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Staff Report for Discussion and Direction to Staff on Community Workforce Agreements

SUMMARY AND RECOMMENDATIONS

This report provides an overview of policy options related to the consideration of a Community Workforce Agreement as well as work that has been conducted to date on this issue. Staff requests that the City Council provide direction on next steps, accounting for staff's questions and the issues identified below.

BACKGROUND

Staff considers the following 2014-2015 City Council goals applicable to the City Council's consideration of this policy:

- Place San Leandro on a firm foundation for long-term fiscal sustainability;
- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation; and
- Maintain and enhance San Leandro's infrastructure.

A Community Workforce Agreement ("CWA," referred to from time to time and by other jurisdictions as a Project Labor Agreement) is a contract between a public agency and the respective building trades groups or unions within the jurisdiction of the public agency that governs, among other things, the role of organized construction trade unions in the execution of a public agency's projects. This issue relates to the City Council's goals because it will impact the process for completing major expenditures within the City's budget, the role that local businesses and employees play in that process, and ongoing efforts to enhance and maintain the City's infrastructure.

Based on direction from the City Council, over the past several months staff held discussions with the Building and Construction Trades Council of Alameda County to explore policy options related to the

implementation of a CWA.

Staff also held discussions with numerous stakeholder groups including local San Leandro businesses, the San Leandro Chamber of Commerce, and multiple business associations. Through this process, strong opinions have been presented both for and against the City's potential adoption of a Community Workforce Agreement. The primary arguments in favor of a CWA are that it may ensure labor peace on City projects, which assists in delivering projects on-time and on budget and that it promotes the payment and provision of quality wages and benefits for the employees who work on these projects. The primary argument in opposition is that a CWA puts non-union contractors at a disadvantage in competing for City projects. Staff was not directed to fully reconcile these positions, but will provide a summary of this feedback to the City Council.

Concerns have also been raised that the City may be proceeding down a path toward the adoption of a CWA without having first engaged in a more basic discussion of the goals it hopes to achieve by approving a CWA, and the metrics that will be used to determine success in meeting those goals. Staff seeks direction from the City Council on whether or not alternative approaches and additional dialog should be explored.

Analysis

Review of Community Workforce Agreements and Project Labor Agreements from other Agencies

Staff compiled and reviewed comparable agreements from other Bay Area public agencies. Staff identified two Bay Area cities -- Berkeley and Martinez -- that have adopted community workforce agreements or project labor policies. Additionally, staff reviewed policies adopted or agreements approved by Alameda County, the San Leandro Unified School District, the Port of Oakland and the Hayward Unified School District.

Draft Community Workforce Agreement

As a starting point for discussions with the Building and Construction Trades Council of Alameda County, staff and the Trades Council used the City of Berkeley's Community Workforce Agreement as a model. It is not a foregone conclusion that the model provides the most appropriate vehicle to create an agreement for San Leandro. It does, however, provide an opportunity to assess many of the common components of a CWA.

A DRAFT agreement based on the City of Berkeley Community Workforce Agreement is attached. It reflects a preliminary set of terms and conditions provided and negotiated by City staff, the City Attorney, and the Building Trades Council. The attached document is not a finished product recommended for adoption and additional details remain to be resolved if the City Council provides direction to proceed further with it.

The basic mechanics of the agreement are as follows:

Covered Work and Cost Threshold: City staff recommends setting a baseline value so that the CWA would apply to City construction projects whose value exceeds \$1,000,000. The Building Trades request a minimum value of \$250,000. Staff's recommendation is based on programmatic necessities, including but not limited to maintaining efficiency of process and budget and project

management flexibility. Based on staff research, other agencies have used the following thresholds:

- City of Berkeley: \$1,000,000 and above
- City of Martinez: \$500,000 and above
- San Leandro Unified School District: Between \$500,000 and \$3,000,000
- Port of Oakland: Varies, some as low as \$50,000
- Contra Costa County: \$1,000,000
- Solano County: \$10,000,000

Contracts would still be subject to competitive bidding laws, the payment of prevailing wages, and the City would still be required by law and its own ordinances to select the lowest responsive and responsible bidder.

The work covered under the draft CWA includes all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other related activities for the projects that is within the craft jurisdiction of one of the Unions and that is part of the projects, including, pipelines, site preparation, survey work, and demolition. Some details related to the definition of covered work remain subject to refinement and negotiation with the Building Trades Council.

Staff recommends that the agreement not apply to projects for which there is a prohibition, exclusion or other limitation imposed because of a grant, funding, or other agreement, as determined by the City, that creates a risk to the City of any repayment or return to source of any funds received.

Labor Peace: For all projects covered by the Agreement, the Unions would agree that there will be no strikes, sympathy strikes, work stoppages, picketing, hand billing, or slowdowns of any kind, for any reason, on the projects, at a job site of the projects or at any other facility of the City.

Union Hiring Hall: Contractors working on covered projects would be required, in filling craft job requirements, to utilize and be bound by the registration facilities and referral systems authorized by the unions who are signatory to the CWA. This is commonly referred to as the union hiring hall.

This version of the CWA allows non-union contractors to use no more than five of their own employees and only if an equal number of union workers are also retained by the contractor. Non-union workers hired under this provision would still be required to register with the union hiring hall and the non-union contractor would be required to pay into the union trust fund, covering health and pension benefits for these workers.

Local Hire and Apprentices: Berkeley's Agreement provides that Berkeley residents will perform a minimum of 30% of the hours worked, on a craft by craft basis. The contractors are required to make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. Although well-intentioned, empirical evidence shows that this clause has not impacted local hiring in Berkeley in significant numbers. Out of 1,322 individuals working on qualified projects, only 19 (1.4%) were Berkeley residents. Additionally, according to staff research implementation and monitoring of this requirement created a substantial burden on City of Berkeley staff.

The attached draft includes the 30% goal and a requirement that contractors make "good faith" efforts to meet it. The agreement also requires contractors to hire one San Leandro resident as a

New Apprentice for the first \$1 million of the bid amount. Thereafter, for every \$5 million of project monies, the contractor would be required to hire one additional New Apprentice. The intent of the clause is to increase pathways for San Leandro residents into the building trades although staff believes that it is likely to impact a relatively small number of residents.

Funding: In Berkeley, to cover the expenses related to the implementation and management of the local hiring program, each contractor must contribute ten cents per hour worked or paid to each employee performing work on any project covered by the Agreement. These local hire funds are deposited in a City account to be used for implementation and management of the CWA. After almost three years, this mechanism yielded only \$2,468.00. This requirement is not recommended for San Leandro. San Leandro staff proposed that the Building Trades provide sufficient funding to cover the cost of one Analyst I position in the City's Finance Department; the Building Trades Council is not willing to include that requirement. Thus, funding for implementation and oversight of an agreement (and/or any related policy) remains unresolved.

Potential Challenges

Impact on Non-Union San Leandro Businesses and Consistency with the San Leandro Local Inclusion Policy: Although the agreement does not prohibit non-union contractors from bidding on projects, some stakeholders' feedback on the current version of the agreement opine that there would be strong limitations on a non-union contractor's ability to use their own employees, which creates an implicit barrier to non-union contractors bidding on such projects. As presently written, a contractor could use no more than five of their own employees and would have to pay into the union trust fund for pension and health benefits for these employees. Staff has received conflicting feedback regarding the feasibility of this provision. Some local San Leandro businesses and contractors have already signaled to City staff that they would not bid on City projects, either as a prime or subcontractor, if an agreement with such a requirement were adopted. Other local San Leandro businesses encourage the City to adopt a CWA, with this requirement as written.

In 2014, the City Council adopted a Local Inclusion Policy that gives San Leandro businesses an advantage in competing for City contracts. As noted above, a Community Workforce Agreement would create challenges for non-union contractors, including some San Leandro businesses. If San Leandro businesses opt not to bid on City projects due the existence of a CWA, they would be unable to realize any of the benefits of the Local Inclusion Policy, especially the bid preference that is permitted by ordinance. Some stakeholders have expressed concern that the CWA could negate the benefits of the Local Inclusion Policy for non-union contractors.

Costs of Implementation and Oversight: Staff costs for implementation include monitoring payroll and other records to oversee and track the impact of the local hiring goal, staffing a Joint Administrative Committee, updating bid documents, and participating in the resolution of disputes if any should arise. The City of Berkeley has devoted a significant share of one full-time position in their Health, Housing, and Community Services Department for implementation and monitoring of the program. Berkeley estimates the annual cost to be \$61,000. San Leandro does not have a comparable position on staff at this time and it is not yet clear where the resources to support implementation and oversight would come from.

Impact on Project Costs: It is extremely difficult to estimate what, if any, impact a Community Workforce Agreement would have on the cost of City construction projects. Based on its experience so far, Berkeley staff theorized that the policy is most likely to impact the cost of complex projects

with multiple subcontractors, because those projects are more likely to have significant administrative costs for contractors related to the implementation of the program. Berkeley identified some instances in which contractors stated that they chose not to bid on City projects due to the requirements of the CWA, which created a smaller pool of bidders that Berkeley staff thinks caused an impact through higher bids.

Stakeholder Concerns Alternative Approaches

As noted above, several stakeholders, including local contractors and developers, the Associated Builders and Contractors, Inc., and the San Leandro Chamber of Commerce expressed concern about the potential adoption of a CWA. The most common concern is that a CWA is inherently unfair to non-union contractors. In a debate that has taken place in several other jurisdictions, stakeholders on opposing sides of this issue have made contradictory claims regarding the ability of non-union contractors to participate in City projects under a CWA. It is not possible for staff to definitively reconcile these positions.

A more fundamental concern expressed by other community stakeholders is that the City would benefit from a discussion of goals related to public contracting prior to determining the best tool to accomplish them.

In order to provide an alternative approach for City Council consideration, the Chamber of Commerce submits a proposed addendum to the City's Local Inclusion Policy, which is attached. The Open Hiring Policy Addendum establishes the framework for a local resident training and hiring system, whether a contractor is a union contractor or a non-union contractor.

Request for Council Direction

Staff requests that the City Council provide direction on next steps.

Consideration of Alternative Approaches: City staff met with the Building Trades Council, the Chamber of Commerce, the Associated Building Contractors, private developers, and individual businesses to receive feedback on the proposed policy. However, no consensus has emerged and there is no indication that a compromise exists that would satisfy all parties.

City Council direction is requested on whether staff should continue moving forward with the Building Trades on a draft CWA. Alternatively, the City Council could direct staff to conduct additional outreach or explore alternative approaches such as the Local Inclusion Policy - Open Hiring Policy Addendum submitted by the San Leandro Chamber of Commerce.

If the City Council desires to move forward on the current draft agreement, staff requests direction on the following items:

Threshold for Projects Subject to a CWA: City staff recommends setting a baseline value so that the CWA would apply to City construction projects whose value exceeds \$1,000,000. The Building Trades request a minimum value of \$250,000.

Priority of the Local Business Inclusion Policy and Impact on San Leandro Businesses that are Non-Union Contractors: As noted above, it could be challenging to implement a Community Workforce Agreement, as presently drafted, while maintaining consistency with the goals of the Local Business

Inclusion Policy that was adopted last year. The Local Inclusion Policy seeks to make it easier for all San Leandro businesses to contract for City projects, but the Community Workforce Agreement imposes requirements that some local non-union contractors find prohibitive. Options may be available that would make the policy more palatable for non-union contractors, potentially limiting the extent to which a Community Workforce Agreement would conflict with the goals of the Local Inclusion Policy. Staff seeks Council direction on the desire to consider these revisions.

Implementation Costs: Implementing an agreement will require significant staff resources that are not presently available. Implementation of a CWA will involve a significant modification to the City's bidding practices as well as ongoing monitoring and tracking. Staff recommends not moving forward without providing for these costs. City Council direction on this matter is requested.

Current Agency Policies

The Local Inclusion Policy provides a bid incentive for San Leandro businesses bidding for City contracts and also sets a goal of 25% participation in City projects by San Leandro businesses.

Summary of Public Outreach Efforts

City staff met with the Building Trades Council, the Chamber of Commerce, the Associated Building Contractors, private developers, and individual businesses to receive feedback on the proposed policy. The Chamber of Commerce also held a meeting with San Leandro contractors.

Legal Analysis

The City Attorney's Office has been working with staff throughout the outreach and discussions of an agreement. The CAO has also reviewed the Berkeley model, and made edits so that it comports with the current objectives of the City, and State and Federal law.

ATTACHMENTS

- Draft Community Workforce Agreement
- Local Inclusion Policy - Open Hiring Policy Addendum (submitted by a consortium of stakeholders organized by the San Leandro Chamber of Commerce)

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