

CONCLUSION

Negotiating a CWA for City capital projects is a Priority A work plan item for Fiscal Years 2023-24 and 2024-25. Consistent with the direction received from Council at the June 27, 2023 Study Session, staff conducted extensive outreach and has negotiated a CWA that applies to five projects. The CWA meets the guiding principles endorsed by Council for work force development, anticipated timely and cost-effective delivery of the City's capital projects, and ensuring that workers are cared for. The agreement also includes a timeline for the City and BTC to meet and confer to extend the agreement to include more projects.

ALTERNATIVES

1. Do not approve the recommended CWA and direct staff to renegotiate certain terms of the agreement.
2. Defer approval of the recommended CWA until the BTC and Carpenters reach an agreement that allow both parties to participate in the agreement.
3. Provide other direction.

PUBLIC NOTICING—Agenda posting, and a copy of the report has been sent to the BTC.

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DSC/KY/6/CAM
939-05-14-24CR
204089

Attachments:

1. Draft Community Workforce Agreement
2. City Projects Included in CWA
3. CWA Comment Letters