



September 9, 2013

To: Joshua Wood, Executive Director, [Region Builders](#)  
James Battles, Volunteer Leader, [Crown Downtown](#)

CC: Eric Christen, Executive Director, [Coalition for Fair Employment in Construction](#)  
Richard Markuson, representative of [Western Electrical Contractors Association \(WECA\)](#), [Plumbing-Heating-Cooling Contractors of California \(PHCC\)](#), and [Air Conditioning Trade Association \(ACTA\)](#)

From: Kevin Dayton, President & CEO, [Labor Issues Solutions, LLC](#)

Re: Eight Steps to Possibly Alleviate Taxpayer and Contractor Outrage about the Backroom Deal for a Project Labor Agreement on Construction of the Sacramento Kings Arena

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Josh and James:

Below is a list of eight reasonable, constructive steps that may alleviate the outrage of many Sacramento-area building companies and professional construction service companies to the backroom deal to give unions control of construction for the new Sacramento Kings arena. These steps may also ameliorate the concerns of taxpayers.

### **Objectives**

These eight steps will allow progress toward the following five objectives concerning Sacramento Kings arena contracts for building and professional construction services:

1. Compensate the public for increased costs that will likely result when the Project Labor Agreement discourages subcontractor participation on contracts funded by the People.
2. Offer job opportunities for contracts funded by the People to the largest possible pool of local qualified workers.
3. Maximize the number of capable and responsible bidders for contracts funded by the People.
4. Obtain the best quality work at the best price for contracts funded by the People.
5. Increase openness and transparency to enable the People to evaluate the policies and restrictions on contracts funded by the People.

### **Whose Proposal Is This?**

I initiated and wrote this memo without input, review, or approval by other individuals or representatives of any organization. However, as someone who has worked on construction labor issues in California for more than 16 years, I have an idea of how arena supporters can alleviate the legitimate grievances, objections, and concerns of many area companies and their employees.

As someone who is part of what Sacramento Mayor Kevin Johnson derides as “people on the fringes,” I obviously lack any clout to interact with the wealthy investors, connected businessmen, and powerful politicians who support the arena. In contrast, you are respected leaders of two influential organizations (Region Builders and Crown Downtown) strongly backing the arena. I encourage you to act as intermediaries and forward this memo to the key decision makers for the Kings arena, both in Sacramento and elsewhere.

I have emailed a copy of this memo to representatives of the Coalition for Fair Employment in Construction and three subcontractor trade associations based in Sacramento. Perhaps their membership will consider whether or not fulfillment of these eight steps would adequately address their concerns about the Project Labor Agreement as it now stands.

Josh, please consider forwarding this to construction entities belonging to Region Builders.

### **Background**

Announced by Sacramento Mayor Kevin Johnson and union officials on September 4, 2013 at the Downtown Plaza Piazza, the deal at issue will require construction companies to sign a Project Labor Agreement (aka Community Workforce and Training Agreement) with trade unions as a condition of working on the Entertainment and Sports Center in downtown Sacramento. Parties to the Project Labor Agreement have not released the contract to the public, nor has the city council voted to ratify it. It was developed behind the scenes without public scrutiny and without input from most entities in the regional construction industry.

There is even speculation that the Project Labor Agreement is still in negotiations and has not been signed by representatives of construction trade unions. If that is truly the case, there is still opportunity to mollify the anger of construction companies in the Sacramento region.

### **Defensive Purpose**

If there is a campaign funded by Sacramento-area contractors to compel a public vote on the arena, I intend to use this memo to undermine accusations that Sacramento-area contractors and their representatives did not propose solutions, offer a plan, or make a credible attempt to seek a reasonable, constructive compromise that would allow the arena plan to advance without a public vote hindering or stopping it.

## **The Eight Steps, for Three Groups**

### **I. For the Taxpayers**

The National University System Institute for Policy Research published a study in July 2011 entitled [Measuring the Cost of Project Labor Agreements on School Construction in California](#). This is the most comprehensive study produced anywhere to date on the relationship between Project Labor Agreement mandates and construction costs. According to this study, “our research shows that PLAs are associated with higher 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.”

Obviously an arena is not a school construction project, although recent educational projects such as River City High School in West Sacramento’s Washington Unified School District have cost more than \$100 million. (Somehow [Turner Construction was able to build that award-winning school](#) without a Project Labor Agreement.) Nevertheless, it’s reasonable to expect that the Project Labor Agreement on the arena will increase costs to an unknown extent.

Construction trade unions are essentially getting a political payoff in exchange for not blocking the arena through comments and litigation during the environmental review process under the California Environmental Quality Act (CEQA). Their only sacrifice so far in exchange for getting this enviable monopoly on construction is an unenforceable commitment not to go on strike while the arena is built. The People are not benefiting from this backroom union deal.

**Step 1: Trust funds affiliated with construction trade unions (such as pension funds, labor-management cooperation committees, etc.) must reduce the public funding obligation for this project by 10 percent by investing \$25.8 million in the arena project.**

This union investment would reduce the public funding obligation (classified as Capital Contribution - City/Other in the [Sacramento Entertainment and Sports Center Term Sheet dated March 23, 2013](#)) from **\$258 million to \$232.2 million**.

### **II. For Preservation of Principles of Good Government**

Parties to the Project Labor Agreement have not released the contract to the public, nor has the Sacramento City Council voted to authorize it or ratify it. It was developed behind the scenes without public scrutiny. The public cannot verify the truth or accuracy of any of the claims made at the press conference, in the press release associated with the press conference, or by the news media. People just have to believe what they are told about secret deals endorsed by Mayor Kevin Johnson and California State Senate President pro Tem Darrell Steinberg.

The only public participation in the development and implementation of this backroom union deal was the public resources used to plan and execute the sham press conference announcing the Project Labor Agreement on September 4, 2013 at the Downtown Plaza Piazza. This is where Mayor Kevin Johnson labeled certain members of the public to be “people on the fringes” and

where Mayor Kevin Johnson's press secretary declared the public event to be a "private press conference." It was a prime example of why informed Americans on the Left and Right are railing against "crony capitalism" and the subtle suppression of constitutional rights and the checks and balances that allow the Government to be accountable to the people.

As long as the Government compels the People to pay \$1 (let alone \$258 million) for the arena, the People need to see and comment on all decisions and deals, and the representatives of the People need to vote on these decisions and deals. The People – even people on the fringes – have the right of access to information concerning the conduct of public business. Here's how this can be achieved:

**Step 2: The complete Project Labor Agreement (aka Community Workforce and Training Agreement) with addendums shall be released to the public immediately, that is, by 5:00 p.m. on Wednesday, September 11, 2013.**

**Step 3: The Sacramento City Council shall vote on ratifying the Project Labor Agreement (aka Community Workforce and Training Agreement) after a public hearing at a city council meeting before October 1, 2013. To ensure that the People and the representatives of the People are adequately informed about the issue, the public hearing shall assign 10 minutes each for supporters and opponents of the proposal to make formal presentations.**

### **III. For Fair and Open Competition and Freedom of Choice for Workers**

Parties to the Project Labor Agreement can negotiate the deal to mitigate the costs and risks of specific provisions that tend to discourage construction companies from bidding and participation. Here are five provisions to incorporate directly into the terms and conditions of the Project Labor Agreement (aka Community Workforce and Training Agreement).

**Step 4: The Project Labor Agreement shall include a provision that allows a contractor and its employees to maintain their own existing fringe benefit programs if those programs are equivalent or better than the union programs, instead of forcing that contractor to make employer payments to union-affiliated trust funds and depriving employees of benefits from such contributions made on their behalf.**

Here is sample text to fulfill this step:

(a) Contractors shall pay contributions to established employee benefit funds in the amounts designated in the appropriate Schedule A; and make all employee authorized deductions in the amounts designated in the appropriate Schedule A; provided, however, that the Contractor and Unions agree that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, and training funds) shall be included in this requirement and required to be paid by the Contractor on the Project; and provided further, however, that such contributions shall not exceed contribution amounts set in the applicable prevailing wage determination.

(b) Unless otherwise required by law, Contractors who have fringe benefits for their core

workforce equal to or better than those designated in the Schedule A do not have to pay the fringe benefit contribution designated in the Schedule A on the core work force and may utilize their own fringe benefits. The Project Labor Coordinator will be responsible for determining whether the benefits are equal to or better than those designated in the Schedule A's. Contractors must submit their fringe benefit packages to the Project Labor Coordinator for evaluation prior to bidding. Contractors may only take credit against the prevailing wage in accordance with the Prevailing Wage Statute and the difference between the hourly cost, if any, of the fringe benefit provided and the hourly cost of the applicable fringe benefit portion of the wage determination must be paid to the worker as wages. Benefits designated in the Schedule A will be paid on all employees dispatched by the Union.

(c) Where applicable, the Contractor adopts and agrees to be bound by the written terms of the applicable, legally established, trust agreement(s) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds for its employees. The Contractor authorizes the Parties to such trust funds to appoint trustees and successors' trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.

(d) Each Contractor and Subcontractor is required to certify to the Project Labor Coordinator that it has paid all benefit contributions due and owing to the appropriate Trust(s) or fringe benefit programs prior to the receipt of its final payment and/or retention. Further, upon timely notification by a Union to the Project Labor Coordinator, the Project Labor Coordinator shall work with any Contractor or Subcontractor who is delinquent in payments to assure that proper benefit contributions are made, to the extent of requesting the District or the prime Contractor to withhold payments otherwise due such Contractor, until such contributions have been made or otherwise guaranteed.

Next, to avoid giving union-affiliated apprenticeship programs a monopoly on training opportunities provided by arena construction, the Project Labor Agreement needs to include a provision that allows ALL qualified apprentices to get on-the-job training through this project.

**Step 5: The Project Labor Agreement shall allow the contractor to comply with [Title 8, Section 230.1 of the California Code of Regulations](#) and request apprentices from any program authorized and approved by the Director of the California Division of Apprenticeship Standards to provide on-the-job training to construction trade workers in Sacramento County.**

Here is sample text to fulfill this step:

When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected.

Or

Each contractor or subcontractor performing work on the project shall, for each apprenticeable craft that it employs, employ on its regular workforce the ratio of apprentices as required by Labor Code Section 1777.5 who are enrolled and participating in a bona fide apprenticeship program. Prior to commencing work on the Project, each contractor or subcontractor must file with the District a certification of its compliance with this requirement and disclose the identity of the bona fide apprenticeship program from which it will obtain apprentices for work on this project.

Or

Any contractor performing work covered by this Agreement shall have the right to employ apprentices enrolled in any State-approved apprenticeship program, provided that the contractor has employed apprentices enrolled in the same program for a period of at least six months prior to either (1) this Agreement taking effect or (2) the contractor's commencement of work covered by this Agreement. No apprentice may be required to pay membership dues or fees to any organization where such requirement did not pre-exist performance of work by such apprentice under this Agreement.

Or

Notwithstanding the provisions of this agreement or any labor agreement incorporated therein, any contractor performing work covered by this Agreement shall have the right to employ apprentices enrolled in any State-approved apprenticeship program for which the contractor is approved to train prior to the contractor's commencement of work covered by this Agreement. No apprentice may be required to pay membership dues or fees to any organization where such apprentice has been dispatched to such a contractor under this agreement.

Next, there needs to be a degree of public accountability for the flood of money that unions will obtain through mandatory dues and initiation fees under this Project Labor Agreement.

**Step 6: The Project Labor Agreement shall allow for transparency concerning mandatory payment of union dues and fees by trade workers by including an appendix that indicates the exact cash amount of dues and fees, such as initiation fees, that would be requested of any journeyman or apprentice for any trade that is working under the terms and the conditions of the Project Labor Agreement.**

The next step protects the paychecks and earnings of workers who have freely chosen to work for a construction company whose employees are not represented by a union:

**Step 7: The Project Labor Agreement shall allow "core workforce" employees of contractors not signatory to a union Master Labor Agreement to choose whether or not to pay union dues and fees.**

Here is sample text:

The Contractor agrees to deduct initiation fees, union dues or representation fees from the pay of any employee who executes a voluntary authorization for such deductions.

The next step addresses employer withdrawal liability for multi-employer pension plans and protects the assets of companies that sign the Project Labor Agreement but are not bound to a Master Labor Agreement with unions. The Employment Retirement Income Security Act (ERISA) allows union multi-employer construction industry pension plans to make assessments against employers after they withdraw from those plans and no longer have an obligation to contribute. Employers who withdraw from a multi-employer pension plan, for example after ceasing work on a project covered by a Project Labor Agreement, may be required after the project ends to pay the plan an additional amount to cover part of the plan's alleged "unfunded vested benefits." Withdrawal liability could be incurred if the employer is no longer obligated to contribute to a plan, but continues the same type of work in the same area as was covered by the union that was signatory to the Project Labor Agreement.

**Step 8: The Project Labor Agreement should include language exempting the contractor from employer withdrawal liability if the employer made all of the required contributions to the union pension fund during the period it was covered under the agreement.**

Here is sample language that has been included in some labor agreements:

To the extent that such are not contrary to the terms of this Agreement, the Contractor agrees to accept the terms of the Trust Agreement of the union's fringe benefit funds as amended establishing the Trust Agreements and Funds of the said Union. The Contractor designates as its representatives and trustees of said Funds the trustees now serving or who may in the future serve as vacancies occur. In the event that any pension fund designated for contributions by the Union assesses withdrawal liability against the Contractor as a result of such contributions, the Union agrees to defend with competent counsel, indemnify and hold harmless the Contractor from such assessment of withdrawal liability and from any and all attorneys' fees and costs related to or arising out of such agreement.

Or, the following language could be included:

In order to protect the Contractor from incurring any withdrawal liability based on the contributions made to such pension plans as a result of executing this Agreement, the parties stipulate that it is not intended that such Contractor shall have any withdrawal liability when such Contractor ceases to make contributions to such pension plans pursuant to this Agreement. Furthermore, the signatory Unions therefore agree not to collect or make any attempt to collect such a withdrawal liability and to indemnify and hold harmless any Contractor against any withdrawal liability resulting from a Contractor contributing to said pension funds as a result of executing this Agreement.

**I believe adoption of these eight steps will ameliorate the legitimate grievances, objections, and concerns of many Sacramento area construction companies and their employees.**

In conclusion, here is a photo I took on June 30, 2013 at the Turner Construction job site of Levi's Stadium in Santa Clara. Contractors must sign a Project Labor Agreement to work on the stadium. I expect similar signs will be at the Turner Construction job site of the Sacramento Kings arena next year, if it ever gets built.

