

DATE: June 27, 2023

TO: Honorable Mayor and City Council

FROM: Dawn S. Cameron, Public Works Director
Arn Andrews, Assistant City Manager

VIA: Kimbra McCarthy, City Manager

TITLE: **Community Workforce Agreement for City Capital Projects**



STUDY SESSION MEMO

PURPOSE

The purpose of this Study Session is to provide the City Council with an overview of Community Workforce Agreements, including major considerations associated with their adoption. Staff seeks Council direction on policy guidance related to a recommended schedule and process for adoption of a CWA and guiding principles for an agreement.

BACKGROUND

On June 13, 2023, the City Council adopted the Fiscal Year 2023-25 Strategic Work Plan, which includes a “Priority A” project to negotiate a Community Workforce Agreement (CWA). This report presents an overview of CWAs, discussion of the potential provisions in a negotiated CWA, a recommended process for adopting a CWA, and recommended guiding principles for an agreement.

Overview of Community Workforce Agreements

CWAs, also called Project Labor Agreements (PLAs), are prehire agreements between one or more labor organizations and a public agency that establish the terms and conditions of work for the construction of one or more capital projects. CWAs are similar to PLAs, except that CWAs generally apply to all agency projects that meet certain criteria, whereas PLAs apply to a single project. CWAs/PLAs are negotiated agreements that are unique to each agency (CWA) or project (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.

CWAs/PLAs differ from traditional collective bargaining agreements in that collective bargaining agreements are between the individual craft unions and contractors/contractor organizations, while a CWA/PLA is between a consortium of different craft unions and the public agency awarding a construction contract. The City would negotiate such an agreement with the Santa Clara and San Benito Counties Building and Construction Trades Council (BTC), with the various craft unions all being signatories on the agreement. The CWA would be included in the bidding documents for construction projects with a requirement that all contractors and subcontractors who are awarded construction contracts must comply with the provisions of the CWA. The CWA would supplement or supersede any existing collective bargaining agreements between the individual craft unions and contractors.

Initially, PLAs primarily covered large construction projects, such as San Francisco International Airport (1995) and the Port of Oakland (1999), where the value of the covered work exceeded \$1 billion. More recently, jurisdictions began applying CWAs/PLAs to projects of significantly less value (as small as \$1 million to \$3 million). Most of these jurisdictions are larger than Mountain View in terms of population and total value of capital projects. The only city within Santa Clara County with a CWA is San Jose. Valley Water and Santa Clara Valley Transportation Authority (VTA) also have CWAs.

DISCUSSION

The City has not used PLAs for individual capital projects and, therefore, does not have any direct experience in negotiating a CWA that will work well for Mountain View. In preparation for this Study Session, staff reviewed CWAs, staff reports, and Council presentations from multiple agencies and municipalities. Table 1 provides a listing of peer agencies reviewed to date.

Table 1: Peer Agencies Researched

Agency				
Anaheim	Berkeley	Concord	Dublin	Hayward
LA County	Martinez	Oakland	San Jose	San Leandro
Santa Ana	Santa Barbara	Valley Water	VTA	

Staff also reviewed publications from the BTC, San Francisco Foundation, Coalition for Fair Employment in Construction, Los Angeles County CWA Annual Report, and Ohio University.

The City has contracted with Renne Public Law Group (RPLG) to provide assistance in understanding key provisions of CWAs, conducting outreach, and negotiating a CWA. Jonathan Holtzman of RPLG is working directly on this with City staff. Mr. Holtzman has extensive experience assisting public agencies in negotiating and completing CWAs Statewide, including the CWAs for VTA and Valley Water.

Staff's research of CWAs at other agencies revealed a variety of opportunities, challenges, and provisions that can inform the City's process. The experiences of these other agencies are reflected in the discussion below regarding provisions and exemptions.

Negotiated Provisions of CWAs/PLAs

In addition to the previously mentioned standard provisions of CWAs/PLAs, there are several elements of CWAs/PLAs that are typically negotiated. These range from the types of projects covered to benefit structures and targeted hiring. Provided below are some of the key elements staff has identified that would likely be included in a negotiation process.

Project Criteria

Many CWAs include provisions that exclude projects of less than a specified value or certain types of projects or work. Table 2 provides a partial summary of project thresholds established by peers in the Bay Area.

Table 2: Peer Agencies Project Thresholds

Agency	Project Threshold
Berkeley (2011, 2015, 2020)	\$500,000 (originally \$1 million)
San Leandro (2015)	\$1,000,000
Alameda (2016)	\$1,000,000
Hayward (2017)	\$1,000,000
Valley Water (2022)	\$2,000,000
VTA (2021)	\$2,000,000
San Jose (2019)	\$3,000,000

Table 3 provides the four base exclusions provided by BTC. As previously mentioned, peer agencies have typically negotiated exclusions beyond the four base agreement exclusions provided in the BTC template. Table 4 provides examples of the types of agreement exclusions that have been negotiated and the respective agencies.

Table 3: BTC Base Agreement Exclusions

Template Exclusions	
1.	This Agreement shall not apply to work performed by the City's own employees as permitted by the Public Contract Code.
2.	This Agreement shall not apply to a Contractor/Employer's nonconstruction craft executives, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.
3.	This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities, including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building, shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.
4.	This Agreement shall not apply to the off-site maintenance of leased equipment and on-site supervision of such work.

Table 4: Peer Agencies Negotiated Exclusions

Peer-Negotiated Exclusion Examples	
1.	Shall not apply to any startup, calibration, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems performed after completion. (Berkeley, San Jose)
2.	The Agreement is not intended to and shall not affect the current or anticipated operation, maintenance, access, or use of any of the City's buildings or facilities. (Hayward, Berkeley)
3.	The Agreement is not intended to and shall not affect or govern the award of public works contracts by the City which are outside the identified scope of work of the projects. (San Leandro, Berkley, San Jose)
4.	The Agreement applies only to construction contracts that are awarded by the City, and not third-party public agencies, where City funding is utilized. (Hayward)
5.	Agreement does not apply to emergency remediation. (Valley Water)

Peer-Negotiated Exclusion Examples

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| 6. | The Agreement shall not apply to work substantially funded by any Federal, State, other local, private, or public agency that prohibits the use of project labor agreements on projects receiving its funding. (Valley Water, San Jose) |
| 7. | The Agreement does not apply to off-site fabrication unless such fabrication is covered by a Master Agreement or local addenda to a national agreement. (San Jose) |
| 8. | The Agreement does not apply where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate is for street maintenance. (San Jose) |
| 9. | The Agreement does not apply where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate is for sewer maintenance. (San Jose) |
| 10. | The Agreement does not apply where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate is for muni water maintenance and repair. (San Jose) |
| 11. | The Agreement does not apply where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate is for building maintenance and rehabilitation. (San Jose) |

Project thresholds and exemptions can be important for the following reasons:

- Ensuring smaller contractors/subcontractors have opportunities to bid on City projects:** Based on other agencies' experiences, smaller contractors and subcontractors may be hesitant to bid on projects that are subject to a CWA/PLA. Smaller contractors are more likely to be nonunion firms, and many have little or no experience complying with the provisions of such agreements. The administrative burden of documenting compliance with the agreements can be significant, and small firms may be less likely to have the staff to support the effort needed. Lack of interest can be particularly acute with subcontractors, which are often small and specialized firms.
- Ensuring the City's projects, especially pavement, utility, or other time-sensitive projects, are not delayed or become too expensive due to a lack of bids from responsive responsible contractors:** CWAs bind both contractors and subcontractors awarded City construction contracts. Nearly all of the City's construction contracts include subcontractors; therefore, even if the prime contractor is willing to comply with the CWA, they can only submit a bid if they can find the subcontractors (including small and/or specialized subcontractors) they need for their team.

As part of initial research into how project criteria (dollar thresholds and exemptions) may affect bid results, staff reviewed the City's bid results since 2017, capturing three years before the pandemic, during the pandemic, and the most recent results.

Table 5 summarizes the City's public works projects with bids that exceeded \$1 million since 2017, including the number of bidders and subcontractors for each project. Attachment 1

provides the list of individual projects summarized in Table 5 with the low bid dollar amount and categorized by type of public works project (new buildings, building renovations, parks, utilities, street pavement, other infrastructure).

Table 5: City Bid History for Projects over \$1 Million

Year	No. of Projects	No. of Bidders (Lowest-Highest)	Average Bidders/Project	No. of Subs* (Lowest-Highest)	Average Subs/Project*
2017	4	2 - 9	4.8	1 - 5	3.0
2018	4	3 - 6	4.5	0 - 7	3.8
2019	7	1 - 6	4.3	1 - 6	2.9
2020	3	4 - 11	7.0	3 - 6	4.0
2021	6	3 - 8	5.0	0 - 23	5.8
2022	5	2 - 6	4.4	2 - 7	4.0
2023**	4	1 - 3	1.5	1 - 13	5.5

* Number of subcontractors (subs) for the lowest responsive responsible bidder.

** Bid openings in 2023 to date.

Key findings from the City's bid history are as follows:

- Of the 33 projects over \$1 million put out to bid since 2017, only two projects had no subcontractors, and both of these were utility projects. Overall, the utility projects used the lowest number of subcontractors, with many only having one subcontractor, which is usually a paving subcontractor to repair the road after the utility work is completed.
- Building projects tend to have a higher number of subcontractors. The two highest number of subcontractors on the list were 23 for the Rengstorff Aquatics Center and 13 for the Magical Bridge Playground/Rengstorff Tennis and Maintenance Building projects.
- Parks and Roads projects all used subcontractors, averaging around three to four subcontractors per project.

Notably, 2023 is proving to be an especially challenging year for bidding projects (Table 6). To date, six bid openings have been held, most with only one responsive responsible bidder. This appears to be due to a high level of contracting opportunities in the public and private sectors, allowing contractors to be more selective in choosing projects to bid on. Only three of the City's projects in 2023 had bids within 10% of the Engineer's Estimate, while two projects had bids exceeding 40% of the Engineer's Estimate, and in both cases, these projects had only one bidder and a higher number of subcontractors.

Table 6: 2023 Bid Results to Date

Project	No. of Bidders	Engineer's Estimate	Awarded Bid	No. of Subs
Annual Water/Sewer	1*	\$5,200,000	\$5,938,000	1
Leong/Fairchild Pavement with bike/ped improvements	3	\$1,900,000	\$2,056,000	4
Park/Sonia Road Reconstruction	1	\$2,700,000	\$2,633,000	4
Magical Bridge Playground with Maintenance/Tennis Building	1	\$7,820,000	\$10,819,000	13
Annual Sidewalk/Curb Repairs	2**	\$550,000	\$593,617	3
Colony Street Connection to Trail	1	\$706,783	\$993,000	6

* Two bids received—low bid disqualified due to being nonresponsive; thus, only one responsive responsible bid received.

** Four bids received—two lowest bids disqualified due to being nonresponsive; thus, only two responsive responsible bids received.

The recommended CWA adoption process (discussed later in this memo) includes robust outreach to stakeholders, including local contractors/subcontractors to assess the impact that a CWA may have on their willingness and interest to bid on the City's projects and how the City may be able to address their concerns in the provisions discussed below.

Bidding Responsiveness

To address a potential outcome of no or single bids on a project, some CWAs include provision(s) allowing the agency to rebid the project without the requirements of a CWA. Such a provision might also be triggered if poor bid results due to the CWA lead to bids significantly exceeding the Engineer's Estimate.

Double Benefits

A typical component of CWAs/PLAs is the requirement that contractors pay various benefit contributions required under the unions' collectively bargained agreements, whether the contractor employees are union or nonunion. A nonunion contractor will be required to pay the benefits portion of its nonunion workers' wages to the union benefits plan even if they already have their own benefits program in place and even if the nonunion contractor's workers may never be entitled to the benefits. This is referred to as the payment of "double benefits," and it places nonunion contractors at a financial disadvantage when it comes to submitting bids as those costs become incorporated into increased project costs.

Wages are a less significant issue because contractors performing the City's public works projects are required to pay prevailing wages. Prevailing wages are determined by the California Department of Industrial Relations and are usually based on rates specified in collective bargaining agreements. Chapter 42 of the City Code applies prevailing wage law to public works construction projects of more than \$25,000 and projects for alteration, demolition, repair, and maintenance work of more than \$15,000.

Use of Core Workers

CWAs/PLAs traditionally establish the requirement to use union job referral systems for much of the labor required on the project rather than a standing workforce employed by the contractor. The various trade union signatories operate "hiring halls," and the hiring halls refer workers to the employers/contractors. One element that is typically negotiated in a CWA is authorization for a nonunion contractor or subcontractor to use a limited number (generally five at most) of members of its existing workforce ("core workers") on a project in addition to workers from the hiring hall. Some agreements include a requirement that one worker from the hiring hall be employed for each core worker used.

Core worker provisions can be a disincentive to bidding for some contractors, including small and minority-owned contractors, that maintain a standing workforce or have provided specialized training to employees.

Sole Operator/Small Operator Carveout

Another provision sometimes included in CWAs/PLAs are exemptions ("carve-outs") for sole proprietors, small contractors, or other targeted firms that the agency does not want to exclude from bidding. Such exemptions are often capped at a maximum percentage of the contract amount.

Duration of Agreement

Of the regional peers' CWAs reviewed by staff, agreement durations are between three and five years. This allows sufficient time to review the effectiveness of the CWA/PLA and evaluate outcomes, while also providing an opportunity to negotiate a new CWA that addresses any lessons learned in terms of achieving the City's policy objectives and resolving any unintended consequences.

Local Hire/Apprenticeships

In exchange for establishing CWAs versus PLAs, agencies have requested that the CWA give preference to local residents ("local hire") when referring workers to the contractor/employer and/or create new apprenticeship positions for residents. Agreements with local hire provisions

require contractors to target hiring percentages for certain categories of individuals for projects. Examples include residents of the agency or graduates from local schools, veterans, public assistance recipients, at-risk youth, survivors of human trafficking, individuals emancipated from foster care, formerly incarcerated, homeless, unemployed for a year and/or low income. A review of the local hire performance in peer agencies' CWAs indicates that local hire goals are difficult to meet.

Apprenticeship and preapprenticeship targets appear to be more achievable. Apprenticeships are typically negotiated on a per-individual basis for a defined incremental dollar value of the project. CWA peer agreements often require that contractors hire one new apprentice for the first \$1 million as determined by the Engineer's Estimate. Above an additional dollar threshold, contractors would be required to hire an additional apprentice. In addition, agreements usually establish a minimum percentage of apprentice hours worked on a project.

Administrative Costs and Workload Impacts

Staff's research indicates that the administration of a CWA is very time-intensive. In addition to staff required to document contractors' compliance with agreement provisions, CWAs typically require the creation of a Joint Administration Committee (JAC) partially comprised of City staff that meets regularly to monitor projects under construction. Given existing workloads, administration of a CWA would likely require both additional dedicated staff and a third-party administrator (TPA). The TPA would manage the on-boarding and support of contractors as well as the tracking and monitoring of community benefit goals like local hire and apprenticeship.

CWA Adoption Process

Staff recommends that the CWA adoption process begin with outreach to stakeholders, including labor organizations, contractors, and other interested parties, before Council provides direction on the provisions of a CWA for Mountain View. While research of the experience from other agencies provides good information, staff considers local outreach important to develop an agreement that best suits the Mountain View community.

Below is the anticipated process and schedule for the CWA process:

- Summer 2023: Conduct public outreach to stakeholders, including labor groups and contractors.
- September/October 2023: Return to Council with results of outreach and recommendations for potential provisions of CWA for Council deliberation.

- September-December 2023: Negotiate with the BTC, with additional Council input as required as negotiations proceed.
- Early 2024: Council adopt the CWA and authorize the City Manager or designee to execute the agreement.

Question No. 1: Does Council concur with the recommended CWA adoption process and schedule, including conducting a robust outreach process this summer?

Guiding Principles

While staff is not prepared to recommend specific CWA provisions prior to an outreach process, staff recommends that Council endorse two guiding principles as the process proceeds:

1. Focus the social policy goals in the CWA on workforce development, such as establishing or supporting a preapprenticeship/internship program for local residents. If Council endorses this principle, staff can research opportunities and alternatives and return for further direction.
2. Ensure that the City's capital projects will continue to be delivered in a timely and cost-effective manner.

Question No. 2: Does Council concur with the recommended guiding principles for negotiating a CWA?

RECOMMENDATION

Staff seeks Council input regarding the following for negotiating a CWA:

Question No. 1: Does Council concur with the recommended CWA adoption process and schedule, including conducting a robust outreach process this summer?

Question No. 2: Does Council concur with the recommended guiding principles for negotiating a CWA?

NEXT STEPS

With Council's concurrence on the recommended CWA process and schedule, staff will proceed with conducting outreach to stakeholders, including labor groups and contractors, this summer. Staff will return to Council after the summer recess to share the results of the outreach and receive direction on CWA provisions to negotiate.

PUBLIC NOTICING

Agenda posting and notices sent to BTC, trades unions, Chambers of Commerce, and contractors/subcontractors who have bid on City projects over the last few years.

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Attachment: 1. Capital Projects Bid Results 2017-2023