



DATE: May 21, 2024

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt a Resolution Approving the Revised Community Workforce Agreement (CWA) between the City of Hayward and the Building and Construction Trades Council of Alameda County (BTC) and Authorize the City Manager to Execute the Revised CWA

RECOMMENDATION

That Council approves the revised Community Workforce Agreement (CWA) with the Alameda County Building Trades Council (BTC) and adopts a resolution (Attachment II) authorizing the City Manager to execute the revised CWA.

SUMMARY

On December 5, 2023, Council authorized a one-year extension of the existing Citywide Community Workforce Agreement (CWA) with the Building and Construction Trades Council of Alameda County (BTC). This extension was requested by staff in order to subsequently negotiate revised terms of the CWA with the BTC. Staff has successfully negotiated with the BTC for a revised Agreement. Included in the revised Agreement are negotiation points which have been added to the revised CWA (Attachment III). Staff is recommending that Council approve the revised version of the CWA and authorize the City Manager to execute the revised CWA.

BACKGROUND

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

In April 2015¹, the Council directed staff to negotiate and execute a CWA with the BTC for the new main library.

That agreement included the following types of provisions:

- Requirements that the contractor and subcontractors on the project use local union hiring halls to hire trades workers for the projects;
- “Local Hire” provisions, encouraging the contractor to employ Hayward residents or Hayward Unified School District graduates;
- Requirements that all hired workers pay union dues and receive other benefit trust fund contributions;
- Management rights regarding employment procedures, including hiring, discipline, etc.;
- Grievance and arbitration procedures to allow for timely resolution of disputes;
- Standardized work rules and regulations; and
- Provisions governing requirements around apprenticeships.

At Council’s direction, staff brought forward an item on February 23, 2016² that allowed for the discussion of creating a “Citywide” CWA that could apply to a broader scope of projects within the community. Staff received policy direction from the Council at that meeting regarding how a Citywide CWA might be structured. Subsequently, staff negotiated a CWA with the BTC, which included an effective date of July 6, 2017. Below is a summary of the key elements of the final negotiated CWA:

- 1) The Citywide CWA applies to City projects where the construction cost of the project exceeds one million dollars (\$1,000,000) based on the Engineer’s Estimate.
- 2) The Citywide CWA does not apply to private development projects or to projects awarded/managed by another third-party public agency where the City has contributed funding.

¹ <https://hayward.legistar.com/MeetingDetail.aspx?ID=454174&GUID=F3A52681-D58E-4A0C-BA83-%2084F8A581A981&Options=info&Search=>

² <https://hayward.legistar.com/LegislationDetail.aspx?ID=2574917&GUID=CA735E50-7832-4222-BC26-%20F99567B99389&Options=&Search=>

- 3) The City retains the ability to exempt certain specialty or unique projects from the CWA requirements as needed and upon approval by the Council. Staff and the BTC would first meet in good faith to discuss the exemption. However, if the parties fail to reach a consensus, staff would be able to bring the project to the Council for review and consideration.
- 4) During the duration of the Projects, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone, or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, wobble, sympathy strike, picketing or other work stoppage or hand billing of any nature whatsoever, for any cause whatsoever (including jurisdictional disputes), and it is expressly agreed that any such action is a violation of the agreement.
- 5) A Joint Administrative Committee (JAC) comprised of two City representatives, two Union representatives, and one construction industry representative was established to review the implementation of the agreement and the progress of the projects. The JAC has the responsibility of monitoring the local hire and apprentice provisions of the agreement.
- 6) The agreement contains a goal that Hayward residents, and especially HUSD graduates, will perform a minimum of thirty (30%) percent of the hours worked on a craft-by-craft basis on the covered projects. Contractors shall make good faith efforts to reach the Local Hire Goal through the utilization of the Union's hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of Hayward Resident workers and in their hiring hall procedures to facilitate the Local Hire Goal on the Projects. The parties shall cooperate to establish or support a pre-apprenticeship/internship program for HUSD graduates. If a Contractor fails to meet the Local Hire Goal or demonstrate a good faith effort, there will be a ten (10%) percent contract retention withheld until the Local Hire Goal is remedied. Acceptable remedies include commitment to employ Hayward residents on non-City projects or acceptance of Hayward residents as new apprentices.

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

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

The Citywide agreement was to expire on December 31, 2023. On December 5, 2023³, Council authorized the City Manager to extend the agreement to December 31, 2024, to allow time for staff and the BTC to discuss any modifications and draft a revised CWA.

DISCUSSION

Staff successfully negotiated with the BTC and in good faith have agreed to the addition of the following negotiation points which were added to the CWA:

Article 2.3 – Covered Work

Section 2.3.4 - Add a requirement to “meet and confer, then if not resolved” before being subject to the grievance and arbitration process.

Article 5 Pre-Job Conference

Section 5.1 – Allow Pre-job conferences to be held using Teams, Zoom or some other form of teleconference.

Article 8 – Referral

General – City wants to require contractors to use a referral form that informs trade halls that the project is subject to a CWA with priorities, goals and preferences for hiring Hayward residents, HUSD grads, veterans and new Interns.

Section 8.8 – The City would like this section to reference the Union’s referral of a journeyman or apprentice, with priorities given to Hayward residents and/or Hayward Unified School District graduates. This is to reinforce the core purpose of the City’s participation in the CWA.

Article 11 Grievance Arbitration Procedure

Section 11.2 Step 3 –The list of acceptable arbitrators should be updated.

Article 13 – Local Hire and Apprentices

Section 13.4: The City wants to support efforts to increase the diversity of the construction work force by encouraging under-represented groups to enter the building trades.

Section 13.7: Require contractors to use an electronic program (by Elation Systems) to monthly craft utilization reports which include information related to the CWA hiring priorities.

General: there are a number of other suggested changes related to outreach, good faith efforts, offsite credits, penalties, negotiated compliance plans and federally funded projects.

Article 22 – Substance Abuse Prevention

Understanding that marijuana use is now legal, it is still unsafe and undesirable for anyone under the influence to be employed on a construction project. The CWA policy should maintain the threshold for Marijuana and follow US DOT, Drug 49 CFR Part 40, which has

³ <https://hayward.legistar.com/LegislationDetail.aspx?ID=6439973&GUID=EA0D1598-A0FD-46A2-8B4C-B28A8969DE87&Options=&Search=>

remained consistent. Marijuana is still a Schedule 1 substance under the Controlled Substances Act and is still prohibited.

Although not included in the revised CWA, a suggestion for consideration was that local hires also include residents residing in areas outside of the City of Hayward (Union City, San Leandro, San Lorenzo, Tri Valley Area - Dublin, Pleasanton, Livermore, and Oakland areas.) The inclusion of hires outside of the City of Hayward would receive 50% credit toward the local hire goal while graduates of Hayward High Schools living outside of Hayward city limits would receive 100% toward the local hire goal.

Staff is requesting that Council approve the revised Community Workforce Agreement and authorize the City Manager to execute the revised CWA.

Environmental Review

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

ECONOMIC IMPACT

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

FISCAL IMPACT

This item will have no impact on the General Fund.

STRATEGIC ROADMAP

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Priorities.

SUSTAINABILITY FEATURES

This item has no sustainability features.

PUBLIC CONTACT

No public contact has been made related to this item.

NEXT STEPS

If approved, the City Manager will execute the revised Community Workforce Agreement between the City of Hayward and the Building and Construction Trades Council of Alameda County.

Prepared by: Kathy Garcia, Deputy Director of Public Works

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Dustin Claussen, Interim City Manager