

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY WORKFORCE AGREEMENT WITH THE ALAMEDA COUNTY BUILDING TRADES COUNCIL AND AUTHORIZING THE ADDITION OF A STAFF POSITION FOR MONITORING/IMPLEMENTATION OF THE AGREEMENT AND OTHER WORKFORCE DEVELOPMENT ACTIVITIES

WHEREAS, the City Council has expressed a strong desire to ensure labor peace during the construction of City public works projects; and

WHEREAS, the City Council has long been a solid supporter of labor rights, fair wages, and the creation of quality jobs in the community; and

WHEREAS, charter cities, like Hayward, have much more latitude to establish local bidding criteria to address other legitimate municipal concerns, such as to promote the hiring of local residents or the support of local business where possible; and

WHEREAS, the City Council over the last few years has expressed interest in being even more proactive regarding assuring quality wages on all City construction projects, supporting and procuring from local businesses, and protecting and increasing quality jobs for local residents; and

WHEREAS, the City and the Alameda County Building Trades Council have negotiated the terms for the establishment of a citywide Community Workforce Agreement as outlined in the accompanying staff report.

WHEREAS, a dedicated staff position is necessary to assist in the implementation, management, and monitoring of the Community Workforce Agreement and on workforce development.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the establishment of a citywide Community Workforce Agreement and staff position for monitoring/implementation of the agreement and workforce development activities, and authorizes the City Manager to execute the agreement in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



DATE: November 15, 2016
TO: Mayor and City Council
FROM: City Manager

SUBJECT

Approval of Citywide Community Workforce Agreement

RECOMMENDATION

That Council reviews this report and adopts the attached resolution authorizing the City Manager to execute a Community Workforce Agreement (CWA) with the Alameda County Building Trades Council (BTC) and authorizes the addition of a staff position for monitoring/implementation of the agreement and other workforce development activities.

SUMMARY

The Building and Construction Trades Council of Alameda County (“Building Trades Council”) and the City of Hayward have been discussing and working on a Community Workforce Agreement (CWA) for the past four years. In 2015, the Building Trades Council and the City executed a CWA for the new Library and Community Learning Center project, which was advertised for construction bids in May 2015. Staff has now had over a year of experience in implementing the CWA for the Library construction project.

At Council’s direction, staff brought forward an item on February 23, 2016 that allowed for discussion of creating a “Citywide” CWA that could apply to a broader scope of projects within the community. Staff received policy direction from the Council at that meeting regarding how a citywide CWA might be structured and has been negotiating with the BTC since that date to finalize the agreement.

Staff is returning to Council to receive final approval of the citywide CWA that has been negotiated with the BTC and to request formal authorization for a new position as previously discussed with Council to assist with implementation and coordination of the CWA as well as with other workforce development efforts.

BACKGROUND

Over the years, CWAs/PLAs have been utilized in the construction industry to assure that labor issues related to major construction projects are minimized and to accomplish some local goals. They are a type of collective pre-hire bargaining agreement between project managers or owners and organized labor that outline a variety of employment and other working conditions with the express purpose of providing peaceful settlement of labor disputes and grievances without work stoppages, strikes, or lockouts; thereby allowing for the timely and cost-effective completion of projects. It is noteworthy that there has never been a similar work stoppage or strikes on any of the City projects in the City's recent history.

CWA agreements were entirely prohibited on federal and federally funded construction projects from 2001 to 2009 pursuant to Presidential Executive Order. In 2009, a new Executive Order was issued that encouraged Project Labor Agreements (PLAs) on large-scale construction projects where the total cost to the Federal Government is \$25 million or more. One exception to this is that projects receiving Federal Highway funds cannot have a local hire requirement. These types of agreements have been historically used on larger scale construction projects until recently when some cities and counties have negotiated agreements to apply them more broadly to smaller public works projects on a city and countywide basis.

Hayward has long been a solid supporter of labor rights, fair wages, and the creation of quality jobs within the community. Many actions taken by Council over time are in support of these values. For instance, Hayward has long required payment of prevailing wages on construction projects whether or not such was required by state or federal regulations. Hayward has had a Living Wage Ordinance in place for many years. In addition, the creation of quality jobs is a core value of the Economic Development Strategic Plan.

While California General Law cities are constrained by the elements of the Public Contract Code when bidding construction projects, charter cities, like Hayward, have much more latitude to establish local bidding criteria to address other legitimate municipal concerns, such as to promote the hiring of local residents or the support of local business where possible. Some charter cities have chosen to simply adopt local hire ordinances or require the payment of prevailing wages, while others have gone a step further to adopt CWAs, or PLAs, to govern either individual, large scale construction projects, or to more generally include larger public works projects in a community.

As noted above, Hayward already requires the payment of prevailing wages on its public works projects. Based on staff evaluation of construction projects for the past three to five years, more than 90% of those projects were performed by contractors that already belong to a local labor union (i.e., "union contractors"). Despite this historically progressive approach, Council has over the last few years expressed interest in being even more proactive regarding assuring quality wages on all City construction projects, supporting and procuring from local businesses, and protecting and increasing quality jobs for local residents.

In April 2015, the Council directed staff to negotiate and execute a CWA with the Building Trades Council for the new Library and Community Learning Center (<http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca041415full.pdf>). That agreement includes the following types of provisions:

- 1) Requirements that the contractor and subcontractors on the project use local union hiring halls to hire trades workers for the projects;
- 2) "Local Hire" provision, encouraging the contractor to employ Hayward residents or HUSD graduates;
- 3) Requirements that all hired workers pay union dues and other benefit trust fund contributions;
- 4) Management rights regarding employment procedures, including hiring, discipline, etc;
- 5) Grievance and arbitration procedures to allow for timely resolution of disputes;
- 6) Standardized work rules and regulations; and
- 7) Provisions governing requirements around apprenticeships.

The April 2015 report to Council outlined many of the benefits and challenges associated with CWAs (Report is linked above).

In February 2016¹, staff returned to Council to receive direction regarding a possible citywide CWA and to discuss various policy elements of that larger citywide agreement.

DISCUSSION

Since February, staff has been negotiating with the BTC to finalize the elements of a citywide CWA. That agreement is now in substantial final form and ready to be executed by the City Manager pending final authorization by the City Council. Below is a summary of the key elements of the final negotiated CWA:

- 1) The term of the citywide CWA will be three years and the effective date of the agreement will be January 1, 2017. The parties may mutually agree to extend and/or amend this agreement, and will review the agreement at two years from date of execution for possible extension beyond the initial term. Review of the agreement may include, but is not necessarily limited to, the following criteria: (1) the impact of the agreement on local jobs and work hours; (2) the administrative costs of implementing the agreement; and (3) the impact on awarding contracts or subcontracts to City-based businesses as a result of the agreement.

¹ The February 23, 2016 report can be found here:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=2574917&GUID=CA735E50-7832-4222-BC26-F99567B99389&Options=&Search=>

- 2) The citywide CWA will only apply to City projects where the construction cost of the project exceeds one million dollars (\$1,000,000) based on the Engineer's Estimate.
- 3) The citywide CWA will not apply to private development projects or to projects awarded/managed by another third party public agency where the City has contributed funding. An example of this might be the upgrade of AC Transit bus shelters throughout the City. The City might contribute supplemental funding to a project of this nature to enhance the outcome for the community but AC Transit would be the agency responsible for awarding the contract and managing the project. This mirrors what other local agencies have covered as part of their CWAs.
- 4) The City will retain the ability to exempt certain specialty or unique projects from the CWA requirements as needed and upon approval by the City Council. Staff and the Building Trades would first meet in good faith to discuss the exemption. However, if the parties fail to reach a consensus, staff would be able to bring the project to the Council for review and consideration. Given that staff has not implemented this type of agreement before, staff has concerns that there may be projects that arise during the term of the agreement where implementation of a CWA may present unique or previously unknown issues.

Staff does not anticipate utilizing this mechanism very often for a couple of reasons. First and foremost, there will likely be limited examples where projects would need to be exempted from the CWA. Secondly, the desired goal would be to reach consensus with the Building Trades on these exemptions without the necessity of bringing the items to Council for direction.

- 5) During the duration of the Projects, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, wobble, sympathy strike, picketing or other work stoppage or handbilling of any nature whatsoever, for any cause whatsoever (including jurisdictional disputes), and it is expressly agreed that any such action is a violation of the agreement.
- 6) A Joint Administrative Committee (JAC) comprised of two City representatives, two Union representatives and one construction industry representative will be established to review the implementation of the agreement and the progress of the projects. The JAC will also have the responsibility of monitoring the local hire and apprentice provisions of the agreement.

- 7) Local Hire Provisions: The agreement contains a goal that Hayward Residents, and especially Hayward Unified School District (HUSD) Graduates, will perform a minimum of thirty (30%) percent of the hours worked on a craft by craft basis on the covered projects. The Contractor shall make good faith efforts to reach the Local Hire Goal through the utilization of the Union's hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of Hayward Resident workers and in their hiring hall procedures to facilitate the Local Hire Goal on the Projects. The parties shall cooperate to establish or support a pre-apprenticeship/internship program for HUSD graduates. If a Contractor fails to meet the Local Hire Goal or demonstrate a good faith effort, there will be a ten (10%) percent contract retention withheld until the Local Hire Goal is remedied. Acceptable remedies include: commitment to employ Hayward residents on non-City projects or acceptance of Hayward residents as new apprentices.

Contractors will be required under the agreement to hire one Hayward resident as a New Apprentice for the first one million dollars (\$1,000,000) of construction costs with one additional apprentice for every \$5 million dollars (\$5,000,000) thereafter and with an assignment of a maximum of two New Apprentices to any one craft. A minimum of 50% of the applicable Apprentice hours on any project must be worked by the Hayward New Apprentice.

The BTC has also agreed to facilitate and encourage enrollment of least ten (10) Hayward residents or HUSD Graduates into State approved Labor-Management Apprenticeship programs during each year of the agreement term and facilitate placing them on a job site.

Addition of Staff Position for Implementation/Monitoring and for Workforce Development

Staff has been working with the BTC to implement the CWA for the Library and Community Learning Center project since May 2015. While the experience is still relatively new, there are a few insights that can be shared with Council. The most important for Council consideration prior to embarking on a citywide CWA is the amount of staff time spent on issues related to the CWA. This has been more burdensome on the project manager and Public Works management staff than previously anticipated. Staff has been separately tracking the hours spent administering the CWA. Currently, the Public Works department management team members are spending approximately 2% to 3% of their time on the CWA. At this current rate, the staff's administrative efforts for CWA will be at least \$100,000 at the completion of the project.

The City of Berkeley has a staff position dedicated to working with the BTC and Public Works on implementation of the CWA and on workforce development. Having a single point of contact for implementation of the CWA is critical for a couple of reasons. First and foremost, it

is essential for workload management with the current Public Works and Utilities staff members. Second, with a dedicated staff person, there will be consistent implementation of the CWA across all of the projects, potentially resulting in fewer issues or concerns and ultimately saving staff time. Project managers unfamiliar with the CWA would not have to spend valuable project development and management time learning the terms of the CWA, figuring out how to implement it, and developing the necessary relationships and lines of communication with both labor and contractors.

Given the volume of capital projects that the City designs and constructs every year and the low-level of staffing throughout the City, spending this much time on CWA implementation will impact the volume of work that staff can deliver. As discussed more in the fiscal impact section below, staff recommends the addition of a staff position for monitoring and implementing the agreement as part of the Council action to approve the agreement. The cost for this position will be spread across the various budgets for projects that are subject to the CWA and there is an opportunity to also use this position to assist with other workforce development initiatives.

ECONOMIC AND FISCAL IMPACT

There has been much debate over the years regarding the fiscal impacts of CWAs/PLAs and the actual benefits they achieve (i.e., smoother management/labor relationships, increased local hiring, and improved pay and benefits to workers over and above that of a prevailing wage job). Prior staff reports to Council have provided detail regarding project cost implications.

Staff's one remaining concern related to the CWA is the administrative burden on City project managers for implementing and monitoring the agreement. As such, staff is recommending the addition of a staff position as part of the Council action to approve the agreement. The cost for this position will be spread across the various budgets for projects (funded from Enterprise and General Fund Capital Improvement budgets) that are subject to the CWA and there is an opportunity to also use this position to assist with other workforce development initiatives.

Based on the experience from the City of Berkeley, this estimated total compensation (salary and benefits) for this position would be approximately \$150,000-\$175,000. Following action by the City Council, Human Resources staff would perform the appropriate classification study to ensure that the job description and salary range are set in accordance with Human Resources best practices.

In addition, staff may need to return to the Council for additional budget authorization during the mid-year budget adjustment for any CIP projects that will be bid during the remainder of FY2017. When the FY2017 CIP budget was adopted, the project budgets did not account for the inclusion of the requirements of a citywide CWA. Staff will work with the City's consultants and cost estimators to determine what, if any, adjustments will need to be made to FY2017 project budgets. Any future CIP budgets will include appropriate budget allowances for CWA requirements as necessary.

ENVIRONMENTAL REVIEW

Staff has determined that this action is statutorily exempt from analysis under the California Environmental Quality Act (CEQA) for the reason that it is not a project. CEQA Guidelines, Section 15378(b)(5), states that a project does not include "Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment." CEQA review will be completed separately for individual public works project subject to the Citywide CWA.

SUSTAINABILITY FEATURES

The action taken for this agenda report will not result in physical development, purchase or service, or a new policy or legislation. Any physical work will depend upon future Council action.

NEXT STEPS

The CWA is in substantially final form as negotiated between the City and the BTC. Following Council action, the City Manager will proceed to execute the agreement and Human Resources staff will work to create the new classification and position as authorized by this action.

Prepared by: Kelly McAdoo, City Manager

Approved by:



Kelly McAdoo, City Manager