

The People's JUSTICE40+
Community Benefit Playbook



Anatomy of an
Effective
Community
Workforce Agreement



OVERVIEW



This guide to Community Workforce Agreements provides a framework to bring innovation to the traditional Project Labor Agreement (PLA), and to give life and meaning to a new social compact between a city, labor, and the community.

The foundation of a new social compact is a genuine commitment for shared prosperity among all stakeholders, and the wherewithal to change traditional business and hiring practices to support that goal.

An effective Community Workforce Agreement (CWA) is the heart of this social compact. It is a dynamic partnership between labor and community – more than just diversity and inclusion goals. An effective CWA reflects a common pledge to work together to build a high-road path to economic revitalization that includes good jobs. It gives greater voice to community and labor, and increases access to consequential decision-making about the urban future.

Community Workforce Agreements (CWAs) are one of the most effective instruments to operationalize the social compact to achieve these goals. CWAs are often described as Community Benefit Agreements (CBAs). They share common language and often include elements unique to local markets and project conditions.

However, CWAs are usually limited to jobs (and maybe business opportunities), and they rarely involve the community. In contrast, in the case of a CBA, the community is involved in the development of the agreement (“procedural equity”), and a broader array of benefits is typically inserted, such as housing, environment, and transportation investments that align with community needs and priorities.

WHAT IS A CWA?

The CWA is a formal, legally binding labor-management agreement that is negotiated between public and private construction end-users, the local building trades council, and prime contractors managing specified projects in a geographically defined jurisdiction. The Building Trades Council leads in negotiating the CWA, and individual Building Trades Unions are signatories to the agreement. The CWA is binding on all sub-contractors engaged in work on the specified project.

The difference between the CWA and a Project Labor Agreement is that community interests are incorporated into the terms of the CWA. Typical PLAs focus on such issues as strikes, lock-outs, dispute resolution, journey-apprentice ratios, work hours, conditions, and wages. CWAs focus on community benefits to ensure diversity and inclusion as a pathway to shared prosperity.

The key purpose of the CWA is to ensure that the job access and quality aspects that are contained in the social compact between labor and the community are actively pursued and persistently protected in a formal agreement.

Ideally, community organizations can be direct signatories to the CWA or to a side agreement, and are involved in monitoring and assisting in the CWA implementation. Accountability is an important principle for every CWA.



SUMMARY OF CORE CWA ELEMENTS

The following guidelines for putting together an effective CWA represents best practices gleaned from Emerald Cities' experience, secondary sources, and our survey of over 20 community workforce agreements that have been negotiated, signed, and implemented across the country. While CWAs vary from city to city, virtually every good CWA contains these essential elements:

Specific Percentage of Project Work Hours for Targeted Hiring Populations:

- Local residents or residents local to the impact area
- Disadvantaged workers (low-income, returning citizens, homeless, government benefits recipients, etc.)
- Trainees from specific pre-apprenticeship organizations

Specific Apprenticeship Goals:

- Percentage of total apprentices, relative to a project's whole workforce
- Percentage of apprentices from each target population
- Direct entry options from approved pre-apprenticeship programs
- Other experiential learning or work-and-learn opportunities, such as internships and on-the-job training
- Range of worker benefits, including workers compensation

Carve-outs for Minority, Women and Disadvantaged Business Enterprises (MWDBE):

- Emerging business enterprise
- Employee exception to PLA requirements
- Ensure contractors are evaluated on a "quality" as opposed to a "price-based system"
- Pre-approval system for contractors who have been educated in, and have agreed to work under the CWA.

SUMMARY OF CORE CWA ELEMENTS (CONT.)

CWA Compliance Monitoring

- Online data reports
- Project monitor (consultant, community-based organization, public agency, or project construction member)
- Stakeholder Advisory Committee (e.g., Portland Social Justice Committee and Seattle Sound Transit)
- Proactive monitoring or a job monitoring committee

Sanctions for CWA Non-Compliance

- Penalties or fines
- Draw-down payments
- Withholding percentage of retainer or progress payments
- Loss of contract
- Loss of future contracts

Incentives for CWA Compliance

- Monetary bonuses
- Bonus bid points on future projects

Funding Mechanisms for Support Services

- Percentage of work hours or contract value
- Separate fund administration committee



THE ANATOMY OF A CWA

WORKFORCE DEVELOPMENT

A Community Workforce Agreement (CWA) includes the standard PLA provisions, including terms and conditions of employment, collectively bargained wage rates, benefit fund payments, hours, etc. The terms encourage job stability and prevent costly delays through a number of provisions related to strikes, disputes, and working conditions.

The “community benefits” that are negotiated to ensure a broader distribution of opportunities are what turns a PLA into a Community Workforce Agreement (CWA). There are at least seven major elements to the anatomy of an effective CWA. The following sections briefly describe these elements and provide, where possible, examples and sample CWA language.

- A. Clearly Articulated Targeted Hiring Goals
- B. Definition of the Targeted Employment Category
- C. Definition of Good Faith Effort
- D. Monitoring and Compliance
- E. Accountability Mechanisms /Sanctions
- F. MWDBE Carve-outs
- G. Funding Mechanisms

A. CLEARLY ARTICULATED TARGETED HIRING GOALS

The first major element is clear, concrete hiring goals that are strategically important and politically feasible. The hiring goal categories may be defined by geography (eg. residents in a local neighborhood, census tract, or zip code), economic status (i.e. low-income), or some other legally defensible criteria.

- **A requirement that a designated percentage of all *worker hours* (not jobs) will be performed by members of the targeted workforce.**

Trade-level Goals: Trade-level goals require that hiring goals are to be met by each of the trade unions involved on the project. Examples:

- The Oakland Port Modernization Project (MAPLA) set a goal that 50% of all hours worked, on a craft-by-craft basis, were performed by people from targeted communities.
- The City of Los Angeles negotiated several PLAs to cover sewer, road, and police station construction. Those agreements require 30-40% of all worker hours be performed by residents of the local impact areas, with 10% of the work to be performed by disadvantaged workers.

Project-wide Goals: Project-wide goals (rather than trade-by-trade or contractor-by-contractor goals) create more flexibility, although potentially less accountability, for inclusion in mechanical trades. In other words, it often means that hiring goals are limited to laborers, painters, and/or carpenters, as opposed to plumbers, electricians, bricklayers, etc.

SAMPLE LANGUAGE

“The parties agree that it is the goal that residents of buildings and zip codes in which work is being performed and disadvantaged San Francisco workers perform at least 33% of the total work hours in each project. If the total cost of the Project exceeds \$1,000,000, this goal will be measured on a trade-by-trade basis.”

A. CLEARLY ARTICULATED TARGETED HIRING GOALS (CONT.)

2. An apprenticeship utilization requirement with a designated percentage of total hours to be performed by apprentices.

- The bulk of new entrants into construction careers enter through apprenticeship. If apprenticeship utilization is not required, then new workers may not have meaningful opportunities to enter the construction trades through the project. To pre-qualify as a potential contractor or subcontractor on a CWA-covered project, a bidder must participate in a certified and registered apprenticeship program. For example, the Oakland MAPLA established a goal that 20% of the work be performed by apprentices.
- **Apprentice-Equivalent Positions (and Wage Exceptions):** Often, despite best efforts, it is legitimately difficult to find skilled workers to meet hiring goals. Reasons for this may include a tight labor market, lack of a pipeline, or the need to provide work and learning opportunities for community residents who have yet to qualify for apprenticeship slots. Equivalent positions are sometimes created within unions, such as the pre-craft worker positions established within IBEW 18 in Los Angeles. Alternatively, contractors are given opportunities to hire outside of the hiring hall, typically from lists of other pre-qualified training organizations.

SAMPLE LANGUAGE

“In the event that a Union is unable to fill any requisition for one or more employees within 48 hours after such requisition is made by a contractor, or within 24 hours in the case of replacing a terminated employee, or for any cause, the Contractor may employ applicants meeting the qualifications sought from any other available source as per the Schedule A. Contractor shall promptly notify the Union of any applicants from other sources.”

A. CLEARLY ARTICULATED TARGETED HIRING GOALS (CONT.)

Staffing Utilization Plans: A staffing utilization plan should be required as part of the project scope, to assist in identifying the number of jobs, trades, and hours to be worked on the project. This will assist in outreach and placement, and should be included in all bid/solicitation documents.

SAMPLE LANGUAGE

"All work assignments shall be disclosed by the Prime Contractor and Contractors at pre-job conference prior to commencing work under this Agreement. Prime Contractor shall coordinate the scheduling of the pre-job conferences... Prime Contractor and Contractors are responsible for providing complete information on assignments of work at pre-job conference."

3. A goal that sets the percentage of first-year apprentices and/or of total apprentices that come from the targeted hire category.

Examples:

- In addition to requiring that 20% of the work be performed by apprentices, the Oakland MAPLA also set an ambitious target that all of the apprentices should come from the targeted employment category.
- The LA Community College District CWA requires that 30% of the hours be worked by apprentices, with half of those hours targeted to first year apprentices.
- The Portland Community Benefit Agreement specifies apprenticeship training goals for each designated target population.
- Portland CBA included utilization goals for: apprentices (20% of total worker hours), minority apprentices (18% of apprenticeship hours) and journeymen (18% of total worker hours), women apprentices (9% of apprenticeship hours) and journeypersons (9% of total worker hours). This was in addition to Local HUB Zone residents (10%) and DMWESB contractors (22%) with a subcategory of DMW of 12%.

B. DEFINITION OF THE TARGETED EMPLOYMENT CATEGORY

Although low-income communities and communities of color are key constituencies for CWAs, identifying workers of color and women workers as the target employment categories create legal problems and may render the agreement vulnerable to a lawsuit. Instead, a model CWA should focus on addressing poverty as a core component of the agreement and should identify a targeted employment category of low-income workers who would benefit from fuller access to construction careers.

The definition could include:

- Residents of census tracts or zip codes that have high poverty or unemployment rates. (Zip codes and census tracts should be identified specifically by number.)
- Residents of neighborhoods that surround the project, especially if the project area is in a low-income area; priority should be given to workers or job seekers who reside within a particular radius of the project.
 - Example: The LA Convention Center established a project hiring radius, with priority given to people who lived within a one-mile radius, and second priority given to those who lived within a three-mile radius, etc.
- “Hard-to-Employ” workers, including people who are on or recently left public assistance, single partners, workers with a history of homelessness, and workers with a criminal record.
- Unemployed or underemployed residents of low-income households throughout the city or region.
- Graduates of named pre-apprenticeship programs (e.g., YouthBuild, Malloy Center, etc.)



B. DEFINITION OF THE TARGETED EMPLOYMENT CATEGORY (CONT.)

Example: City of Milwaukee Residents Preference Program

The City of Milwaukee established a creative and relatively uncomplicated way to identify qualified job seekers as part of its Residents Preference Program. Under the terms of the program, targeted workers would perform 40% of all public infrastructure work contracted through the city's Department of Public Works (DPW).

In order to qualify, job seekers must be unemployed or underemployed and live in a low-income household anywhere in the city. DPW has designated community agencies to identify and recruit workers. These agencies ask job seekers to sign an affidavit that they meet the targeted worker definition.

Once job seekers are put on the qualified worker list, they can continue to work on DPE projects for 5 years before they are considered to be no longer underemployed. This process establishes a low hurdle for verification, specifically identifies the agencies that are authorized to accept affidavits and put workers on the list, makes it easy for qualified workers to show compliance, and also gives new workers a window of time to continue working as a targeted workers so that they can stay employees, get on their feet, and stabilize their households before they have to compete for work on their own.

C. THE DEFINITION OF GOOD FAITH EFFORT

The best CWA will explain what each entity has to do to demonstrate a good faith effort at meeting the hiring goals. The project owners, managing agency, contractors and subcontractors, union hiring halls, and apprenticeship programs may all have to alter and adjust their standard procedures to help achieve the hiring targets.

Enforcement mechanisms work best if the targeted hiring program is defined as a requirement with clear consequences for violation. The CWA should also lay out the process by which a contractor, JAC, or union hiring hall can show compliance even if they do not meet the numerical requirements. The process would include all the activities that entities would have had to engage in if they were abiding by the terms of the agreement. The responsibilities include the following:

- Contractors must show that they have asked the hiring hall for referrals that fit the targeted hiring requirements. They should be able to document these requests and show that they have made every effort to hire and keep targeted workers on the jobs.
- The union hiring halls must be willing to refer workers from the targeted category as they are needed. In some cases, this may mean that targeted workers are referred before other workers who are above them on the list. This may require changes in referral procedures and/or waivers from established dispatch rules, which should be set out in the CWA. The hiring halls should be able to show that they have a mechanism for identifying the targeted workforce and referring them to the job.
- Apprenticeship programs must show that they have opened up or reserved slots for new apprentices who meet the targeted hiring requirements, and that they refer those workers to contractors working on the CWA-covered projects, as requested. They may also be asked to demonstrate that they are working with named pre-apprenticeship programs in the community to help identify and recruit workers into their apprenticeship programs.

C. THE DEFINITION OF GOOD FAITH EFFORT (CONT.)

SAMPLE LANGUAGE FROM PORTLAND

"Employers shall maintain records of the diversity of their on-site workforce, such as certified payroll or other voluntary reporting items, sufficient to allow the Owner to determine whether a project is meeting this goal and to assess the rates of workforce participation by racial and ethnic minorities, women, and low-income people. Employers shall submit this information to the Owner and the Labor-Management-Community Committee on a quarterly basis.

Employers shall maintain documentation of their good-faith efforts to meet the apprenticeship project hour goals for the duration of the project and shall submit such to the committee."

SAMPLE EC-SF CWA LANGUAGE

"All parties agree to identify and refer on a priority basis, consistent with the non-discriminatory referral procedures of the hall, qualified and available targeted workers for project work. For the convenience of the Parties, Attachment B of this Agreement contains a map of neighborhoods that meet the unemployment or income level definition of 'disadvantaged' based on the most recent census tract-level data. In addition, the local Unions will work with Contractor to identify qualified and available targeted workers that reside in buildings in which work is being performed."

"Prior to coming on site, contractors shall contact in writing their signatory union(s) or local hiring hall(s) from which they plan to or may request workers, to request all possible assistance from the union(s) in fulfilling the hiring and employment goals in this Agreement."

D. MONITORING AND COMPLIANCE

The CWA should specify the information contractors are required to submit to verify their compliance with the targeted hiring program. The monitoring information should include a specific explanation of how often the information is submitted, to what entity it is submitted (either a public agency, but preferably a committee with broad representation of project stakeholders), and how often that information is reviewed to determine progress.

Online Data Reporting: Use of online data reporting systems of certified payroll that include indications of which workers met the targeted hiring criteria provide real-time data for benchmarking progress throughout the construction process.

Proactive Monitoring & Compliance: The best CWAs make this information public, by establishing a committee of stakeholders to receive the data, evaluate progress, and provide problem-solving support for contractors who are having difficulty meeting the hiring goals. This committee could include representatives of the general contractor and end-user, as well as union hiring halls, apprenticeship programs, and representatives from community-based organizations.

Proactive compliance is designed to help contractors meet the targeted hiring goals. This committee should have a direct role in problem-solving on a case-by-case basis with contractors who are not in compliance or are in danger of being out of compliance. When contractors are not in compliance or are in danger of not meeting the hiring goals, the committee could ask them to come to a meeting where committee members help identify obstacles and ensure communication among the entities to make the program work.

SAMPLE LANGUAGE

“The Emerald Cities Steering Committee, of which Mission Housing Development Council and the San Francisco Building Trades Council are founding members, will monitor the progress of the contractors and signatory unions in meeting the goals and purposes of this Agreement. MHDC, with the assistance of the San Francisco Office of Economic and Workforce Development, shall provide monthly workforce reports based on certified payroll to the ECSF Steering Committee.”

D. MONITORING AND COMPLIANCE (CONT.)

SAMPLE LANGUAGE FROM PORTLAND CBA

"In recognition of the necessity for cooperation and communication between all parties to the agreement in achieving the diversity goals of this Agreement, the prevention of disputes and misunderstandings and the implementation of this Agreement, the parties agree to establish a Labor-Management-Community Oversight Committee ("Committee") and to hold periodic meetings to discuss and resolve issues and/or concerns which may arise during the life of each of the Owner's Projects. The dates and times of these meetings will be determined by the parties but in no case shall they meet less than monthly.

Committee shall be comprised of an equal number of Owner representatives, labor representatives, Prime Contractor representatives, and Community representatives from community-based organizations with a strong record of accomplishment of serving racial and ethnic minorities, as well as low-income people. Owners, labor, Prime Contractor, and Community shall each have an equal number of members; a minimum number of two and a maximum number of four members and four votes for each group; even if only one member is present. A quorum for this committee is when all parties are represented. No official business can be transacted without a quorum."

E. ACCOUNTABILITY MECHANISMS/SANCTIONS



The CWA should specify penalties for non-compliance with every aspect of the document, including the targeted hiring provision. Good agreements not only penalize contractors for inability to show they have made good faith efforts to comply with the targeted hiring program, but also establish a process for debaring project contractors with egregious violations of the hiring requirements. As an alternative, some agreements provide incentives for good performance. The various tools include:

Penalties

- Draw-down payments
- Fines
- Withholding percentage of retainer or progress payments
- Loss of contract
- Loss of future contracts

Incentives

- Monetary bonuses
- Bonus bid points on future work projects

F. MWDBE CARVE-OUTS

The utilization of minority, women, veteran, and disadvantaged businesses (MWDBE) under a CWA has increased over the years due to a legacy of exclusion from collective bargaining agreements. The legal basis for MWDBE is typically a disparity study which shows the underutilization of these contractors on construction projects, despite their availability in the marketplace. These firms are also most likely to hire low-income, disadvantaged, and women workers as a reflection of the firms' own cultural and demographic composition. The percentage set-aside typically aligns with the findings of the disparity study.

SAMPLE LANGUAGE FROM PORTLAND CBA

"There shall be a utilization goal for firms that have been certified by the State of Oregon as a Minority-Owned Business, a Women-Owned Business, or a Disadvantaged Business Enterprise. The utilization goal is twenty percent of the hard Construction costs for the project. Prime Contractors shall develop a plan to achieve the 20% goal which shall be submitted to and approved by the Labor-Management-Community Oversight Committee ("Committee"). Prime Contractors shall undertake and maintain documentation of good-faith efforts to achieve these goals for the duration of the project and shall submit such documentation to the Owner and the Labor-Management-Community Oversight Committee quarterly."

Core employee exception: A concern of small, minority firms relates to PLA requirements to hire from their apprenticeship roles, as well as paying employee union wages and benefits. Effective CWAs address this legitimate concern.

SAMPLE LANGUAGE #1

"The parties agree that contractors and subcontractors awarded work on this Project and who do not traditionally work under a local collective bargaining agreement may employ their regular local experienced workforce, pursuant to the procedures described below, where the employees so designated as a 'regular, experienced employee' meet the following qualifications:

- possesses any license required by state or federal law for the Project Work to be performed; and
- has been employed by the Contractor for at least 1000 paid work hours during the 12 months immediately preceding the Contractors' start of Project Work"

F. MWDBE CARVE-OUTS (CONT.)

SAMPLE LANGUAGE #2

"Nothing in this Community Benefit Agreement shall be deemed to limit a Contractor or its subcontractor's right to reject proposed employees or to use their own core employees."

SAMPLE LANGUAGE #3

"Employers which do not have a collective bargaining relationship with the Unions signatory to this agreement who become successful bidders on this project may employ their own core employees. 'Core employees' in this context refers to craft workers only, including working foreman, lead (journey person), working owner-operators, and apprentices, and shall not be supervisory, management, or non-working owners of non-signatory contractors.

There shall be no limit on the use of core employees and no requirements to pay union benefit for certified Disadvantaged Business Enterprise firms.

For non-union contractors not certified under the DBE classification, the limits on core employees shall be as follows: the first two workers can be core employees; the next two shall be union referrals. Thereafter dispatch may alternate every other between core employees and union referral, with the core employee number not to exceed 50% plus one worker of the contractor's craft workforce."

G. FUNDING MECHANISM

It has become increasingly apparent that resources are needed to meet the community hiring and procurement goals for outreach, training, monitoring, compliance, and supportive services. While many community-based organizations bring a certain amount of resources to the partnership, a dedicated pool of funding is needed for project staff and specific activities related to the project. Specific funds have been established for these purposes that come from the developer/contractor or directly off the top of the contract.

SAMPLE LANGUAGE FROM PORTLAND CBA:

"There shall be a dedicated fund account in the onetime amount of .25 % of each one million dollars (\$1,000,000) in total project cost to finance the operations of the Compliance Monitoring Subcommittee, including CBO participation. The Committee shall be the sole administrator of this fund, and it shall have the authority to establish its own rules and procedures for administering this fund, consistent with the terms of this Agreement.

The Owner and Employer hereby agree to submit to a project-specific dedicated fund account the one-time amount of .75% of each one million dollars (\$1,000,000) in total project costs. The fund shall be used to promote the recruitment, training, and hiring of a qualified, diverse workforce. The parties agree that WSI/CAWS will be the recipient of these funds and will convene the Labor-Management-Community Committee (or a subcommittee with the same membership composition as specified in section 9.2) to advise on the utilization and distribution of these funds in accordance with these objectives."