



Santa Clara Valley Water District

File No.: 19-1123

Agenda Date: 5/26/2020

Item No.: *2.8.

BOARD AGENDA MEMORANDUM

SUBJECT:

Consideration of Project Labor Agreement.

RECOMMENDATION:

- A. Receive information from Santa Clara Valley Water District (Valley Water) staff, and the Capital Improvement Program (CIP) Committee, regarding how a Project Labor Agreement (PLA) may impact Valley Water's capital projects;
- B. Receive information and discuss the CIP Committee's identified potential benefits, and potential concerns;
- C. Make a determination on whether Valley Water should pursue PLA implementation;
- D. If the Board decides to proceed with a PLA, provide direction on whether Valley Water should adopt a project value threshold for use of a PLA, or should one specific pilot project be selected to test the use of a PLA; and
- E. If the Board decides to proceed with a PLA, identify negotiation parameter and provide direction regarding PLA negotiation commencement.

SUMMARY:

Background

On September 25, 2018, Valley Water's Board of Directors was informed of a request from the Santa Clara & San Benito Counties Building and Construction Trades Council (SBCTC) to consider using a Project Labor Agreement (PLA) and a Community Workforce Agreement (CWA) on all public works contracts awarded by Valley Water. The Board referred this request to the Capital Improvement Program (CIP) Committee to evaluate the request and make a recommendation to the full Board of Directors. supplemental information will be provided with the amended agenda on Friday, March 13, 2020.

The attached PowerPoint presentation will assist the Board in the Project Labor Agreement (PLA) discussion and was developed by staff in collaboration with Chair Hsueh.

Process

The CIP Committee obtained information and input from stakeholders, via Q&A sessions, and through an open discussion forum at several CIP Committee meetings. Intake of information and input began on February 11, 2019, via receipt of a memo from Director Barbara Keegan, research presentations from Valley Water staff, and through presentations, informational handouts, and

comments from representatives of SBCTC and local unions, Associated Builders and Contractors (ABC), Coalition for Fair Employment in Construction (CFEC), small business representatives, industry experts, and members of the public.

A. Board Member Input

1. Director Keegan's memo, dated April 10, 2019, was entered into the record on April 17, 2019. The following memo was provided to the CIP Committee and made available to the public.

[Attachment A1: Memorandum from Director Keegan to the CIP Committee - Project Labor Agreements (PLA) dated April 10, 2019]

B. Staff Presentations and Analyses

Valley Water staff presented research to the CIP Committee as follows:

1. February 11, 2019: A PLA and CWA overview was presented to the CIP Committee by Michael Baratz, Labor Relations Officer, Valley Water.

[Attachment B1: PowerPoint - Project Labor Agreement dated February 11, 2019]

2. April 17, 2019: Examples of PLA policies enacted by public agencies in the Bay Area, as well as a synopsis of Valley Water's construction activities was presented to the CIP Committee by Michael Baratz. This synopsis included information about the number of awarded contractors and subcontractors, Small Business Enterprise (SBE) participation, and the contractor labor force.

[Attachment B2:-

- i. *Synopsis of Valley Water Construction*
- ii. *City of San Jose City Council Meeting Synopsis dated October 24, 2017*
- iii. *County of Santa Clara Board Policy 5.7.5.4 - Project Labor Agreements dated April 26, 2016 (policy amended)*
- iv. *EBMUD Agenda No. 9 - Pilot Project Labor Agreement of Chabot Dam Seismic Improvement Project dated January 12, 2016*
- v. *VTa Community Workforce Agreements Policy - BSD-002 dated September 21, 2016*
- vi. *UCLA Labor Center study - Project Labor Agreements: Pathways to Business Ownership and Workforce Development in Los Angeles dated November 2011*
- vii. *Study by Emma Waitzman and Peter Philips - Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California]*

3. July 29, 2019: Information on how PLAs may impact Valley Water's capital projects was presented to the CIP Committee by Emily Meeks, Labor Relations Specialist, Valley Water.

[Attachment B3: PowerPoint - Project Labor Agreement (PLA) dated July 29, 2019]

C. Stakeholder Input in Support of PLAs

The CIP Committee received comments expressing support for the use of a PLA at Valley Water on April 17, 2019, June 10, 2019, and July 29, 2019.

1. SBCTC (David Bini)

[Attachment C1-:

- i. Project Labor Agreement/Community Workforce Agreement Frequently Asked Questions dated August 8, 2019*
- ii. Working Partnerships USA - Building Opportunity dated July 2017*
- iii. Testimony of Peter Philips, Ph.D., Professor of Economics, University of Utah*
- iv. ELECTRI International - Project Labor Agreements dated January 15 2007*
- v. Memorandum from Ben Field and David Bini to the Board of Directors dated November 6, 2019*
- vi. Santa Clara Valley Water District Speaker Notes (David Bini; Cherie Cabral; Frank Biehl) dated April 17, 2019]*

2. Carpenter's Local Union 405

[Attachment C2: Santa Clara Valley Water District Speaker Notes (Samuel Munoz; Laurie Drocic) dated April 17, 2019]

3. International Brotherhood of Electrical Workers Local Union 332

[Attachment C3: Santa Clara Valley Water District Speaker Notes (Javier Casillas) dated April 17, 2019]

D. Stakeholder Input in Opposition of PLAs

The CIP Committee received comments expressing opposition for the use of a PLA at Valley Water on March 11, 2019, April 17, 2019, June 10, 2019, and July 29, 2019.

1. Associated Builders and Contractors (ABC NorCal) (Susan Siegert; Nicole Goehring)

[Attachment D1-:

- i. E-mail sent by Susan Siegert to Leslie Orta dated March 19, 2019; E-mail sent by Susan Siegert to Leslie Orta dated March 26, 2019*
- ii. Santa Clara Valley Water District Speaker Notes (Nicole Goehring) dated April 17, 2019]*

2. Coalition for Fair Employment in Construction (CFEC) (Eric Christen)

[Attachment D2-:

- i. CFEC PowerPoint - Project Labor Agreements: A Record of Failure and Discrimination; Santa Clara Unified School District PowerPoint - PLAs Hurt Workers; Flyer - What Women and Minority Groups Say About PLAs*
- ii. Santa Clara Valley Water District Speaker Notes (Eric Christen) dated April 17, 2019]*

3. Susan Andrews (undisclosed residency)

[Opposing comment made during CIP Committee meeting on July 29, 2019]

4. DACO Construction (Jared Ajlouny)

[Attachment D3: E-mail sent by Jared Ajlouny to Director Hsueh and Director LeZotte dated

July 18, 2019]

5. The Silicon Valley Organization (Eddie Truong; Matthew Mahood)

[Attachment **D4**:-

i. E-mail sent by Eddie Truong to the Board of Directors dated October 21, 2019

ii. Memorandum from Matthew Mahood to Director Hsueh dated October 21, 2019]

6. Business San Jose Chamber PAC (Victor Gomez)

[Attachment **D5**: Memorandum from Victor Gomez to Director Hsueh dated October 21, 2019]

E. Industry Experts

1. Mr. Jonathan V. Holtzman, Partner, Renne Public Law Group, provided insight to the CIP Committee regarding the costs and benefits of PLAs. Mr. Holtzman provided a handout summarizing observations of PLA cost control and issues based upon his experience negotiating PLAs.

[Attachment **E1**: Memorandum from Jonathan Holtzman to the CIP Committee - Observations About PLAs, Cost Control and Hiring Goals dated June 9, 2019]

2. Mr. Joe Flatley, former Director of Facilities Modernization at Milpitas Unified School District, discussed his experience leading a Negotiated Project Stabilization Agreement (PSA) (aka PLA). This discussion included particulars of the process such as: pre-project meetings, scope of work review and the signed agreement of duties by trade. Specifically discussed was a \$95M modernization project, the estimated three-month time period for negotiating, and inclusion of a core worker provision. Mr. Flatley also spoke about his relationship with the SBCTC.

3. Mr. Kenneth Wong, currently County of Alameda and formerly Chief of Construction Services at the County of Santa Clara, discussed factors affecting PLA efficacy, including economy and market conditions (American Recovery and Reinvestment Act (ARRA), general contractors' relationships with subcontractors, size and sophistication of general contractors (administration), labor disputes and general availability of crafts in the area (location), size and duration of projects (long-term employment stability), craft(s) collective bargaining contract expiration during PLA project, effect on government delays in contract award and performance, project delivery methods (design-bid-build, design-build), political climate, and PLA signatories.

[Attachment **E2**: PowerPoint - Project Labor Agreement Information Brief (PLA)^{ab} dated October 21, 2019

^a Rider Levett Bucknall [RLB]. *Project Labor Agreements - Impact Study for the Department of Veterans Affairs*. RLB, Final Issue - June 02, 2009.

^b United States General Accounting Office [GAO]. *Project Labor Agreements - The Extent of Their Use and Related Information*. GAO, May 1998.]

4. Mr. Thomas Esch, Purchasing & Contracts Manager, Valley Water, and with former experience at VTA, discussed his managerial experience during his tenure with VTA as the Construction Contracts Administrative Manager with oversight over PLAs for VTA.

F. CIP Committee Questions and Staff Analyses

Q1: Is the usage of PLAs limited to the public sector?

A1: No, approximately 93% of PLAs are reportedly in the private sector. Companies include: Apple, Disney World, Samsung, Trans-Alaska Pipeline, Tesla, Toyota and Walmart.

Q2: What are examples of public sector public works PLA Projects?

A2: Examples of regional Bay Area PLA projects are as follows:





1. The Contra Costa County Water District used PLAs for projects such as the Los Vaqueros Dam, a \$450M project in 1995 through 1997. And, the Bollman Water Treatment, a \$35M project in 1995 through 1999.
2. The San Mateo Community College had projects from 2003 through 2007 totaling \$90M.
3. The Eastside Unified School District used a PLA in 2002 for projects totaling \$298M.
4. The County of Santa Clara PLA projects included (*Countywide PLA):
 - a. Animal Shelter* (2018): \$34M
 - b. Department of Revenue and Taxation* (2018): \$12M
 - c. Santa Clara Jail Security* (2017): \$10M
 - d. James Ranch Expansion and Renovation (2015): \$48M
 - e. VMC Ancillary Building (2015): \$20M
 - f. County IT/ROV/DOR Berger Drive Building (2015): \$12.7M
 - g. Valley Medical Center (VMC) Bed Building #1 (2009 Extension): \$350M
 - h. VMC Service Building Replacement (2011): \$55M

Q3: Are all PLA thresholds the same?

A3: Project thresholds vary in private and public sector. In the public sector, examples within Santa Clara County include: The City of San Jose established a project value threshold of \$3M or greater for new or major replacement projects. The City of San Jose's PLA policy did not apply to rehabilitated facility projects or maintenance projects. The Valley Transportation Authority established a threshold of \$2M or greater. The County of Santa Clara also established a PLA threshold of \$2M or greater.







Q4: What are the PROS to implementing a PLA? Is there a Valley Water Board Policy that is applicable? And, who are the beneficiaries?

A4: Please refer to the following summary:

PROS	BOARD POLICY VALUE?	WHO BENEFITS?
✓ May guard against the possibility of work stoppages or labor actions	X	
✓ May aid in on-time delivery of key Valley Water projects through unions' use of subcontractors	✓ (Governance Policy E-1.5)	 + subcontractors
✓ May include local and/or targeted hiring involvement through incorporation of a Community Workforce Agreement	X	 + e.g. minorities, women, veterans, etc.
✓ Provides uniform wages, benefits, overtime pay, working conditions, and work rules for different crafts	X	 + contractors

Q5: What are the CONS to implementing a PLA? Who is impacted? Is there a mechanism to reduce the impact?

A5: Please refer to the following summary:

CONS	WHO IS IMPACTED?	POTENTIAL MECHANISM TO REDUCE IMPACT
✗ May delay key Valley Water projects due to individual project negotiation		✎ Limit negotiation proposals that are inconsistent with the Building & Construction Trades Council's established agreements
✗ May conflict with projects utilizing external funding and may impact Valley Water's ability to obtain funding on projects with PLAs (e.g. state, federal grant or U.S. Army Corps of Engineers funded projects)		✎ Select project(s) that does not include external funding source(s) restricting the use of PLAs (e.g. state, federal grant or U.S. Army Corps of Engineers funded projects)
✗ May cause loss of staffing control for contractors of projects (e.g. core worker limitations, 1:1 hiring, use of unknown employees)	 + contractors	✎ Negotiate terms to include use of more core workers by non-union contractors
✗ May reduce the number of contractors who submit bids for projects	 + contractors	✗ No control over submission of bids
✗ Union dues requirements cause reduction in paycheck for non-union workers	non-union construction trade workers	✎ Negotiate terms
✗ Requires non-union contractors to pay health and retirement benefits twice (union + company plan) *receipt of benefits from contributions paid to union only if worker joins union and remains member until vested	non-union construction trade workers	✎ Negotiate terms
✗ May increase administrative costs (e.g. monitoring and compliance)	 + rate payer(s), small and/or non-union contractors	✎ Select larger, more substantial project(s) so costs are proportional to the value of the project
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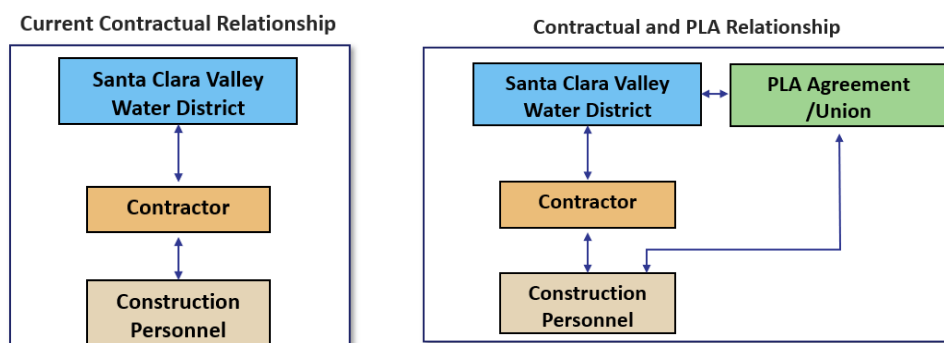
Q6: What is the budgetary cost impact of a PLA?

A6: Examples of projects that resulted in both savings and budgetary excess are listed below:

1. San Francisco 50 United Nations Plaza (2011): \$128M. The PLA bid price was 2% less than the non-PLA bid price. The project was completed on schedule and within budget.
2. City of Berkeley (CWA): The engineers' estimates ranged from \$578K to \$2.7M. The bid prices ranged from -13% to +31%. Project examples include:
 - a. Street Rehabilitation Project: \$1.6M(estimated). The low bid was \$1.4M.
 - b. Sanitary Sewer Rehab Project 10: \$1.3M (estimated). The low bid was \$1.057M.
 - c. Sanitary Sewer Rehabilitation Project 11: \$1.3M (estimated). The low bid was \$1.28M.
 - d. Claremont Branch: \$2.9M (estimated). The low bid was \$2.97M.
 - e. North Branch: \$3.8M (estimated). The low bid was \$4.25M.
 - f. South Branch: \$4.3M (estimated). The low bid was \$4.6M.
3. City of Fremont (CWA). The bid prices were 32% below similar projects in Contra Costa County.
4. County of Alameda (CWA) with a 40% local hiring requirement. Project examples included:
 - a. Peralta Oaks Seismic Upgrade (Design-Bid-Build). The \$20M awarded bid was 10% over estimate.
 - b. East County Hall of Justice (Design-Build). The \$90M awarded bid was 15% over the estimated bid.
5. Federally funded projects
 - a. The New York Thruway Authority
 1. Tappan Zee Bridge (1996) had a \$130M project budget. The PLA resulted in a 4.6% (\$5.98M) savings.
 2. Lawrence Livermore Laboratory (1997) had a \$1.2B project budget. The PLA resulted in 0.2% (\$24M) savings.

Q7: What are the Contractual Relationship differences with a PLA?

A7: Please refer to the following illustration:



G. CIP Committee Discussion

1. Potential Benefits

The CIP Committee identified potential benefits regarding the use of a PLA at Valley Water

(see Q4/A4), as the number of large, CIP construction projects are proposed to grow in the near future.

- a. May help with the construction management of future projects as PLAs encourage unions to find available subcontractors, which may also aid in on-time project delivery
 - 1. Consistent with Governance Policy E-1.5 (Recognition that Valley Water services are critical to the economic vitality of Silicon Valley)
- b. Consistent with Board standards, a PLA may include provisions to ensure community job training and work opportunities for the local workforce

2. Potential Concerns

The CIP Committee identified potential concerns regarding the use of a PLA at Valley Water (see Q5/A5 *highlighted sections*), with substantial concern with respect to:

- a. The impact to non-union construction trades workers who may experience a reduction in pay as a result of union dues requirements and the requirement to pay health and retirement benefits twice (union + company plan)
- b. The ability for Valley Water to encourage and promote the use of small and local businesses in the contracting and procurement of goods and services may be affected due to items such as: a PLA requirement that non-union contractors derive a portion of their project workforce from a union hiring hall; ability for small and local businesses to submit bids (Ordinance No. 04-01)
- c. Additional requirements, such as monitoring and compliance obligations, may increase project expenses

3. Recommendation

If the potential concerns identified by the CIP Committee can be addressed, along with any additional concerns that the Board of Directors may identify, then the Board should consider moving forward with supporting a PLA.

Next Steps

A. Direction

The CIP Committee requests the Board of Directors provide direction regarding whether Valley Water should pursue PLA implementation.

- 1. If “YES”, determine if negotiations surrounding the use of a PLA at Valley Water should commence.
 - a. If “YES”, identify PLA negotiation parameters and provide direction on the following:
 - i. Should a project value threshold (wrap-around) for use of a PLA be used versus a project-specific PLA?
 - ii. Initially, should one specific pilot project be selected to test the use of a PLA?
 - iii. What size and type of project may be appropriate for a PLA?
 - 1. What type(s) of project(s) should be included/excluded?
 - 2. What will the monetary threshold be for the project(s)?
 - iv. What additional resource(s) will Valley Water need to implement a PLA?

- v. Will implementation of a PLA create the need for an organizational restructure?

FINANCIAL IMPACT:

The financial impact associated with this item is unknown, however the use of a PLA may add to Valley Water's administrative costs given the related implementation, monitoring and compliance functions required to be performed.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: 041019 Memo, B. Keegan to CIP Committee (A1)
Attachment 2: 021119 CIP Mtg PowerPoint (B1)
Attachment 3: Synopsis of Valley Water Construction (B2-i)
Attachment 4: 102417 Synopsis, SJ City Council Mtg (B2-ii)
Attachment 5: 042616 SC County BOS Policy 5.7.5.4 (PLAs) (B2-iii)
Attachment 6: 011216 EBMUD Agenda, Pilot PLA (B2-iv)
Attachment 7: 092116 VTA Policy BSD-002 (B2-v)
Attachment 8: 2011 UCLA Study, PLAs (B2-vi)
Attachment 9: Waitzman/Philips Study, PLAs/Bid Outcomes (B2-vii)
Attachment 10: 072919 CIP Mtg PowerPoint (B3)
Attachment 11: 080819 PLA/CWA, FAQs (C1-i)
Attachment 12: Working Partnerships - Building Opportunity (C1-ii)
Attachment 13: Testimony, Peter Philips (C1-iii)
Attachment 14: 011507 ELECTRI Int'l, PLAs (C1-iv)
Attachment 15: 110619 Memo, B Field & D Bini (C1-v)
Attachment 16: 041719 CIP Speakers, Bini/Cabral/Biehl (C1-vi)
Attachment 17: 041719 CIP Speakers, Munoz/Drocic (C2)
Attachment 18: 041719 CIP Speaker, Casillas (C3)
Attachment 19: 042619 E-mail, Siegert (D1-i)
Attachment 20: 041719 CIP Speaker, Goehring (D1-ii)
Attachment 21: 041719 CIP Mtg Handout, CFEC/SCUSD (D2-i)
Attachment 22: 041719 CIP Speaker, Christen (D2-ii)
Attachment 23: 071819 E-mail, Ajlouny (D3)
Attachment 24: 102119 E-mail, Truong (D4-i)
Attachment 25: 102119 Memo, Mahood (D4-ii)
Attachment 26: 102119 Memo, Gomez (D5)
Attachment 27: 060919 Memo, Holtzman (E1)
Attachment 28: 102119 PowerPoint, Wong (E2)
Attachment 29: 052620 PowerPoint

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