AGENDA
REGULAR JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF DUARTE,
CITY COUNCIL AS SUCCESSOR AGENCY TO DISSOLVED
REDEVELOPMENT AGENCY OF CITY OF DUARTE,
AND DUARTE HOUSING AUTHORITY
TUESDAY, APRIL 10, 2012
6:00 p.m. – Closed Session
7:00 p.m. – Regular Session
COUNCIL CHAMBERS, 1600 HUNTINGTON DRIVE, DUARTE, CALIFORNIA 91010

MISSION STATEMENT
With integrity and transparency, the City of Duarte provides exemplary public services in a
caring and fiscally responsible manner with a commitment to our community’s future

MAYOR/HOUSING AUTHORITY CHAIR JOHN FASANA
MAYOR PRO TEM/HOUSING AUTHORITY VICE CHAIR LIZ REILLY
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER MARGARET FINLAY
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER TZEITEL PARAS-CARACCI
COUNCILMEMBER/HOUSING AUTHORITY BOARD MEMBER PHIL REYES

City/Authority Staff:
Darrell George, City Manager/Housing Authority Executive Director
Kristen Petersen, Assistant City Manager/Housing Authority Assistant Executive Director
and Director of Administrative Services
Craig Hensley, Community Development Director
Cesar Monsalve, Interim Director of Parks and Recreation
Brian Villalobos, Director of Public Safety Services
Dan Slater, City Attorney/Housing Authority General Counsel
Marla Akana, City Clerk

ADDRESSING THE CITY COUNCIL AND HOUSING AUTHORITY:
If you wish to address the City Council or Housing Authority on any item on the Agenda, you should fill out a Speaker
Card indicating which item or items on the Agenda you wish to speak about, and hand the card to the City Clerk. You
will be called to the Podium when that item is heard by the City Council/Authority. If you wish to address the City
Council or Housing Authority on any item that is not on the Agenda, but that is within the subject matter jurisdiction
of the City or Authority, you may do so under the “Oral Communications” portion of the Agenda. At the podium, before
starting your remarks, please state your name and city of residence for the record.

ADA ACCESSIBILITY NOTICE:
In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, you should
contact the City Manager’s office at (626) 357-7931. Notification no later than 1:00 p.m. on the day preceding the
meeting will enable the City to make reasonable arrangements to assist your accessibility to this meeting.

Note: Any documents distributed by the City/Authority to a majority of the City Council/Housing Authority Board less
than 72 hours prior to the City Council/Authority meeting will be made available for public inspection at City Hall, 1600
Huntington Drive, Duarte, CA 91010, during normal business hours, except such documents that relate to closed session
items or which are otherwise exempt from disclosure under applicable law.

4/10/12
G. Award of contract to lowest responsible bidder American Wrecking, Inc., in the amount of $37,000,000 (base bid plus additive bid) for Asbestos Abatement and Site Clearance at 1415 Huntington Drive
H. Award of contract to lowest responsible bidder Gentry Brothers, Inc., in the amount of $29,745.00 for Town Center ADA Improvements
I. City Council/City Manager Conference – San Gabriel Valley Economic Partnership 12th Annual Legislative Networking Reception, April 13, 2012, Alhambra

13. ITEMS REMOVED FROM CONSENT CALENDAR (City Council/Housing Authority)

14. CONSENT CALENDAR (City Council as Successor Agency to Redevelopment Agency)
   A. Approval of Minutes – March 27, 2012
   B. Approval of Reimbursement and Operating Agreement by and between the City of Duarte and the City of Duarte as Successor Agency to the Dissolved Redevelopment Agency of the City of Duarte

15. ITEMS REMOVED FROM CONSENT CALENDAR (City Council as Successor Agency to Redevelopment Agency)

16. BUSINESS ITEM – Page 15
   Staff presentation concerning Project Labor Agreements and discussion by City Council of presentation materials (Receive and File)

17. CONTINUATION OF ORAL COMMUNICATIONS
   Any person who did not speak during the initial 30 minute Oral Communications period earlier in the meeting, who wishes to speak on any issue that is not on the Agenda but that is within the subject matter jurisdiction of the City or Authority, may do so at this time. Each person may speak once for no more than 3 minutes. Under the Brown Act, the City Council, Authority, and staff can respond only with a brief reply to issues raised in Oral Communications and no action on such matters may take place at this meeting.

18. ITEMS FROM CITY COUNCIL/AUTHORITY MEMBERS AND CITY MANAGER/EXECUTIVE DIRECTOR (AB 1234 reports on trips, conference attendance, and meetings)

19. ADJOURNMENT
MEMORANDUM

TO: City Council
FROM: City Manager
DATE: April 5, 2012
SUBJECT: Comments on Agenda Items, Meeting of April 10, 2012

ITEM 8.A. On Saturday, April 7, from 8 a.m. to 2 p.m., Duarte will hold its bi-annual Duarte Community Clean-up Day, and in conjunction with Torre de Alabanza (tower of praise) Christian Church Youth Ministry, has invited other local churches and local youth groups including Duarte Public Safety’s Duarte Area Resource Team (D.A.R.T.) to participate in a pilot “Adopt-A-Block” project, to assist local residents in a designated neighborhood with clean-up tasks. Adopt-A-Block is an outreach program based on the popular Adopt-A-Highway program. Duarte’s pilot “Adopt-A-Block” project will focus first on a neighborhood area within the boundaries of Mountain Avenue on the north, Broach Avenue on the south, Newington Street on the west, and Hurstview Street on the east. Duarte’s licensed trash hauler, Burrtec Waste Industries, will also be providing convenient drop-off locations in the designated area where residents can dispose of large refuse items.

ITEM 8.B. The Duarte Community Advocacy Youth Coalition on Youth Smoking Prevention is committed to protecting the health and well-being of youth in Duarte, and is concerned with the problem of youth access to tobacco. It is leading efforts in Duarte to educate community members about the latest research on health risks to teen smokers, and will be making a presentation to City Council at the upcoming meeting. The group’s presentation to the Council will be on the topic of its efforts to prevent youth smoking in the community, as well as introduce concepts that other local Valley communities have introduced to further protect youth from the harmful effects of smoking.

ITEM 8.C. Scott Chamberlain, Executive Director of the San Gabriel Valley Housing and Homeless Coordinating Council, will give a presentation on the efforts being made to address homelessness in the San Gabriel Valley. In addition, the Housing and Homeless Coordinating Council is requesting funding support in the amount of $2,500 to continue its initiative. Mr. Chamberlain has made requests to all the San Gabriel Valley cities in an effort to raise $35,000.

ITEM 12.D (Consent Calendar). Due to clean-up work related to the December 2011 wind storm still being undertaken by City staff, the need to continue declaration of the local emergency is in order.

ITEM 12.F (Consent Calendar). This Reimbursement and Operating Agreement will allow the Successor Agency to utilize City staff, facilities, and administrative resources, along with the associated payment of those costs. Staff is recommending approval of this Agreement in order to reimburse the City of Duarte for the Successor Agency costs.

ITEM 12.G (Consent Calendar). This is to award a contract in the amount of $37,000 to the lowest responsible bidder American Wrecking, Inc., for asbestos abatement and site clearance at 1415 Huntington Drive.

ITEM 12.H (Consent Calendar). This is to award a bid in the amount of $29,745 to the lowest responsible bidder Gentry Brothers, Inc., for Town Center ADA improvements. This contract includes removal of existing stairs and walkway path, and construction of an ADA-compliant ramp with landings to accommodate mobility for the elderly and disabled persons.

ITEM 16. City staff will provide a comprehensive presentation on Project Labor Agreements (PLA). The presentation, along with the Council packet, will include a discussion on what is a PLA, the pros and cons of PLAs, typical projects utilizing PLAs, local hire component of a PLA, and significant materials/articles representing varying points of view related to PLAs.

Respectfully submitted,

[Signature]

Darrell J. George
City Manager
MEMORANDUM

TO: Honorable Mayor and Members of the Duarte City Council
FROM: Dan Slater, City Attorney
DATE: April 5, 2012 for Council Meeting of April 10, 2012
RE: Project Labor Agreements

PURPOSE

The purpose of this Memorandum and the staff presentation concerning Project Labor Agreements on the April 10, 2012, City Council agenda is to provide the City Council with background information, relevant documents, and a discussion of advantages and disadvantages of, and key legal issues concerning, Project Labor Agreements for City public works projects. This agenda item responds to Councilmember Reyes’ request that the City Council receive a staff presentation and information on Project Labor Agreements.

Attached to this Memorandum are 14 tabbed documents which are referred to in the body of this Memorandum. These documents are also listed in the table at the end of this Memorandum.

RECOMMENDATION

Receive and file this Memorandum and attached informational materials.

DISCUSSION

Background

Project Labor Agreements ("PLAs"), also known as Project Stabilization Agreements, are pre-hire agreements between public entities that let contracts for public works projects and a consortium of labor unions represented by a labor organization, usually a labor council for the geographic area of the project. (See Tab 1: Project Labor Agreements: What You Need to Know by Lan Wang, Senior Deputy Attorney, City of Sacramento, Western City, League of California Cities, February 2012.) PLAs may also be negotiated between contractors on private construction projects and a labor council.

As defined in the report Building Better: A Look at Best Practices for the Design of Project Labor Agreements, dated August 11, 2010, by Dale Belman, Michigan State University School of Labor & Industrial Relations, and Matthew Bodah, University of Rhode Island Schmidt Labor Research Center, published by Economic Policy Institute (union-supported think tank in
Washington, D.C.) (see Tab 7), “Project labor agreements (PLAs) are a type of contract used in the construction industry to set the terms and conditions of employments on large projects of long duration and design complexity.” (Id. at p. 1.)

PLAs are “pre-hire” agreements because they mandate the process for hiring project labor that contractors on the project (union and non-union) must follow. PLAs do not exclude non-union contractors but the hiring of workers pursuant to a PLA, including by non-union contractors, is through the union hiring hall. Non-union workers hired by a contractor for a project governed by a PLA are required to pay dues to the union for representing the worker’s interests before the contractor employing the worker. PLAs also typically establish procedures for settling disputes and grievances to prevent strikes and lock-outs. The PLA is signed by all of the unions represented by the labor council, which normally includes all of the unions with any potential role in the work.

**Asserted Advantages of Project Labor Agreements**

Advocates of PLAs—typically labor unions and their coordinating associations known as labor councils and related lobbying groups—argue that PLAs are advantageous on large-scale projects to obtain assurance there will be labor peace without strikes, lock-outs, or other work stoppages and that any labor issues will be handled through an agreed-upon grievance process. A PLA, it is argued, thus provides more certainty on project construction costs by eliminating unexpected wage demands or disputes or strikes during the construction process that would cause an increase in project costs. (See Tab 1: Project Labor Agreements: What You Need to Know by Lan Wang, Western City, February 2012, p. 10; Tab 2: Project Labor Agreements: A Better Option for Cities, Plain and Simple, California Municipal Labor Project website 2/2/12); Tab 3: PLAs Helping Your City, California Municipal Labor Project website, 2/2/12.)

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1 As noted in the Western City article (Tab 1), courts are more likely to find a PLA does not violate state or local competitive bidding requirements if the nature and scope of the project is not routine but rather if the project “is of sufficient size, scope, complexity, or duration that a PLA is in fact needed.” (Project Labor Agreements: What You Need to Know by Lan Wang, Western City, League of California Cities, February 2012, at pp. 10-11.)

2 In California, the state level labor council is the State Building & Construction Trades Council of California and, at the local Los Angeles level, the Los Angeles/Orange Counties Building & Construction Trade Council.

3 The California Municipal Labor Project is an arm of the State Building & Construction Trades Council of California.
It is also argued that because PLAs establish pay rates, grievance procedures, and local hire goals up front, both union and non-union contractors will bid for a city’s public works projects on a level-playing field with the result that projects are delivered on time with ultimate lower cost than without a PLA. *(id; see also Tab 4: League of Cities Latino Caucus Voice Support for PLAs, State Building & Construction Trades Council of California (STCTB), November 2, 2011, STCTB website 2/2/12.)*

**Asserted Disadvantages of Project Labor Agreements**

Opponents of PLAs—typically construction industry organizations—assert that PLAs limit competition by effectively freezing out non-union contractors, cause increased construction costs, and require non-union contractors and workers to be bound by union rules. *(See Tab 1: Project Labor Agreements: What You Need to Know by Lan Wang, Western City, League of California Cities, February 2012, p. 10.)* A primary opponent of PLAs is the Associated Builders and Contractors, Inc., a national association representing 22,000 “merit-shop” contractors, with two chapters in the Los Angeles area (“ABC”). ABC asserts that only 15.6% of the private construction workforce in the United States belongs to a union. It argues PLAs discourage non-union contractors (what ABC calls “merit shop contractors”) from bidding and thus working on PLA projects, thereby driving up the cost of construction. ABC asserts non-union contractors are discouraged from bidding on public works projects operating under a PLA because PLAs require non-union contractors to obtain workers from union hiring halls, require non-union workers to pay union dues or fees, require apprentices to be obtained only from union programs, and require the non-union contractors to pay twice for their worker’s health benefits—one to any company plan and a second time to the union’s trust fund. *(See Tab 5: Why Is ABC Opposed to Union-Only PLAs?, Associated Builders and Contractors website, 2/2/12; Tab 6: Project Labor Agreement Basics: What Is a PLA,” www.TheTruthAboutPLAs.com website [sponsored by the Associated Builders and Contractors].)*

**PLAs and the Issue of Increased Construction Costs**

As noted above, proponents of PLAs argue that obtaining labor peace with no strike/no lock-out clauses and an agreed-upon grievance procedure actually reduces costs in the end. *(See Tab 2: Project Labor Agreements: A Better Option for Cities, Plain and Simple, California Municipal Labor Project website 2/2/12); Tab 3: PLAs Helping Your City, California Municipal Labor Project website, 2/2/12.)*

Also as noted above, opponents of PLAs argue that PLAs increase project costs from 10% to 20% by limiting bidders and requiring non-union contractors that do bid to comply with rules which are asserted to be anti-competitive. *(See Tab 5: Why Is ABC Opposed to Union-Only PLAs?, Associated Builders and Contractors website, 2/2/12; Tab 6: Project Labor Agreement...
Honorable Mayor and Members of the Duarte City Council
4/5/12 for Council Meeting of 4/10/12
Page 4

Basics: What Is a PLA,” www.TheTruthAboutPLAs.com website [sponsored by the Associated Builders and Contractors].)

Two recent studies illustrate the challenge in evaluating the claims. First is a 2010 study entitled “Building Better: A Look at Best Practices for the Design of Project Labor Agreements,” dated August 11, 2010, by Dale Belman of the Michigan State University School of Labor & Industrial Relations and Matthew Bodah of the University of Rhode Island Schmidt Labor Research Center, and published by the Economic Policy Institute, a union-supported think tank in Washington, D.C. (See Tab 7.)

The Belman study identifies best practices for developing effective PLAs and states that with a PLA project uncertainty can be controlled thereby allowing project efficiencies which leads to on-time project completion. Because PLAs ban work disruptions due to labor disputes and also contain set grievance procedures, often with a joint labor-management grievance process, delays are minimized. The study notes that large-scale projects with multiple crafts benefit from PLAs where work practices provisions unique to the particular project can be set, safety training and rules specific to the project can be established to reduce worker injury, and union jurisdictional disputes that can cause work stoppages are eliminated because all the unions representing crafts on the project are signatories to the PLA. The study concludes that by establishing a PLA that meets best practices standards, the PLA can effectively reduce the risk of increased project costs that otherwise could occur without a PLA.

The second study was published on July 25, 2011, by the National University System Institute for Policy Research. (See Tab 8: New Groundbreaking Study Reveals “Project Labor Agreements” (PLAs) Increase School Construction Costs by 13 to 15 Percent in California, Business Wire [www.businesswire.com], July 25, 2011; Tab 9: Measuring the Cost of Project Labor Agreements on School Construction in California, authored by Vince Vasquez, Dale Glaser, and W. Erik Bruvold, National University System Institute for Policy Research, July 25, 2011.)

The National University study sought to isolate the effect of PLAs on school construction cost in California. The report concluded that PLAs are associated with higher school construction costs: “We found that costs are 13 to 15 percent higher when school districts construct a school under a PLA. In inflation-adjusted dollars, we found that the presence of a PLA is associated with costs that are $28.90 to $32.49 per square foot higher.” (Id. at p. 1.)

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4 This study is highlighted on the pro-PLA website www.plaswork.com, a website of the Building Construction Trades Department, a unit of the AFL-CIO.
The National University study was questioned by Dr. Dale Belman of Michigan State University, one of the authors of the 2010 study referred to above. Dr. Belman argued that the effect of PLAs on school construction cannot be disentangled from other factors involved in constructing in urban areas. (Tab 8: New Groundbreaking Study Reveals ‘Project Labor Agreements’ (PLAs) Increase School Construction Costs by 13 to 15 Percent in California, Business Wire [www.businesswire.com], July 25, 2011, p. 1.) In response, the National University group, while noting the challenge to segregate the impact of PLAs from the high construction costs that occurs in Los Angeles and thus faced by the Los Angeles Unified School District (which has build more schools with PLAs than any other entity in the country), referred to National University’s use of inflation adjusted costs and statistical measures to isolate the PLA factor. (Id. at pp. 1-2.)

Prior to its publication, the National University report was subjected to an independent review by the Keston Institute for Public Finance and Infrastructure Policy of the University of Southern California. The USC review concluded:

Overall, we believe that the conclusion drawn in the report regarding the influence of PLAs on project costs are supported by the data set provided to us and the subsequent statistical analysis of that data. The research team appropriately utilized well-accepted statistical methods to arrive at this conclusion and it constitutes an important research finding. However, I would like to reiterate at this time that the results of our review should in no way be construed as the Keston Institute for Public Finance and Infrastructure Policy supporting any position relating to the use of Project Labor Agreements by any public or private entity. (Id. at Appendix A.)

The National University study has been the focus of discussion since its publication. As reported in the article “Project Labor Agreement Debate Is As Complex As It Is Conflicted,” from PublicCEO.com dated March 27, 2012 (see Tab 10), the National University study was criticized by the UCLA Labor Center and by State Superintendent of Public Instruction, Tom Torlakson. A focal point of criticism was that approximately 20% of the cost of the National University study was paid for by a grant from the Associated Builders and Contractors California Cooperation Committee (ABC-CCC). The partial funding for the study from ABC-CCC was expressly disclosed by National University in the foreword to the report. (Tab 9: Measuring the Cost of Project Labor Agreements on School Construction in California, National University System Institute for Policy Research, July 25, 2011, Foreword; see also, Tab 8: New Groundbreaking Study Reveals ‘Project Labor Agreements’ (PLAs) Increase School Construction Costs by 13 to 15 Percent in California, Business Wire [www.businesswire.com], July 25, 2011, p. 2.)
According to the PublicCEO article, Mr. Torlakson sent a letter to all school superintendents and charter school administrators in California criticizing the National University study and cited to a study by the UCLA Labor Center which expressed concerns about the National University study’s “focus, methodology, and the way in which the results are reported.” (Tab 10: Project Labor Agreement Debate Is As Complex As It Is Conflicted, PublicCEO.com, March 27, 2012, p. 2.) As reported in the PublicCEO article, both Mr. Torlakson and the UCLA Labor Center are linked to labor union support and Mr. Torlakson received a $5000 donation from the Building Trades Council less than three weeks after he sent his letter to the school superintendents and charter school administrators. The UCLA Labor Center has been the recipient of several grants, including one of $250,000, from the California Construction Industry Labor Management Cooperation, the principal officer of which is the president of the California Building Construction Trades Council. According to the PublicCEO article, the fact of this pro-union link was not disclosed in the UCLA Labor Center’s criticism of the National University study. (Ibid).

The PublicCEO article also noted the response to the debate by the Association of California School Administrators:

However, Torlakson’s chief constituency — the Superintendents, school board members, and school administrators — viewed the National University and UCLA reports rather differently. [¶] In a letter dated December 20, 2011, the ASCA writes that, “We have found the original study by the National University System Institute for Policy Research (NUSIPR) to be credible.” [¶] The claim that the National Study was inherently biased due to grant money received from ABC-CCC was also dismissed. “The research has been validated by an independent third party review of its methodology and the conclusions by USC’s Keston Institute for Public Finance and Infrastructure Policy,” the letter read. [¶] “In fact a subsequent NUSIPR response challenges the UCLA Labor Center’s critique, and the work by USC only solidifies the credibility of the original report. For example, it was suggested that the original study didn’t account for land acquisition costs, when in fact the opposite is true.”

(Id. at p. 2.)

The debate over the effect of PLAs on public works construction costs will no doubt continue.

The Issue of “Local Hire”

One of the asserted benefits of PLAs is that PLAs include “local hire” provisions. “The definition of ‘local’ may mean workers who reside in a certain number of zip codes near the project site, within the citywide zip codes, within county-wide zip codes, or in another type of
geographic boundary that is pre-determined" in the PLA. (Tab 3: PLAs Helping Your City, California Municipal Labor Project website, 2/2/12, p. 3.)

The “local hire” applies when a contractor (union and non-union) on a project subject to a PLA needs additional workers on the project (beyond the contractor’s regular employees identified as “core workers”). Some explanatory context is necessary. When a union contractor in a non-PLA situation requires workers in a particular craft who are not already employed by the contractor, the union contractor contacts the union hiring hall and the next person in that craft looking for work that is on the waiting list reports to the job site. When a PLA with a “local hire” provision applies, the “next person on the list” is not actually the next person on the list, but rather the next person on the list who is from the applicable “local” geographic area defined in the PLA. As a result, the “local” person can jump to the top of the list when more workers in the craft are needed. In that manner a PLA could enhance “local hiring.”

The contractor working under a PLA, however, can negotiate—and usually does negotiate—provisions in the PLA that allow the contractor to hire for the project those of the contractor’s regular stable of workers, referred to as “core workers,” rather than hiring workers through the union hiring hall (the core workers are still required to pay union dues the non-union employer must still pay into the union benefits trust in addition to paying benefits under any company plan). To be a “core worker” the worker must usually appear on the contractor’s payroll for a certain number of days prior to the award of the contract to which the PLA applies.

PLAs vary as to the “carve-out” for core workers. Some may limit the actual number of “core workers” while others may have both a numerical limit and require that for every core worker in a particular craft used on the project, a worker in that craft must also be hired through the union hiring hall, or various permutations thereof. An example is the PLA recently negotiated with the Los Angeles County Metropolitan Transportation Authority (“Metro”) (see Tab 12: Agenda Report from the Executive Management Committee of the Los Angeles County Metropolitan Transportation Authority, January 19, 2012 concerning “Project Labor Agreement/Construction Careers Policy, including Attachment B (Project Labor Agreement).) That PLA applies to Metro projects with a “life of project” budget of greater than $2,500,000.00 with the contract awarded by Metro. (Id. at p. 1.) The PLA defines “core worker” as an employee of the contractor whose name appeared on the contractor’s payroll for 50 of the 100 days prior to the award of the contract. (Id. at Attachment B, §7.1, p. 3.) The PLA, however, requires that for every one “core worker” selected for the project there is to be a person selected from the union hiring hall and limits the number of core workers to five (5) per craft. After five (5) core workers per craft are hired, all further hiring for that craft must be from the union hiring hall. (Id. at Attachment B, §7.1.2, p. 12.) Thus, with a “local hire” provision, when the contractor uses a core worker and then contacts the union hiring hall for the “next person on the list” in that craft, the union hiring
hall is supposed to move the next “local” (as defined in the PLA) person on that craft list to the top of the list.  

Local hire provisions in PLAs are not without legal issues. To avoid legal problems PLAs normally require “best efforts” to reach a certain percentage goal of workers on the job site who are “local” rather than mandating specific percentages. Local hiring requirements also can easily run afoul of the United States Constitution, Article 1, section 8 (the “commerce clause”) if any federal funds are involved in the project. (B. Gadbois, *The New Normal* Local Hire Programs, Gibbs, Giden, Locher, Turner & Senet, LLP, 2012.) Moreover, local hire mandates (as compared to best efforts goals) will be deemed to violate Article IV, section 2, of the United State Constitution (the “privileges and immunities clause”) unless (i) there is a compelling reason set forth that justifies discriminating against certain citizens when awarding local public contracts, and (ii) the compelling reason is narrowly tailored to meet the specific harm sought to be avoided by having such a mandated requirement. (Id.) Mandated local hire requirements may also violate constitutional protections on freedom of association and may also constitute an unfair labor practice under federal law. (Id.)

Therefore, to assure compliance with these legal standards, local hire provisions in PLAs generally are non-mandatory goals but instead set forth mandatory “best-efforts” requirements that set out procedures defining the actions that constitute “best efforts.” (Id.)

**Additional Legal Considerations**

It is settled law in California that PLAs for large-scale, complex projects of long-duration are permissible if there is substantial evidence presented the PLAs are necessary and thus do not violate competitive bidding laws.

In *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission* (1999) 21 Cal.4th 352, the California Supreme Court unanimously held, based on the substantial evidence presented by the proponents, that PLAs are not inconsistent with competitive bidding laws and the decision by the San Francisco Airport Commission to require a PLA was “in furtherance of legitimate governmental interests . . . these interests include those of preventing costly delays and assuring contractors access to skilled craft workers.” (Id. at p. 374.). Because the PLA did not exclude non-union contractors from bidding on the project, the PLA was not deemed anti-

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5 The PLA recently concluded with the City of Baldwin Park for its estimated $6,000,000.00 transit center parking structure contains a substantially similar provision with respect to core workers. (See Tab 13: Project Labor Agreement By and Between City of Baldwin Park and Los Angeles/Orange Counties Building and Construction Trades Council, §7.21(C), p. 10.)
competitive. (See Tab 1: Project Labor Agreements: What You Need to Know by Lan Wang, Western City, League of California Cities, February 2012, p. 12.)

But as the Western City article points out, the court identified that the substantial evidence supporting the need for the PLA included (1) the expected 10-year duration of the project, (2) the fact there were 77 separate construction contracts interrelated by time and effect, (3) project delays would cost $1,500,000.00 in project administration costs for every month of delay plus $13,000,000.00 in lost revenue to the public entity, and (4) an unquantifiable loss of tourist revenue to San Francisco would result from delays in project completion. Finally, the court stated that challenges to future PLAs must be reviewed on a case-by-case basis for consistency with competitive bidding laws. (Id. at p. 12.)

Are PLAs Appropriate for City of Duarte Capital Projects?

The legal standard set forth for determining whether substantial evidence exists to justify a particular PLA (or, in other words, whether the PLA violates competitive bidding laws), strongly suggests that a PLA for other than large projects of long duration and design complexity may not withstand legal scrutiny.

Therefore, PLAs are generally defined, even by pro-PLA advocates, as appropriate for substantial, complex projects:

The value proposition of a Project Labor Agreement (PLA) is simple: PLAs streamline complex projects that require the participation of numerous prime contractors, subcontractors, and skilled workers to ensure on-time completion and high quality workmanship. PLAs are the method of choice for complex private sector projects, including for firms like Honda, Toyota, and others, where cost and quality are the over-riding issues. ... Building a school, courthouse, or other major construction project requires the participation of dozens of different prime contractors and subcontractors.

(Tab 2: Project Labor Agreements: A Better Option for Cities, Plain and Simple, California Municipal Labor Project website 2/2/12).

Examples cited by the California Municipal Labor Project (arm of the State Building & Construction Trades Council of California) of projects where PLAs were used are complex projects:

- Construction by MWD of the Eastside Reservoir Project (Diamond Valley Lake) (1995)
- San Joaquin County Administration Building (2007)

- Hunters Point Naval Shipyard redevelopment (2010)

(See Tab 3: PLAs Helping Your City, California Municipal Labor Project website, 2/2/12.)

There are two recent, local examples of PLAs. The first one was entered into with Metro, as referred to above, which applies to Metro contracts for improvements with a life-of-project budget of greater than $2,500,000.00. (See Tab 12: Agenda Report from the Executive Management Committee of the Los Angeles County Metropolitan Transportation Authority (Metro), January 19, 2012 concerning “Project Labor Agreement/Construction Careers Policy, including Attachment 3 (Project Labor Agreement).”)

The second local example is the PLA entered into with the City of Baldwin Park for its estimated $6,000,000.00 transit station parking structure. (See Tab 13: Project Labor Agreement By and Between City of Baldwin Park and Los Angeles/Orange Counties Building and Construction Trades Council.)

By comparison, the City of Duarte capital projects (routine street slurry seal and other road projects, sidewalk work, building repair projects, concrete repairs, traffic signal installation, etc.) fall far short of these thresholds both in dollar amount and in scope, complexity, and duration, as well as in comparison to the types of complex projects cited above. (See Tab 14: City of Duarte’s Capital Projects List, updated February 8, 2012).

The City’s capital projects list shows the largest projects as: (i) the completed Huntington Drive Overlay at $1.488 million, and (ii) the recently awarded contract for the Slurry Seal and Cape Seal (Area 1) in the contract amount of $1.15 million. As is evident from the list, even these significant City capital projects by Duarte standards are for considerably smaller dollar amounts the projects are not complex in design or scope nor are of extended duration.

A legal analysis would need to be undertaken to determine whether a proposed PLA for any specific project on the City’s capital projects list (Tab 14) meets the legal standard referred to above. Given the type and scope and short duration of the City capital projects, however, it may be a significant challenge to generate the required substantial evidence to justify the use of a PLA for any of the listed projects and thereby avoid a claim the use of a PLA violates competitive bidding laws.
Honorable Mayor and Members of the 
Duarte City Council 
4/5/12 for Council Meeting of 4/10/12 
Page 11

**Prevailing Wages**

Regardless of whether the City might require a PLA for all public works contracts awarded by the City over a certain threshold, or only for one or more specifically identified projects, or not at all, the City is still mandated to require contractors to which it awards public works contracts to pay “prevailing wages” as required by Labor Code Section 1771 et seq. (if the work is more than $1000), unless an exemption or exception applies under Labor Code Section 1720.⁶

Prevailing wages are generally associated with higher wages rates for crafts than might be found in the open market for private construction and are determined by the California Department of Industrial Relations (“DIR”). As explained on the DIR website (www.dir.ca.gov):

Q. What is the methodology for determining the prevailing wage rate?

A. The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.

Q. How does the prevailing wage affect me?

A. California’s prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. All bidders are required to use the same wage rates when bidding on a public works project. California law requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a public works project.

Thus, for City public works contracts over $1000, the requirement for all bidders to bid with wage rates not less than the required prevailing wage rates, provides a similar “level playing field” as a PLA with respect to wage rates.

**Apprenticeship Requirements for Public Works Projects**

A further reason the requirement for payment of prevailing wages is relevant in this discussion is that Labor Code Section 1777.5 requires all public works contractors and subcontractors on public works jobs of $30,000 or more (even when there is no PLA) to notify applicable

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⁶ The City of Duarte is a general law city and not a charter city. Therefore the “charter city exemption” to the payment of prevailing wages for “city public works projects that are strictly a municipal affair” does not apply.
apprenticeship programs that can supply apprentices to the job site and the contractors are required to employ apprentices (1 hour of apprentice work for every 5 hours of journeyman work, pursuant to Section 230.1 of Title 8 of the California Code of Regulations) unless an exemption applies. Contractors are also required to pay into an apprenticeship training fund. (See Tab 11: California Department of Industrial Relations—Apprentices on public works projects summary of requirements, www.dir.ca.gov, April 1, 2012; Labor Code §1775.5; 8 C.C.R. §230.1.)

Every project on the City’s capital projects list (Tab 14) exceeds the $30,000 threshold and thus the City is effecting job training/apprenticeship through its public works contracts.

ATTACHED DOCUMENTS

The following materials, which are referred to throughout this Memorandum, are attached to this Memorandum for the City Council’s review:

<table>
<thead>
<tr>
<th>TAB</th>
<th>TITLE</th>
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<tbody>
<tr>
<td>1</td>
<td>Project Labor Agreements: What You Need To Know, by Lan Wang, Senior Deputy City Attorney for the City of Sacramento, Western City magazine, League of California Cities, February 2012.</td>
</tr>
<tr>
<td>3</td>
<td>PLAs Helping Your City, California Municipal Labor Project website (printed 2/2/12).</td>
</tr>
<tr>
<td>4</td>
<td>League of Cities Latino Caucus Voices Support for PLAs, State Building &amp; Construction Trades Council of California website press release, 2/2/11 (printed 2/2/12).</td>
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<tr>
<td>5</td>
<td>Why Is ABC Opposed to Union-Only PLAs?, Associated Builders and Contractors website (printed 2/2/12).</td>
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<td>8</td>
<td>New Groundbreaking Study Reveals &quot;Project Labor Agreements&quot; (PLAs) Increase School Construction Costs by 13 to 15 Percent in California, Business Wire [<a href="http://www.businesswire.com">www.businesswire.com</a>], July 25, 2011.</td>
</tr>
<tr>
<td>10</td>
<td>Project Labor Agreement Debate Is As Complex As It Is Conflicted, PublicCEO.com, March 27, 2012.</td>
</tr>
<tr>
<td>11</td>
<td>California Department of Industrial Relations—Apprentices on public works projects summary of requirements, <a href="http://www.dir.ca.gov">www.dir.ca.gov</a>, April 1, 2012, and Labor Code Section 1775.5 et seq., and Section 230 of Title 2 of California Code of Regulations.</td>
</tr>
<tr>
<td>12</td>
<td>Agenda Report from the Executive Management Committee of the Los Angeles County Metropolitan Transportation Authority (Metro), dated January 19, 2012 concerning “Project Labor Agreement/Construction Careers Policy, including Attachment A (comparison of adopted principles and agreed-upon main points of the PLA) and Attachment B (Project Labor Agreement) covering all Metro construction projects awarded by LACMTA with a “life-of-project” budget of greater than $2,500,000.00.</td>
</tr>
<tr>
<td>13</td>
<td>Project Labor Agreement By and Between City of Baldwin Park and Los Angeles/Orange Counties Building and Construction Trades Council, November, 2012, for estimated $6,000,000 transit station parking structure.</td>
</tr>
<tr>
<td>14</td>
<td>City of Duarte’s Capital Projects List, updated February 8, 2012.</td>
</tr>
</tbody>
</table>

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Item 16. BUSINESS ITEM
Staff presentation concerning Project labor Agreements and discussion by City Council of presentation materials (Receive and File)

Please refer to separate notebook for attachments. Notebook is available at Duarte City Hall, Duarte Library, and at the back of the Council Chambers during the April 10, 2012, City Council Meeting.