

PUBLIC WORKS DEPARTMENT

15. Subject: Options For Potential Use Of Project Labor Agreements On City Public Works Capital Improvement Projects (530.01)

Recommendation: That Council:

- A. Receive a report relating to the potential use of Project Labor Agreements on City Public Works Capital Improvement Projects; and
- B. Choose one of the following options for Council action:
 - 1. Adopt by motion the Ordinance Committee's recommendation to maintain the status quo without Project Labor Agreements, but direct staff to further investigate other options for enhanced local hire opportunities;
 - 2. Determine the appropriate dollar threshold for Public Works projects subject to a potential requirement for a Project Labor Agreement and introduce and subsequently adopt, by reading of title only, Ordinance option A, an Ordinance of the Council of the City of Santa Barbara Amending Chapter 4.52 of the Santa Barbara Municipal Code by Adding Section 4.52.200 to Authorize the Use Of Project Labor Agreements on City Public Works Capital Improvement Projects as Determined by the City Council; or
 - 3. Determine the appropriate dollar threshold for Public Works projects subject to a requirement for a Project Labor Agreement and introduce and subsequently adopt, by reading of title only, Ordinance option B, an Ordinance of the Council of the City of Santa Barbara Amending Chapter 4.52 of the Santa Barbara Municipal Code by Adding Section 4.52.200 to Authorize the Use of Project Labor Agreements on City Public Works Projects Having an Estimated Value of \$ Million and Subject to Section 519 of the City Charter.

QUASI-JUDICIAL HEARING RULES APPLY TO THE FOLLOWING AGENDA ITEM

PUBLIC HEARINGS

16. Subject: Appeal Of The Planning Commission's Approval Of A Two-Lot Subdivision At 104 Jorgensen Lane (640.07)

Recommendation: That Council:

- A. Consider the appeal of Cody Cammbell and David Unger of the Planning Commission's approval of a two-lot subdivision; and
- B. Direct staff to return to City Council with decision and findings reflecting the outcome of the appeal.



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: December 4, 2018

TO: Mayor and Councilmembers

FROM: Public Works Department
City Attorney's Office

SUBJECT: Options For Potential Use Of Project Labor Agreements On City Public Works Capital Improvement Projects

RECOMMENDATION: That Council:

- A. Receive a report relating to the potential use of Project Labor Agreements on City Public Works Capital Improvement Projects; and
- B. Choose one of the following options for Council action:
 1. Adopt by motion the Ordinance Committee's recommendation to maintain the status quo without Project Labor Agreements, but direct staff to further investigate other options for enhanced local hire opportunities;
 2. Determine the appropriate dollar threshold for Public Works projects subject to a potential requirement for a Project Labor Agreement and introduce and subsequently adopt, by reading of title only, Ordinance option A, an Ordinance of the Council of the City of Santa Barbara Amending Chapter 4.52 of the Santa Barbara Municipal Code by Adding Section 4.52.200 to Authorize the Use Of Project Labor Agreements on City Public Works Capital Improvement Projects as Determined by the City Council; or
 3. Determine the appropriate dollar threshold for Public Works projects subject to a requirement for a Project Labor Agreement and introduce and subsequently adopt, by reading of title only, Ordinance option B, an Ordinance of the Council of the City of Santa Barbara Amending Chapter 4.52 of the Santa Barbara Municipal Code by Adding Section 4.52.200 to Authorize the Use of Project Labor Agreements on City Public Works Projects Having an Estimated Value of \$ _____ Million and Subject to Section 519 of the City Charter.

BACKGROUND:

On September 25, 2018, City Council considered the request from Councilmembers Hart and Friedman regarding a Local Community Workforce Agreement Policy for City of Santa Barbara capital construction projects. The Council expressed support for the request and referred the matter to the Ordinance Committee for further consideration. The Council also directed staff to expedite the staff work necessary to bring the matter to the Ordinance Committee. Staff presented this item to the Ordinance Committee on November 6, 2018 and is now returning to Council with options for the Council's consideration and action on this item.

A local community workforce agreement is a different name for a pre-hire collective bargaining agreement more commonly referred to as a Project Labor Agreement (PLA). The purpose of this report is to review typical provisions in PLAs, evaluate the potential impacts of key PLA provisions on contracting for Public Works construction and improvement projects (i.e., those subject to section 519 of the City's Charter), and provide policy options for the Committee's consideration. The intent of the report is to evaluate the potential impacts of a PLA policy from a practical perspective; it is not intended to be an exhaustive review of every provision included in PLAs or to provide an opinion on the merit of a PLA policy.

This report does not seek to resolve the merits of PLAs or make a recommendation to Council. There are competing positions as to the value, utility and cost impacts of PLAs and this report does not propose to resolve those conflicting positions. This report attempts to provide the Council with objective, preliminary information to facilitate a public discussion of the potential benefits and impacts related to the use of PLAs by the City.

PLAs are pre-hire collective bargaining agreements that establish standard terms and conditions applicable to a specific construction project or category of projects. Typically, public agencies that have used PLAs have done so for a large, complex project, although some agencies have PLAs that cover classes of projects. PLAs are typically negotiated between the project owner and the local building trade unions council and/or individual construction trade unions, although PLAs can be directly negotiated between contractors and unions. Public agencies may also choose to engage local stakeholders such as regional contractor's associations. The agreements are negotiated prior to advertisement for bids and a requirement to be bound by the PLA becomes part of the bid submission, procurement documents, and contract. The contractor and all subcontractors of any tier must sign onto the PLA before performing any covered work.

PLAs generally include provisions for: 1) uniform work conditions; 2) hiring procedures, including allowances for a contractor's "core" workers; 3) wages and benefits; 4) management rights; 5) expedited labor dispute resolution procedures; 6) no-strike commitments and procedures to prevent work stoppages; and 7) agreement to adhere to existing Master Labor Agreements (MLAs) for the trades subject to the PLA. In addition, PLAs often include provisions to promote participation in covered projects from targeted

categories of workers, including residents, apprentices, historically underutilized residents and businesses, at-risk persons, veterans, minority-owned businesses and disadvantaged business enterprises. At the September 25, 2018 Council meeting, members of the public and the Council expressed interest in the potential of the PLA structure for advancing local hire and local economic development objectives.

Councilmember Hart provided a binder given to him by The Local Plumbers, Pipefitters and Refrigeration Fitters Local Union 403 containing materials in support of PLAs for Public Works projects. The binder has references to multiple studies both supporting and opposing use of PLAs. These materials are on file with the City Clerk in the City Council Reading File.

DISCUSSION

The following sections detail typical provisions included in PLAs.

Work Conditions

Uniform Work Conditions

PLAs commonly include provisions to establish uniform work conditions across each of the construction trades providing craft labor on the covered project. Conditions typically covered include work hours, holidays, meal periods, break periods, overtime and double-time pay shifts, and shift differential pay. For contractors that are signatory to the unions (union contractors), the MLA with each individual trade sets forth standard work conditions. The MLA for each trade can include slightly different provisions related to work conditions. A PLA can serve to standardize these conditions across all trades and simplify the management process.

Many of the work conditions typically covered in PLAs are also addressed in the California Labor Code including shift lengths, meal and break periods, and overtime/double-time pay. In addition, the construction contract sets forth allowable work hours and holidays observed by the project owner. In the absence of a PLA, California Labor Code and the construction contract will establish the work conditions for the project in question.

Standard work conditions provisions in a PLA are not anticipated to have a significant impact on City Public Works projects, as many of the provisions typically included are addressed in the California Labor Code and the City's standard construction contract documents. Although it is a charter city, Santa Barbara has required payment of prevailing wages and compliance with Labor Code Provisions on its Public Works projects for decades. Some agencies have used PLAs because of large projects that may require special considerations for around-the-clock construction. However, the City's projects generally do not require these types of schedule considerations.

Hiring Procedures

Union Recognition

PLAs designate the Trade Unions and the Local or Regional Building Trades Council as the exclusive source of craft labor on covered projects and the exclusive bargaining representative for craft workers. In addition, employers must recognize the jurisdiction and scope of work specific to each trade as established in each MLA. Terms requiring compliance with existing MLAs are typically incorporated into the PLA.

Referral Systems

PLAs require that established union referral systems be used exclusively to obtain craft labor on covered projects. If a union referral system is unable to refer workers within a defined period (typically 48 hours), contractors are often allowed to hire employees from other sources. PLAs do not discriminate between union and non-union workers and referrals cannot be based on a preference for union members over non-union members; however, non-union workers must register with the union hiring hall to become eligible for assignment to a covered project

Core Employees

PLAs typically limit the number of employees that non-union contractors can bring to a project without utilizing the union hiring hall system. These employees are termed “core” employees, and typically include key positions such as foremen. Most agreements exclude key management employees above the general foreman level from the requirements of the agreement. Employees must meet specific requirements to be considered a core employee, including being recently active on the contractor’s payroll (i.e., for 60 of the 100 working days immediately prior to the award of the contract), possessing licenses that are required for the performance of the project work, and having the ability to safely perform the duties and functions of the trade for which they are providing craft labor.

Core employee provisions vary. In some PLAs, non-union contractors are able to hire core employees first. In others, non-union contractors can hire core employees on a one-to-one ratio with employees referred by the union hiring hall up to a maximum number of core employees (typical limitations of five or six core employees appear common but would be a term subject to negotiation). For example, the contractor can hire a member of its core workforce first, followed by an employee referred from the union hiring hall, then another member of its core workforce. This process continues until the maximum number of core employees specified in the PLA is reached. Core employee provisions do not apply to union contractors.

Targeted Worker Participation

Many PLAs include provisions to increase participation in covered projects by targeted categories workers. Targeted categories typically include residents, apprentices, at-risk persons (e.g., economically disadvantaged individuals as defined in the agreement or those with prior low-level criminal records that can create barriers to employment),

veterans, and disadvantaged business enterprises. PLAs establish goals for the percentage of total craft hours on the covered project to be performed by the targeted workers. Construction contractors can be required to retain the services of a jobs coordinator, who works with the contractor, unions, local workforce development agencies, and apprenticeship programs to help the contractor meet the participation goals for each demographic set forth in the agreement.

Alternative Local Hire Approaches

If the Council's primary objective in pursuing a PLA is advancing local hire and economic development objectives, there are other alternatives that can be considered and implemented via contractual clauses in the bid documents. An example of such provisions can be found in the Alameda County General Services Agency contract for the Cherryland Community Center, which included an "Enhanced Construction Outreach Program" that set goals for participation and required the contractor to demonstrate enhanced efforts to engage small and local business enterprises and other historically disadvantaged groups, to perform project work. A copy of the document is available in the City Council Reading File. A paper published by the League of California Cities has also been included in the City Council Reading File and provides a detailed overview of the legal parameters and practical landscape around local hire and purchase provisions, highlighting what is and is not legally permissible regarding local hire preferences outside the PLA context. An effective program would need to incorporate compliance documentation and monitoring provisions, which could also be incorporated into the bid documents, so that bidders could factor any costs associated with such provisions into their bid packages and progress toward objectives could be tracked. The development of the contractual provisions would be done by project staff and consultants; it would not require negotiations with third parties or third-party compliance monitoring.

Union and Non-Union Contractor Comparison

For union contractors and on PLA-covered projects, MLAs clearly define the scope of work that can be performed by each individual trade, and workers are not allowed to work outside of their classification/jurisdiction. Non-union contractors on projects not covered by a PLA can allow their employees to perform a wider range of tasks. For example, a non-union employee can perform functions of multiple trades (e.g., laborer, operating engineer, cement mason), provided they are paid the appropriate prevailing wage rate for each classification while performing the work.

Hiring procedures included in PLAs limit the ability of non-union contractors to utilize their core workforce on covered projects. PLAs establish the maximum number of core employees that a non-union contractor can employ on a project and require non-union contractors to use union referral systems exclusively for obtaining craft labor. While non-union workers can register with the union and become eligible to work on the project, they are subject to the hiring hall rules of each specific trade. Union hiring halls maintain out-of-work lists, and applicants are typically referred to projects based on the order in which they registered with the hiring hall (i.e., first come, first serve). It is important to note that the hiring procedures and hiring hall rules are specific to each local union.

Hiring procedures in PLAs do not significantly impact union signatory contractors. Signatory contractors routinely use union referral systems to obtain craft labor and can request specific employees by name, rather than requesting workers from the out-of-work list for each trade. In addition, core employee provisions do not apply to union contractors and union contractors are able to utilize their core workforce without limitation. Exceptions can include specific requirements in MLAs that restrict or limit participation of “traveling” union members from their home union to the local union at the project location.

The impact of PLA hiring procedure provisions on City Public Works projects is hard to predict. Non-union contractors would be impacted by limits placed on their ability to utilize their core workforce. Union contractors would not be significantly impacted by the hiring procedure provisions as the procedures reflect their standard work practices, except for travel restrictions imposed by local unions on union members working outside the jurisdiction of their home union. The potential success of a PLA on increasing local hiring and job training is also hard to predict. Historically, approximately 66% of the City’s Public Works projects are awarded to non-union contractors and approximately 60% of the City’s Public Works projects go to contractors located within 40 miles of the City.

Specialty Subcontractors

The PLA hiring procedures would likely impact smaller, specialty subcontractors more than the general contractor and major subcontractors. Non-union specialty contractors with a small workforce generally rely heavily on their core employees, and limitations on their ability to fully utilize their core workforce could disproportionately affect their ability to effectively perform their subcontracted scope of work, as compared to larger contractors. In addition, small non-union contractors may not fully understand the PLA requirements when submitting subcontract bids and may refuse to sign the required letter of assent before beginning work on a PLA-covered project. This could result in cost and schedule impacts associated with subcontractor substitutions.

Careful consideration should be given to the impacts of a PLA on smaller specialty contractors. Many of the subcontractors that typically participate in City contracting are local specialty contractors and are typically non-union.

If the City Council decides to move forward with a PLA program, it should confirm that the building trades are open to negotiating potential exemptions from the PLA for certain types of projects and/or exemptions from the typical PLA hiring provisions and core worker restrictions for small and specialty subcontractors. Additionally, consideration should be given to mandatory pre-bid meetings to ensure that all potential bidders and subcontractors are aware of the PLA requirements, understand their obligations and restrictions under a PLA, and have an opportunity to have pre-bid questions addressed to facilitate fully informed bids.

Construction Inspection

Construction inspectors, materials testers, and other personnel performing quality assurance and quality control functions may be impacted by the hiring procedures set

forth in a PLA. Construction inspectors are typically employed by a third-party construction manager through a professional services agreement with the project owner. Professional service agreements are not governed by City Charter 519, but construction inspectors, materials testers, and personnel performing quality control and quality assurance are often covered crafts under a PLA.

The City frequently contracts for professional construction management and inspection services for its construction and improvement projects. The City's evaluation of construction management firms is partially based on the qualifications of the proposed inspection staff. Depending on the nature of the project, construction inspectors must have experience providing quality assurance for complex civil, structural, and mechanical projects. As providers of professional services, most construction management firms are not signatory to construction unions and non-union firms will be subject to standard PLA hiring procedures, including core worker provisions. Thus, the core worker provisions in a PLA could impact the City's ability to utilize its current practice of retaining construction management and inspection services. If the City Council decides to move forward with a PLA program, it should confirm that all work performed under a contract that is not itself subject to Chapter 519 and is exempt from the PLA, particularly with respect to consultants and persons employed by consultants to perform quality assurance work, including construction inspectors, specialty inspectors, and material testers.

Wages and Benefits

Public Works projects are subject to state prevailing wage laws, and when federal funding is involved, to federal prevailing wage laws. Wages for craft workers on City projects are paid in accordance with applicable state and federal prevailing wage rates. PLAs do not supersede applicable prevailing wage rates and wages paid to craft workers are the same for PLA and non-PLA projects.

In addition to prevailing wage rates, the California Department of Industrial Relations (DIR) establishes fringe benefit amounts that must be provided to the employee by the employer. Fringe benefits include: health and welfare, pension, vacation/holiday, training, and "other" benefits. "Other" benefits include contributions to management relations boards, industry advancement funds, and other miscellaneous initiatives specific to each trade. Union contractors provide fringe benefit payments on behalf of their employees directly to union trusts, who in turn provide benefits to their members. Non-union contractors must provide benefits of equivalent value as the fringe benefit amounts established by the DIR or pay fringe benefits directly to their employees in cash. Training benefits must be paid directly to a State-approved apprenticeship program and are not paid directly to the employee as cash or directly to the union trust fund.

Union and Non-Union Contractor Comparison

On PLA-covered projects, all contractors, regardless of union affiliation, must pay fringe benefit contributions directly to the union trust fund for each employee for the duration of the project. Union contractors are not affected by this requirement as it reflects their normal business practice and is in alignment with the MLAs between the construction trades and union employers.

The extent to which payment of fringe benefits to union trusts affects non-union contractors depends largely on the benefits employers offer to their employees. If non-union contractors provide retirement benefits such as 401(k) plans or health insurance, these benefits would no longer be provided through the employer and would be provided through the union trust. For non-union contractors that pay fringe benefit contributions directly to employees as cash, the contractors would begin making these payments to the union trust on the employees' behalf.

Information published by the United States Department of Labor Bureau of Labor Statistics indicates that union workers have greater participation rates in medical benefit plans than non-union workers, 79% versus 46%, respectively. In addition, union workers have greater participation rates in retirement plans than non-union workers, 82% versus 47%, respectively (United States Department of Labor Bureau of Labor Statistics, 2017).

Union members must work a minimum number of hours each year to become vested in union pension programs. Non-union workers for whom fringe benefits are paid to the union trust by their employer while working on a City construction project might not work sufficient hours to become vested and may not ultimately realize any benefit from the trust fund contributions made on their behalf. This issue may be more pronounced for non-union specialty subcontractor employees. The impact to workers and willingness of the building trades to negotiate potential exemptions from the required union trust fund benefit payments for small or specialty contractors is a factor the City Council should consider during its deliberations.

Management Rights

PLAs include provisions detailing the rights maintained by management under the agreement. PLAs typically give management exclusive rights to plan and direct work; hire, layoff, and promote employees; determine the number of employees required to prosecute the work; determine means and methods of construction; select craft foremen; and assign and schedule the work. The intent of these provisions is to preserve the ability of management to perform key duties that are critical to the successful performance of work under the covered project. These provisions are simply intended to clearly express to signatories that contractors retain the right to manage the labor force on a covered project.

Work Stoppages

PLAs include provisions expressly prohibiting strikes, picketing, work stoppages, slowdowns, and lockouts to ensure the continued performance of work and to prevent schedule delays on covered projects, with limited exceptions. When employers and employees are unable to agree on the terms and conditions of employment, employees may implement work stoppages such as strikes, or slowdowns and employers can implement lockouts. Work stoppages are used to compel either the employer or the employees to agree to the terms and conditions of employment in dispute. Some PLAs allow unions to withhold craft labor in the event a contractor is delinquent in payment of its weekly payroll or payments to the union trust.

Work stoppages can significantly impact a construction project as they interrupt the availability of craft labor and delay performance of the work. Union employees are prevented from striking on the basis of economic conditions when bound by an active collective bargaining agreement and can only strike after a good faith effort has been made at collective bargaining. Union employees are not constrained in their ability to strike on the basis of unfair labor practices when certain conditions are met. It is beyond the scope of this report to detail the circumstances and laws surrounding employers' and employees' ability to implement work stoppages.

The construction trades in California have a long history of successful collective bargaining with the construction industry. A review of work stoppage data compiled by the United States Department of Labor Bureau of Labor Statistics did not identify any work stoppages by the construction trades in California involving 1,000 or more workers over the last ten years (United States Department of Labor Bureau of Labor Statistics, 2018). Work stoppages resulting from a lapse in the collective bargaining agreements between the construction trades and the construction industry do not appear to present a significant risk to the City's Public Works construction and improvement projects. Although the City has not experienced any work interruptions due to work stoppages, a PLA would expressly prohibit strikes, picketing, and work stoppages and would mitigate any future concerns.

Dispute Resolution

Dispute resolution provisions are included in PLAs to establish a uniform and timely process to resolve project issues without slowing down or stopping the work. Disputes regarding the jurisdiction of individual trades are settled in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). The Plan is a broadly recognized dispute resolution procedure established by the American Federation of Labor and Congress of Industrial Organizations and construction employer associations that has been in place since 1984. When a jurisdictional dispute between trades arises on a project covered by a PLA (e.g., laborer versus pipefitter scope for the installation of underground pipelines), the issue is referred to the Plan for settlement.

PLAs include provisions that prohibit work slowdowns and stoppages while jurisdictional disputes are being resolved.

PLAs also include provisions related to resolution of grievances and disputes not specifically related to jurisdictional issues, for example, applicability of shift differential pay or contractual job site drug testing. PLAs establish a defined step-wise process for dispute resolution that encourages resolution of project issues on the lowest possible level. The dispute resolution process typically culminates with arbitration if not settled at a lower level, typically before an arbitrator selected from an agreed upon list of arbitrators to facilitate a timely resolution. As with jurisdictional disputes, parties to a PLA cannot stop or slow down the work because of a grievance or dispute.

It is difficult to evaluate the impacts of PLA dispute resolution provisions on City Public Works projects. City construction contracts contain detailed dispute resolution provisions. Most disputes are resolved informally by the general contractor and subcontractor management teams or through the contractual dispute resolution and claims process detailed in the contract documents.

Jurisdictional issues are more likely to arise between union contractors or on PLA-covered projects where workers are not allowed to work outside of their classification, but where the scope of work for multiple trades overlap. This type of issue could arise on larger, more complex construction projects.

Schedule for Negotiation and Approval of a PLA

PLAs are typically negotiated for each project covered by a PLA. Negotiations are between the project owner and the local or regional building trades council, who represents a group of different craft unions. Some crafts anticipated to perform work on a covered project might not be represented by the building trades council, and the PLA would need to be negotiated with each of these crafts individually. In addition, although not signatory to PLAs, the public agency may also choose to engage local contractor's associations during the negotiations. The amount of time required to negotiate a PLA varies widely and depends on the scope of the project or projects to which the PLA will apply, the content of the agreement initially presented by the building trades as a starting point to the negotiations, and the City benefits that the Council desires to incorporate into the agreement.

It is estimated that the length of time required to negotiate a PLA for the City could range from two months to one year or more. If the City is willing to accept the standard PLA agreement presented by the Building and Construction Trades Council and detailed negotiations are not required, it would take approximately two months to work through the City Council approval process and circulate the final agreement for execution. If provisions of the standard agreement warrant additional negotiations and the City is required to negotiate with multiple trades not represented by the Building and

Construction Trades Council and/or chooses to engage local contractor's associations, the process could take many months.

If the City elects to move forward with a PLA, the agreement must be in place prior to issuing the bid advertisement for the project or projects to which the PLA applies. The PLA must be included in the contract documents to inform prospective bidders and subcontractors of their responsibility to comply with the terms and conditions of the agreement.

There are three threshold determinations the Council must make. The first is determining whether a PLA model is appropriate for Santa Barbara Public Works, or whether certain benefits such as local hire can be accomplished using other methods. If an initial determination is made to pursue a PLA model, then the Council should determine how best to implement that general determination. At the end of this report, two options for an implementing ordinance are presented. Lastly, the particular City benefits the Council seeks to obtain from a PLA should be identified. These will establish the basis for negotiation of the PLA.

Cost

Impacts of a PLA on construction bids are difficult to quantify and are beyond the scope of this report to assess comprehensively. Proponents of PLAs assert that these agreements save money by making overall labor reliability and project cost management more predictable, while opponents argue that PLAs increase project costs due to labor agreement compliance administration and union/fringe benefits contributions requirements. Information regarding the arguments on both sides of this issue is readily available through previously published articles and research. The anecdotal feedback staff received from public entity colleagues who have completed projects subject to PLAs is that the bids received on their PLA projects did not seem significantly out of scale in comparison to non-PLA projects of a similar size; however, the consistent feedback was that it really is not possible to know what the cost impacts on a project might have been absent a parallel bid process, with one including the PLA requirement and the other not. This section will focus on the costs that are more readily quantifiable including costs to support contract negotiations, costs to incorporate the PLA into the construction documents, and costs to administer the PLA through construction.

PLA Negotiation

Negotiation of the PLA would require participation from the City Administrator's Office, Public Works Department, the City Attorney's Office, outside legal counsel, outside technical support, and the project management team if the PLA is for a particular major project. Costs to support PLA negotiations would depend on the extent and duration of the negotiations and can vary widely.

Contract Document Development

The construction contract documents would need to reflect the requirements of the PLA so prospective bidders and subcontractors are aware of their responsibilities regarding the agreement. Language is typically included in the bid advertisement, bid form, agreement, and the front-end documents to detail PLA requirements. In addition, the complete PLA is included in the contract documents as part of the front-end documents or as an appendix. It is recommended that a specification be developed to detail the targeted worker participation requirements, as the procedures for meeting participation goals and reporting requirements are typically not explained in detail in the PLA. The targeted worker specification would increase the likelihood of meeting the participation goals set forth, increase transparency in the process, and facilitate accountability of all parties to the agreement.

Modification of the construction contract documents to reflect the PLA would require participation from the City Attorney's Office, outside legal counsel, outside technical expertise, the design engineer, and the construction management team.

Because the PLA must be reflected in the procurement documents for a project, the impact on project schedule is an important consideration. When an agency determines to use a PLA for a project, the agency's governing body generally establishes a deadline for completion of PLA negotiations.

PLA Administration

PLAs require that the project owner designate a Project Labor Coordinator to act as the owner's agent and to facilitate implementation and compliance with the PLA. The Project Labor Coordinator can be a member of the owner's staff, but an outside contractor with specific experience administering PLAs is typically used. In many cases, the Project Labor Coordinator can also function as the labor compliance program administrator, which is generally required to satisfy the requirements of outside funding sources such as grants or revolving fund loans. It is assumed that the City would hire an outside contractor to serve as the Project Labor Coordinator if a PLA is negotiated.

PLAs include provisions for the establishment of a Joint Administrative Committee (JAC) comprised of representatives from the owner and representatives from the building trades. The JAC meets regularly to discuss issues associated with the PLA including project issues, safety concerns, contractor relations, and disputes. The frequency of the JAC meetings is left to the discretion of the Committee, but meetings are typically held on a quarterly basis. It is anticipated that the City's representatives on the JAC would include Public Works project management staff and staff of the department for which the project is being built.

The City can require the construction contractor to retain the services of a Jobs Coordinator to assist the contractor in meeting its obligations for targeted worker participation. The Jobs Coordinator coordinates with the construction trades, apprenticeship programs, and local workforce development agencies to identify potential

workers that meet the criteria necessary to qualify as a targeted worker for employment on the covered project. The Jobs Coordinator assists the contractor in the preparation of reports including targeted worker hiring status reports and manpower utilization plans. It is anticipated that the contractor would retain the services of an outside consultant to serve as its Jobs Coordinator.

The total estimated cost for PLA negotiation, contract document development, and PLA Administration is difficult to quantify at this time due to limited data and differing conditions between public agencies as well as with each individual PLA. Given the unique labor market in Santa Barbara, staff recommends professional service support from outside counsel and from labor compliance firms with expertise in PLAs in order to adequately negotiate, implement, and administer a PLA. Based on limited available information, staff estimates the total cost in City staff and professional services fees associated with a single PLA for a large-scale project (e.g. construction of a new police headquarters) to be in the range of \$300,000 to \$450,000.

IMPLEMENTING ORDINANCE OPTIONS

The purpose of this initial Council meeting is to obtain general direction regarding PLAs. Staff contemplates that the initial meeting will include input from the public and deliberation of the relative merits of PLAs generally and other methods of potentially achieving City Council objectives. In addition, staff presents two options for potential implementing ordinances to help guide the Council's consideration should it decide to pursue a PLA model. Both options would amend Chapter 4.52 of the Santa Barbara Municipal Code relating to Public Works.

OPTION A

4.52.200 Project Labor Agreements

A. A contract subject to the advertising, bidding, and award requirements of Section 519 of the City Charter in an amount of \$_____ million or greater, as estimated by the City Engineer, may include a requirement for a project labor agreement. Before issuing procurement documents for a contract in an estimated amount of \$_____ million or greater, the department head of the issuing department shall obtain a determination by the City Council whether a project labor agreement is a requirement of the contract. If a project labor agreement is a requirement of the contract, the requirement shall be included in the procurement documents and contract.

B. The City Council may approve a project labor agreement by [ordinance] [resolution].

Comment: This option makes application of a project labor agreement case-by-case determination of the City Council, thereby providing greater flexibility to determine when a project labor agreement is in the best interest of the City. A project labor agreement for a project would require approval by the City Council.

OPTION B

4.52.200 Project Labor Agreements

A. A contract subject to the advertising, bidding, and award requirements of Section 519 of the City Charter in an amount of \$____ million or greater, as estimated by the City Engineer, shall include a requirement for a project labor agreement. The requirement shall be included in the procurement documents and contract.

B. The City Council may approve a project labor agreement by [ordinance] [resolution].

Comment: This option establishes a blanket requirement for project labor agreements on all construction and improvement projects above the threshold amount. The blanket project labor agreement would require approval of the City Council.

Under either option, a PLA would be applicable only on projects subject to bidding under the Charter. PLAs would not apply to design-build, design-build-operate, and other alternative procurement projects of the City's water utility. Under the Charter and SBMC § 4.52.165, only water utility projects are subject to alternate procurement procedures.

Should the Council desire to consider other options, including, for example, a program for required outreach to small and local contractors or local worker targets, or direction to do a PLA only for a specific project, direction should be given to staff to prepare other ordinance options for Council consideration.

Ordinance Committee Recommendation

This item was presented to the Ordinance Committee on November 6, 2018. The Ordinance Committee Report contained much the same information as this document. Following public comment and after some deliberation, the Ordinance Committee voted 2 to 1 not to approve a project labor agreement option and to forward a "Status Quo" option to Council with local hiring preference support. This option is also available to Council.

California Environmental Quality Act (CEQA):

This action is not a project as defined in CEQA.

ATTACHMENTS: 1. Draft Ordinance Option A
2. Draft Ordinance Option B

PREPARED BY: Daniel S. Hentschke, Assistant City Attorney
Brian D'Amour, City Engineer

SUBMITTED BY: Rebecca J. Bjork, Public Works Director

APPROVED BY: City Administrator's Office

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING CHAPTER 4.52 OF THE SANTA BARBARA MUNICIPAL CODE BY ADDING SECTION 4.52.200 TO AUTHORIZE THE USE OF PROJECT LABOR AGREEMENTS ON CITY PUBLIC WORKS CAPITAL IMPROVEMENT PROJECTS AS DETERMINED BY THE CITY COUNCIL

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.52 of Title 4 of the Santa Barbara Municipal Code is amended by adding Section 4.52.200 which read as follows:

4.52.200 Project Labor Agreements.

A. A contract subject to the advertising, bidding, and award requirements of Section 519 of the City Charter in an amount of \$ _____ million or greater, as estimated by the City Engineer, may include a requirement for a project labor agreement. Before issuing procurement documents for a contract in an estimated amount of \$ _____ million or greater, the department head of the issuing department shall obtain a determination by the City Council whether a project labor agreement is a requirement of the contract. If a project labor agreement is a requirement of the contract, the requirement shall be included in the procurement documents and contract.

B. The City Council may approve a project labor agreement by resolution.

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING CHAPTER 4.52 OF THE SANTA BARBARA MUNICIPAL CODE BY ADDING SECTION 4.52.200 TO AUTHORIZE THE USE OF PROJECT LABOR AGREEMENTS ON CITY PUBLIC WORKS PROJECTS HAVING AN ESTIMATED VALUE OF \$ _____ MILLION AND SUBJECT TO SECTION 519 OF THE CITY CHARTER

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.52 of Title 4 of the Santa Barbara Municipal Code is amended by adding Section 4.52.200 which read as follows:

4.52.200 Project Labor Agreements.

A. A contract subject to the advertising, bidding, and award requirements of Section 519 of the City Charter in an amount of \$ _____ million or greater, as estimated by the City Engineer, shall include a requirement for a project labor agreement. The requirement shall be included in the procurement documents and contract.

B. The City Council may approve a project labor agreement by resolution.