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Memorandum

To:	City of Tacoma, City Council
From:	Sterling Johnson, Director of Public Policy, Griffin & Strong, P.C.
CC:	Daniel Murillo, City of Tacoma. Rodney K. Strong, CEO; Michele Clark Jenkins, Sr. Director of Consulting; Dr. Vince Eagan,
Date:	December 7, 2018
Re:	Community Workforce Agreements

To Whom It May Concern,

The 2018 Disparity Study (“Study”) was conducted by Griffin & Strong, P.C. (“GSPC”), for the City of Tacoma (“City”). After presentation of the 2018 Disparity Study Findings and Recommendations, the City Council received testimony on October 2, 2018, in support of the City Manager drafting a Priority Hire Ordinance (“PHO”) and Community Workforce Agreement (“CWA”) and commissioning a CWA task force to make recommendations on a PHO/CWA for consideration as a means of diversifying the local workforce and improving contracting outcomes for M/WBE businesses. Because a portion of the testimony referenced the 2018 GSPC Study as a basis for consideration of this program, GSPC found it appropriate to opine on the use of these tools in helping to both encourage M/WBE participation and a diverse workforce.

Executive Summary

The 2018 Study was not a workforce analysis of the Tacoma market area. It did, however, include, a review of the City’s current Local Employment and Apprenticeship Program (“LEAP”) program, which is a local workforce development and apprenticeship program policy already codified and in operation by the City.

GSPC is not in opposition to building a viable local workforce, working alongside organized labor groups, or the use of PHOs/CWAs and other types of Community Benefits Agreements, when appropriate, as a means of building a strong local workforce, which is critical in community economic development. However, it has been GSPC’s experience that similar types of PLA agreements have been used to prioritize contract access by labor unions and depress the utilization of M/WBE businesses in public contracting.

Framed through anecdotal concerns surrounding the City of Seattle CWA (which was referenced as a framework for this legislation) and the negative impacts of both the City of Seattle CWA and PLAs by regional partners like Sound Transit, which have been reported as a barrier to M/WBE contracting, GSPC believes that this approach would not be advantageous to encouraging M /WBE utilization in public contracting. GSPC would recommend the following:

1. Implementation of Recommendations proposed in the 2018 Disparity Study.
2. Interviews with staff from the City of Seattle and Sound Transit regarding their PLA/CWA's impact on M/WBE and small business participation.
3. Expansion of the Tacoma LEAP Program (including additional staffing and resources).
4. Review the Sound Transit and City of Seattle experience with a CWA/PLA and M/WBE utilization.
5. Creating a LEAP compliance team to monitor and scrutinize workforce recruitment.
6. More effective partnering with building trades coordinated through the LEAP program to increase workforce development and diversity.
7. Exploration of using the City's Non-Discrimination ordinances to promote diversity in union membership and recruitment.
8. Conducting a full independent workforce analysis to identify the demographics and needs of local workforce prior to implementing priority hire requirements.

Background on PLA usage

In discussing CWAs and other types of Project Labor Agreements ("PLAs") we will refer to both jointly, as the term is commonly used interchangeably in this market (a CWA is a PLA with a Community Benefits component). These, along with Community Benefits Agreements ("CBAs"), have grown in popularity as ways to protecting community interest amidst rapid development or promoting diverse business inclusion in public contracting.

As a result of unequal access, some communities have received more benefit from public contracting and community workforce. PLAs/CWAs and CBAs then, have been mobilized as a tool for protecting community interests through providing opportunities to provide opportunity to jobs, contracts and career pathways from new development

According to a 2011 report commissioned by the U.S. Department of Labor from International Elements Incorporated and Hill International on PLA implementation, PLAs provide the following potential benefits:

- Eliminate risk of strikes and disruptions during construction period;
- Provide a process for resolution of disputes that allows work to proceed while disputes are being resolved;
- Provide access to a pool of skilled labor through union hiring halls;
- Allow for meeting labor requirements through other sources if the hiring halls are not able to meet the requirements in a timely fashion; and
- Administer uniform work rules to improve efficiency and save money; these provisions are often the source of the largest cost savings. They normalize shift work to be consistent among the trades and to suit the conditions of construction.

PLA Impacts on M/WBE Businesses

Some argue that the use of “blanket” PLAs (designed to apply to a broad range of public contracts) have restricted access to contracting opportunities by making organized labor the conduit to contract opportunity.

As a result, PLAs may result in steering public contracts only to those contractors and their employees that have chosen to align with trades unions. With M/WBEs and workers having historically been disproportionately underrepresented in union halls, this agreement would, in proxy, restrict access by diverse contractors to public contract opportunities, potentially deepening the disparities identified in the 2018 Disparity Study.

In the Seattle community, some have referenced union requirements as not necessarily being advantageous for many small business owners, forcing non-union contractors to lay off core workforce make contributions to expensive union benefit plans and adhere to strict payroll schedules, additional overhead and costly penalties that place a considerable risk to small and diverse businesses.

In terms of the experience in the Seattle-Tacoma marketplace, in 1999 Sound Transit decided to use PLAs on all of Link light rail construction contracts and Sounder commuter rail station contracts. The Sound Transit Board was concerned that the PLA administered contracts in a manner consistent with Sound Transit and federal grant requirements for the use of local, small and M/WBE firms.¹ The PLA did include community members on the PLA Joint Administrative Committee to review these and other community benefits of the PLA. In particular, the PLA established subcontractor goals of 21 percent for “People of Color” and 12 percent for “Women.” A 2011 study of the Sound Transit PLA reported that MBEs received \$141.2 million and Women \$56.7 million of Central Airport Link projects, 19.7 percent of total construction spending at that time on those projects.² These figures have not been independently verified. At the same time the 2011 study reported the nonunion contractors found the PLA was a barrier to bid on Sound Transit projects as it was the first time many of these firms had to deal with union requirements.³ Sound Transit staff have also reported concerns from M/WBE and small businesses about the costs imposed by the PLA.

Within the marketplace, business owners and organizational leaders interviewed echoed these issues regarding PLA/CWAs in place with the City of Seattle and Sound Transit, with some explicitly stating that the City of Seattle CWA was a barrier to small and diverse businesses. According to a representative of a local trade union who noted that the Seattle CWA requirement was having a significant negative impact on M/WBE participation in public works contracting, they “have nearly no contractors participate in public works contracts”.

Overall, while many proponents may voice that these programs have significantly increased workforce and contracting diversity, safety, and numerous other factors, there has been considerable anecdotal evidence

¹ Sound Transit, Project Labor Agreement for the Construction of Sounder Commuter and Link Light Rail Projects, Article 1, PLA #740-99.

² Agreement Dynamics, Sound Transit Project Labor Agreement Study, 2011, page 58. The 2011 study also reported that \$100 million was spent with DBEs, but the study did not provide a percentage of overall spending for that dollar amount.

³ Agreement Dynamics, Sound Transit Project Labor Agreement Study, 2011, page 8.

that suggests that these types of agreements have not produced a positive impact on either workforce diversity or M/WBE contractor utilization.

GSPC Recommendations

The disparity study was an analysis of the availability and utilization of M/WBE businesses within the relevant marketplace on City of Tacoma contracts (and not Tacoma wages or workforce). The disparities in M/WBE utilization were noted both in our presentation to City Council in September 2018, as well as in testimony on October 2nd.

GSPC does not believe that enacting a blanket PLA will assist the City in remedying these disparities and it is important when considering the use of any future PLA/CWA policy that this study does not provide support for either the use of a PHO or CWA/PLA, as this study measured businesses and not individuals or wages. It has been GSPC's experience that similarly constructed blanket PLA agreements have not been impactful in promoting diverse business inclusion in other jurisdictions.

The GSPC 2018 Study also identified discrimination in the Tacoma private marketplace, making it counterintuitive to use Tacoma private marketplace actors, like labor unions, to promote diversity without governmental intervention. While GSPC has not made a finding regarding the number of MWBE firms who are union signatories in the Tacoma metropolitan area, overall MWBE business availability and disparities in current MWBE utilization may support the deduction that MWBEs may also have low labor union enrollment. Furthermore, GSPC also received feedback anecdotally, that business owners in the Puget Sound region are struggling to find workers, noting that "nobody is in the (union) hiring hall".

Recognizing Washington's strong union presence, the City should use LEAP to advocate and partner with unions to encourage diversification of the workforce and vendor pool and into trades and apprenticeship without using the CWA as incentive. In many cities, labor unions have taken an active role in assisting government actors in building a diverse workforce without CWA/PLA requirements, including programs which partner with schools to identify, recruit, support and help educate students as they enter the trades. The City may also explore agreements which mandate local unions to recruit and diversify prior to exploration of any coordinated PHO or CWA.

Furthermore, GSPC opines that the diversification of available vendors and labor do not require PLAs. Many of these conditions can be incorporated through a more concerted promotion of recruitment for workforce from LEAP rosters or the use of goals and Non-Discrimination programs (explored in the 2018 Disparity Study report) to prevent the City from becoming a passive participant to discriminatory private activity while encouraging the inclusion of diverse businesses and workforce in City contracting.

With the Tacoma LEAP program already in existence, GSPC would opine that it would likely be more impactful for the City to dedicate the necessary resources to strengthen and expand the LEAP program. The LEAP program lacks staffing and resources necessary to effectively carry out its function within Tacoma City government.

Lastly, prior to enacting any additional legislation, GSPC recommends conducting independent research to use data to inform this potential approach, analyzing feasibility, potential cost benefits, and equitable impact. GSPC also recommends that the City undertake a full workforce analysis to determine what is the

composition and need of the City's workforce to assist in creating targeted and defensible priority hire policies.

PLA Implementation Guidance

Should the City choose to push forward in the development of a CWA/PLA, best practice guidance has instead shown that these tools are most impactful when applied under specific circumstances to avoid inefficiencies and improve equal access to opportunities for small and diverse businesses, amongst other issues.

While this memo was neither meant to serve as an indictment against either organized labor or PLAs, the City must ensure that if PLAs are desired to be used for implementation that they adhere to the Department of Labor guidelines on PLA application to help ensure project execution.⁴ Some of the considerations include:

- Selecting projects where scope is well defined, and the construction environment and labor market factors are well understood;
- Undertaking early planning and analysis of PLA use, and conduct a feasibility study that demonstrates economic benefits, appropriate labor conditions and open competition;
- Negotiating the PLA prior to the bid process, and include PLA terms in the documents so that all potential bidders are aware of labor costs and availability; and
- Include public policy provisions in the PLA, addressing DBE goals (or specific MBE, WBE, or SBE goals as appropriate) and local resident participation goals.

Furthermore, to address diversity in construction trades and workforce, any project specific PLA should clearly define the conditions for inclusion of both union and non-union business owners and workforce, coupled with supportive services which can assist the businesses in competition.

⁴ <https://www.dol.gov/asp/evaluation/reports/20110225.pdf>