



AGENDA NO. 9.  
 MEETING DATE January 12, 2016

**TITLE** PILOT PROJECT LABOR AGREEMENT FOR CONSTRUCTION OF CHABOT DAM SEISMIC IMPROVEMENT PROJECT

MOTION \_\_\_\_\_  RESOLUTION \_\_\_\_\_  ORDINANCE \_\_\_\_\_

**RECOMMENDED ACTION**

Approve a pilot Project Labor Agreement (PLA) outlining roles and responsibilities for the District, contractors and labor unions and authorize inclusion of the executed pilot PLA in the bid package for construction of the Chabot Dam Seismic Improvement Project, provided that doing so would not adversely impact the scheduled bid opening date.

**SUMMARY**

The PLA with the Alameda County Building Trades Council (ACBTC) will establish terms and conditions for contractors bidding on the Chabot Dam Seismic Improvement Project. The Board adopted principles for negotiation of the PLA on December 9, 2014 (Attachment 1), and those negotiations which began in May 2015 are in their final stages. The final PLA, as outlined herein, will be added to the bid documents by addendum since the Project is already advertising and set for bid opening on February 10, 2016.

Significant compromises were necessary in order to reach an agreement on the PLA. Tough negotiating points included provisions focused on preserving contractor diversity via the Contract Equity Program (CEP), allowing equitable participation by all contractors, and promoting jobsite efficiency. Both the District and the ACBTC made compromises to reach agreement on the pilot PLA, so its terms and conditions should not be viewed as setting precedent for any potential future PLA that the District might consider. This approach is consistent with the Board-directed approach of implementing a PLA as a pilot in order to gain experience on its impacts.

**DISCUSSION**

Negotiation of the pilot PLA was a long and difficult process. Staff initially provided a draft PLA for the negotiations on May 5, 2015. During the course of negotiations, staff and the ACBTC identified fourteen

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DEPARTMENT SUBMITTING Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR  Xavier J. Irias	APPROVED  General Manager

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main areas of disagreement. A summary of these areas of disagreement and their resolution in the PLA are included in Attachment 2. The most significant areas are discussed below:

#### Payment of Dual Benefits/Union Benefit Trust Fund Contributions by Nonunion contractors

The payment of prevailing wages is required by law on all public works projects. Under the law's requirements, workers are paid a base salary component which must be in cash, and a benefits component that may be paid either as cash or as payments to a benefits program on behalf of the worker.

Under the pilot PLA, the benefits portion of workers' wages must be paid into the benefits program run by and for the benefit of the signatory union and its members. A nonunion contractor will be required to pay the benefits portion of its nonunion workers' wages to the union benefits plan even if they already have their own benefits program in place and even if the nonunion contractor's workers may never be entitled to receive the benefits. The nonunion contractor may then have to pay the benefits portion a second time to its employees so that its employees receive the full value of their required wages.

During negotiations staff explored possible compromises to avoid or reduce dual payment of benefits, such as allowing nonunion contractors to reduce trust fund payments based on the value of any payments to existing benefit programs, or requiring ACBTC to hold contractors harmless for potential adverse consequences. Neither of these compromise positions was accepted, so the current proposed pilot PLA requires trust fund payments. It will be important to assess as the pilot agreement moves forward the degree to which this issue impacts contractor participation or workforce equity, and that assessment will inform any future PLA.

#### Use of Core Workers

The pilot PLA requires that the unions shall be the primary source of all craft labor. However, it does allow a nonunion contractor to use up to ten members of its currently employed nonunion workforce (core workers) provided it accepts referrals alternately one-for-one from the union hiring hall and the contractor's core workforce with the first referral being from the union hiring hall. Over the course of the project, staff plans to assess whether this compromise language poses a hardship especially for small contractors who find themselves asked to efficiently build the job without the ability to use a significant portion of their regular workforce. That will inform the degree to which the terms would need revision for any future PLA, for example allowing the first one or few workers to be from a contractor's workforce.

#### Contract Equity Program: Exemption from PLA for Targeted Contractors

The pilot PLA contains an exemption for businesses targeted by the Contract Equity Program (CEP). The purpose of this exemption (also referred to as a "carve out") is to ensure that the PLA does not impede operation of the CEP by dissuading nonunion small, local and/or disabled veteran owned businesses from participating. The exemption applies if a subcontract to the exempted business is necessary to approach or meet one of the CEP goals for the project, so long as the total value of exempted contracts is no more than 5% of the total value of the project (approximately \$600,000 for the Chabot Dam Seismic Improvement Project).

The ACBTC agreed to this carve out for the pilot PLA, as part of the overall give and take during negotiations, but the issue is likely to be a negotiating point in any future PLA since the ACBTC is concerned that no single trade be disproportionately impacted by the carve out.

#### Local Hire

The pilot PLA includes a requirement for the unions to support the contractor's efforts to comply with the District's local hire pilot project which is included in the project specifications for the Chabot Dam Seismic Improvement Project. Although local hire was not one of the PLA negotiating principles adopted by the Board, there was significant interest for inclusion of a local hiring program in the PLA. Staff was advised that the ACBTC does not have its own local hiring program but would prefer that the local hire requirements be included directly in the PLA. By including the local hire component in the contract specifications rather than the PLA, the District is able to apply the local hire enhancement to all contractors of every tier (the PLA specifically carves out small subcontracts from PLA requirements), has more flexibility in monitoring the program through its regular contracting mechanisms, and can apply the pilot program to projects not subject to a PLA.

The ACBTC agreed with this approach for the pilot PLA. Staff recommends that the same approach be continued in any future PLA. The first project to include the pilot local hire enhancement was the Diablo Pumping Plant Rehabilitation Project, which was awarded to a local, small business contractor on December 8, 2015. The pilot local hire enhancement will also be included in three other projects, including the Chabot Dam Seismic Improvement Project.

#### **FISCAL IMPACT**

Funds are available in the FY16 budget for the Chabot Dam Seismic Improvement Project.

#### **ALTERNATIVES**

**Do not approve the pilot PLA:** The Chabot Dam Seismic Improvement Project was advertised for bid on January 5, 2016. This seismic improvement project mandated by the State of California Division of Safety of Dams cannot be delayed. If the Board does not approve the pilot PLA with the compromises to the negotiating principles noted above, the project will have to be bid without the pilot PLA.

Attachments: Principles of Negotiation  
Summary of PLA Issues

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RESOLUTION NO. 34015-14

ADOPTING PRINCIPLES OF NEGOTIATION FOR A PILOT PROJECT LABOR AGREEMENT FOR THE CHABOT DAM SEISMIC IMPROVEMENT PROJECT

Introduced by Director Mellon ; Seconded by Director Foulkes

WHEREAS, the members of the Board of the East Bay Municipal Utility District ("EBMUD") have carefully reviewed and duly considered the information and reports submitted by staff on the utilization of a pilot Project Labor Agreement ("PLA") on a major public construction project to gain experience with how a PLA could work for EBMUD; and

WHEREAS, EBMUD has determined to undertake a major construction project to be known as the Chabot Dam Seismic Improvement Project ("Project"); and

WHEREAS, economical, efficient, quality construction of this Project is of utmost importance to the residents of the areas to be served by this Project; and

WHEREAS, it is important to EBMUD to ensure a steady and reliable source of skilled labor for the Project and an equal opportunity for all businesses to compete for work on the Project; and

WHEREAS, it is the intent of the principles outlined below to ensure equitable participation by all contractors in compliance with competitive bidding laws, to avoid costly and preventable delays, to assure contractors access to skilled craft workers, and to secure the best work at the lowest price possible for the benefit of EBMUD's ratepayers;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors ("Board") does hereby authorize the development and negotiation of a pilot Project Labor Agreement for implementation, subject to approval by the Board, as to all new construction work on the Project. In the course of the negotiations of such an Agreement, the District's consultants and advisors shall effectuate, to the extent practical and possible, the following principles:

1. The PLA shall contain effective, time-efficient dispute resolution procedures, available to all parties and their employees, covering any potential labor-management or employee-management dispute, including jurisdictional disputes among the signatory unions, which might arise under the Agreement;
2. The PLA shall contain provisions, including a comprehensive no-strike clause, which will prohibit any disruption, work stoppage or lockout that might arise and include a mechanism for the prompt, effective enforcement of such provisions;

3. The PLA shall contain provisions permitting the establishment of rules, regulations and procedures promoting a safe work place for all employees, which may include measures that are beneficial to the Project and to the District, such as reasonable substance abuse programs;
4. The PLA shall prohibit employment discrimination of all types;
5. The PLA shall not impede, but rather encourage, balanced opportunities among businesses owned by all ethnic and gender groups to participate in Project work, pursuant to EBMUD's Contract Equity Program;
6. The PLA shall be consistent with the terms of the Grant Agreement between the State of California (Department of Water Resources) and East Bay Municipal Utility District 4600010369 Proposition 1E Round 2 Stormwater Flood Management Grants, February 2014 regarding a 3<sup>rd</sup> party Labor Compliance Program;
7. The PLA shall include provisions that seek to ensure a steady, broad-based, adequate and reliable supply of properly skilled employees to undertake work covered by the PLA;
8. The PLA shall contain provisions which permit all qualified construction contractors to bid and be awarded work pursuant to the applicable procurement laws, and shall not require such contractors to be signatory to, or to become signatory to, any other agreement but the Project Labor Agreement for purposes of wages, benefits, hours and working conditions on the Project;
9. The PLA shall contain provisions permitting contractors that have an identifiable, regularly employed work force, to employ directly some of such work force, as will permit the contractor to effectively carry out the work for which he or she is committed;
10. The PLA shall, to the extent possible, standardize and harmonize working conditions on the Project to maximize the efficiency of construction and the coordination among different contractors and work forces; but the PLA shall not modify or overrule the terms and conditions in the individual master labor agreements except as necessary to achieve such standardization, harmonization, efficiency and coordination, or achieve any of the goals of these principles for negotiation;
11. The PLA shall explicitly define its scope as limited to the construction work authorized by the Board for inclusion within a PLA and shall further limit its application to those employees traditionally engaged in the construction process and employed directly by contractors bound by the PLA; and
12. The PLA shall, as the definitive labor relations program for the Project, encourage coordination among the contractors and inter-change between labor and management in order to establish a stable, harmonious work site and permit the timely completion of the Project.

BE IT FURTHER RESOLVED that the Secretary is authorized to provide a copy of this resolution upon request consistent with the provisions of state law.

ADOPTED this 9th day of December, 2014 by the following vote:

AYES: Directors Coleman, Foulkes, Linney, McIntosh,  
Mellon, Patterson, and President Katz.

NOES: None.

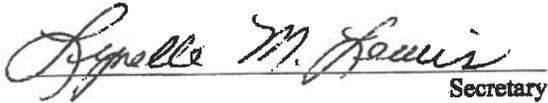
ABSENT: None.

ABSTAIN: None.

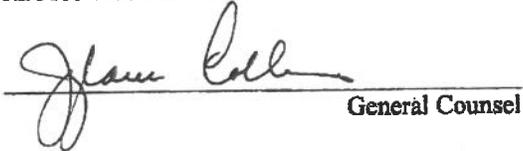


\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

  
\_\_\_\_\_  
General Counsel

ATTACHMENT 2

Summary of PLA Issues		
	Issue	Comments
1	Dual benefits/union benefit trust fund contributions by non-union contractors	Issue is whether all contractors (union and nonunion) pay into the union benefits trust funds and programs. Pilot PLA reflects ACBTC proposal for all contractors to pay into union trust funds and conflicts with Negotiating Principle 8 on equitable participation. (Two alternative District proposals were made but not accepted by ACBTC.)
2	Core Workers	Issue is how many of a nonunion contractors' current crew will be allowed to work on the project, as opposed to workers from the union hiring hall lists. Pilot PLA reflects ACBTC proposal (first worker from hall, alternate one-for-one with core workers up to maximum of ten core workers) and may conflict with Negotiating Principle 8 on equitable participation and Negotiating Principle 9 on efficient and effective performance of the work. (Several alternative District proposals were made but not accepted by ACBTC.)
3	Union initiation and monthly fees by non-union workers	Issue is amount of dues and fees that nonunion workers pay to the union in order to work on the project. Pilot PLA reflects District position that nonunion workers pay monthly fees but not initiation fees. Unions will waive initiation fees for nonunion core workers upon request.
4	Allowing prime contractor to hire non-union subcontractors	Issue is some Master Labor Agreements (MLAs) require their union contractors to only hire union subcontractors. State law requires that the PLA include a provision indicating that contractors have option to hire nonunion subcontractors under a PLA. Pilot PLA quotes State law in the PLA.
5	Dispatch process for owner-operators and sole proprietors	Issue is whether owner-operators and sole proprietors may self-perform work on the project without paying into union trust fund or being dispatched from the union hiring hall. Pilot PLA allows sole proprietors do not have to be dispatched or pay into union trust funds if they pay into their own benefit plan.
6	Carve out for District's CEP program	Issue is establishing workable limit for carve out from PLA. Pilot PLA allows carve out for businesses as necessary to approach or meet CEP goals.
7	PLA relationship to District's local hire program	Issue is whether additional language is needed in the PLA beyond referencing the local hire requirements in the District's contract specifications. Pilot PLA includes union support of the local hire program but requirements are in the contract specifications, not in the pilot PLA.
8	PLA signed by District vs. prime contractor only	Issue is whether the District should be a signatory to the PLA or a third-party beneficiary of the PLA. Pilot PLA will be signed by the contractor and unions only. District is included as a third party beneficiary.

Summary of PLA Issues

	Issue	Comments
9	What work is covered by the PLA?	Issue is whether PLA applies only to the identified construction contract, as opposed to also covering professional services tasks that may be contracted separately (including surveying work and soil testing). Pilot PLA applies only to the identified construction project.
10	What warranty work is covered by the PLA?	Issue is scope of accommodation for manufacturers' requirements regarding performance of work in order to protect warranty. Pilot PLA provides a process to validate manufacturers' warranty requirements.
11	Duration of coverage for repairs	Issue is how long after contract acceptance should the PLA cover repair work. Pilot PLA covers warranty work up to one year after contract acceptance.
12	Selection of arbitrators	Issue is whether arbitrators need to have background with PLAs or just experience with construction disputes. Pilot PLA allows a subcommittee of District and ACBTC representatives attempting to resolve issues before arbitration by people with construction experience.
13	Date of effectiveness of the PLA	Issue is whether PLA becomes effective upon signature by ACBTC and at least one trade or after signature by all trades. Pilot PLA becomes effective after signature by ACBTC and at least one trade.
14	Coverage of off-site fabrication work.	Issue is whether off-site fabrication work by manufacturers or suppliers should be covered by the PLA. Pilot PLA includes coverage of off-site fabrication for certain trades.

**EBMUD**  
**PLA Survey of Selected Contractors who have Bid on District Projects**

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	Yes	Yes	<p>PLA not good public policy for agencies to be unmarried to unions and require hiring of union workers. 90% of our staff are long-time employees who are also members of union but we will not bid SFPUC projects because of PLA and generally stay away from PLA jobs.</p> <p>Prevailing wage enforcement is a level playing field for all contractors and is sufficient. Hiring staff should be prerogative of the contractor better contractors develop their own trained personnel, have lower turnover and better safety records. Employees lose benefits if they shift from one trade union to another. We are signatory to laborers union because we reached agreement with them on training and ability to pay benefits directly to employee rather than to union trust fund.</p>
	No	Yes	Yes	<p>Prefer not to bid PLA jobs but it depends on the PLA. SFPUC's PLA is contractor friendly and has no problem working with it. Allows contractor some freedom to negotiate terms and conditions. Jurisdictional disputes between unions are a bigger problem than the PLA itself.</p> <p>Despite the fact contractors have their own benefits plans, PLAs require open shop contractors to pay their workers' health and retirement benefits to union benefit and pension funds. Thus, companies have to pay benefits twice: once to the union and once to the company plan. Nonunion employees never see any of the benefits from contributions sent to union plans unless they decide to join a union and remain with the union until vested. (So now the open shop contractor is at a disadvantage with wage rates)</p> <p>We have had employees to previous PLA's let their pension funds go. In order to stay vested for the pension funds, the employee had to continue paying union dues or bring union dues up to date in order to obtain their pension monies.</p>

**EBMUD**  
**PLA Survey of Selected Contractors who have Bid on District Projects**

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	No	Yes	<p>Do not care for PLA but deal with it. No purpose except to complicate and confuse issues. Forces work with teamsters and electricians union. Work rules of some unions increase costs □ e.g. pipe fitters union not competitive.</p> <p>Bids are higher for SFPUC work because of PLA. Requiring non-union contractors to pay into union trust fund under a PLA helps level the playing field for union contractors. Union contractors are hampered by union jurisdictional issues and lack flexibility of non-union contractors to have workers perform multiple tasks and pay the appropriate prevailing wage for the different tasks.</p>
	Yes	Yes	Yes	<p>PLAs do not make much sense for modest sized projects (&lt;\$100M). The main benefit provided by PLAs, if properly negotiated, is the assurance of labor peace, no pickets or work stoppages and a 4-10 staggered work week.</p> <p>Prevailing wage enforcement is a sufficient step to assure the level playing field between union and non-union contractors. On larger projects, bonding and pre-qualification requirements are a better method to assure a qualified construction team.</p> <p>PLAs are expensive to negotiate/implement and limit competition from both union and non-union contractors. Costs/bids increase largely due to the reduced control over craft labor and it becomes more difficult to ensure safety. We are very selective in deciding to bid projects for Contra Costa County and SFPUC when the bid documents include a PLA.</p>
	Yes	No	Yes	<p>Generally not a fan of PLA but will bid those jobs. Not a big fan of unions either but being a union contractor helps to avoid pickets on prevailing wage jobs. Prevailing wage enforcement provides a level playing field.</p> <p>Biggest problem with PLA is jurisdictional disputes between unions particularly with plumbers and what work do plumbers have to do vs. laborers or boiler workers. PLA increases bid amount due to limiting competition.</p>

## EBMUD

### PLA Survey of Selected Contractors who have Bid on District Projects

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	No	Yes	<p>PLA can work well. Have not had a negative experience. Danger is when agency and union negotiate PLA without contractor input □ sometimes local area practices are not included. Increases costs for some trades where we are not signatory because non-union subs will not bid PLA jobs and competition is limited. Bigger problem is jurisdictional disputes between unions (e.g. pipe fitters vs. millwrights). PLA could help by clarifying who does what work.</p> <p>PLA does not help with quality/safety and in fact may hinder it. Quality/safety is driven by company not the unions. Like the Core worker□and trust fund payment provision in PLA because it increases costs for non-union contractors who have to pay into union trust fund.</p>
	Yes	No	Yes	<p>Generally have no problems with PLA and it works for us. However pre-qualification is a better route to go than PLA. As a union contractor, we can only hire union sub-contractors. However, some disciplines have no union contractors (e.g. slurry sealing) and this causes problems.</p> <p>PLA can help with jurisdictional disputes between unions (e.g. plumbers vs. boiler workers re: welding of large diameter pipe). Plumbers want to do it but are generally not qualified. PLA requirements regarding payment into union trust funds do not affect us but it impacts non-union contractors. Non-union workers never see the benefits paid into the trust fund on their behalf.</p>
	No	Yes	Yes	<p>Do not like PLA and avoid at almost all cost. Limits freedom with staffing and ability to move people around. Prevailing wage provides level playing field.</p> <p>Was a sub on SFPUC job with PLA □ did not receive good service from union because (as a non-union signatory) we were low on totem pole. PLA did allow our staff to join union, and then hired them for the job. But benefit costs increased because we had to pay benefits to union in addition to company benefits in order to ensure staff retention after the PLA job was over. Extra cost was about \$12/hour per worker.</p>

**EBMUD**  
**PLA Survey of Selected Contractors who have Bid on District Projects**

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	No	Yes	Yes	<p>85% of the construction work force in California is non-union. Non-union contractors have accepted prevailing wages as the level playing field. There are penalties for violating prevailing wage laws and EBMUD does a good job monitoring prevailing wages.</p> <p>Unions do not want non-union contractors on PLA jobs and it is a blatant move to eliminate the open shop. We did seven jobs for the Port of Oakland prior to the PLA but now can't bid Port jobs anymore. Absolutely increases contract costs due to limiting competition. Also increases agency costs for administering the contract and PLA.</p> <p>Workers should not be forced to join union to work on PLA job. There should be no requirement for companies to pay into the union trust fund for workers who are not union members, thereby paying double benefits. We would want a minimum of two core workers before being required to go to the union hiring hall. Unions deliberately send the (bottom of the barrel) to non-union contractors on PLA jobs because trust fund payments are for one project only. District should set a high threshold of \$35m contract amount for PLA projects.</p>
	Yes	Yes	Yes	<p>Do not like PLAs. If they have to be used, the threshold for contract amount should be \$20m. Problems occur with some disciplines where union subcontractors are not available and the non-union subs stay away from PLA jobs. It is impossible for us to build jobs without the ability to use our core workers. We are forced to carry (excess baggage) in order to meet the requirements of a PLA.</p> <p>Jurisdictional issues are a problem with plumbers who are unable to meet the needs for mechanical piping on water and wastewater jobs but claim the work is theirs. Prevailing wage provides a level playing field. On PLA, non-union subcontractors have to pay double benefits to union trust fund if workers are not union members. On one SFPUC job this amounted to \$46/hour per worker. PLA limits competition by effectively removing non-union subcontractors from the bidding pool.</p>

**EBMUD**  
**PLA Survey of Selected Contractors who have Bid on District Projects**

Contractor	Union Signatory?	PLA Disincentive to Bid?	PLA Increases Cost?	Comments
	Yes	Yes	Yes	<p>A PLA not only limits the number of general contractors looking at a project, but also limits the number of subcontractors exponentially reducing competition and increasing costs. Even "union contractors" are impacted by a PLA because many contractors are only signatory to a few trades, but under a PLA the contractor is now bound to the collective bargaining agreements of <u>all</u> trades and those work rules, another factor that increases costs.</p> <p>The double payment of benefits or waiting period for union benefits discourages contractors from bidding PLA projects, and most likely increases costs for those that do bid. Each contractor whether non signatory, or signatory with only a few unions had made that business decision and obviously felt that decision and their means and methods made them competitive. A PLA changes those means and methods which in turn can change the contractor's costs and bid.</p> <p>Core worker provisions, while a novel concept and offered in some PLAs by proponents to hide the discriminatory nature of a PLA, do little to address the issues created by a PLA. While a core worker provision does allow contractors not signatory with a particular trade to bring in some of its workers for that trade it still disrupts the crew already established by the contractor (union and non-union).</p>

Survey initially conducted 5/15/12 □ 5/29/12  
Updated 7/15/15

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