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Title: Resolution to Require Execution of CUB Agreements by Contractors and Subcontractors with the Washtenaw Skilled Building Trades Council as a Condition of City Contracts for New Construction Over \$25,000.00

Sponsors: Margie Teall

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Resolution to Require Execution of CUB Agreements by Contractors and Subcontractors with the Washtenaw Skilled Building Trades Council as a Condition of City Contracts for New Construction Over \$25,000.00

City Council Resolution R-09-459, approved November 16, 2009, required the inclusion in City construction invitations to bid and awarded contracts the requirement that contractors and subcontractors execute Construction Unity Board (CUB) Agreements with the Washtenaw County Skilled Building Trades Council. In adopting R-09-459, Council referenced the benefits of uniform wages, work rules, and benefits across multiple skilled trades and crafts employed on a project as well as the benefit of no-strike and no-lockout provisions in such CUB Agreements.

On July 19, 2011, the Fair and Open Competition in Governmental Construction Act (P.A. 98 of 2011) ("the Act") became law. For all construction contracts executed after July 19, 2011, the Act prohibited the City from entering into or expending funds under a contract for construction, repair, remodeling, or demolition of a facility if the contractor or subcontractor is required under the terms of the contract to enter into or adhere to an agreement with a collective bargaining organization related to the construction project. Further, construction bids issued after July 19, 2011, could not include a bid specification requiring such an agreement with collective bargaining organizations. If included in the bid documents, project agreement, or other contractual agreements such language will have no effect.

In response to the passage of the PA 98, City Council rescinded the City requirement that contractors execute a CUB Agreement with the Washtenaw County Skilled Building Trades Council as a condition of award for City construction contracts on August 15, 2011 (R-11-340).

PA 98 has since been adjudged invalid and unenforceable in *Michigan Building and Construction Trades Council, AFL-CIO, and Genesee, Lapeer, Shiawassee Building and Construction Trades*

Council, AFL-CIO v. Richard Snyder (Case No. 11-13520 US Dist Ct, E District Mi, S. Division, 2/29/12). The US District Court Eastern District of Michigan determined PA 98 invalid and unenforceable because it was preempted by operation of the Supremacy Clause of the U.S. Constitution and the National Labor Relation Act and the Court permanently enjoined enforcement of the Act. While the decision of the U.S. District Court Eastern District of Michigan has been appealed, no final decision has been rendered on the matter and the Court's enjoinder of enforcement of PA 98 remains in place until and unless the appeal decision overturns it.

The City may, relying on the enjoinder holding of the case, adopt a new CUB Resolution. The proposed resolution defines and clarifies the application of the CUB Agreements to City contracts.

Prepared by: Mary Joan Fales, Senior Assistant City Attorney

Sponsored by: CM Teall

Whereas, Public Act 98 of 2011, known as the Fair and Open Competition in Governmental Construction Act (the "Act"), effective July 19, 2011, prohibited governmental units from including either of the following as a term in a construction contract or as a condition in the award of a grant, tax abatement, or tax credit related to a construction contract:

1. A term that requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or related projects; or
2. A term that discriminates against bidders, contractors, or subcontractors based on their status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or related projects;

Whereas, Under the Act, the City, its purchasing officer, or construction manager was prohibited from placing such terms in bid specifications, project agreements, or other controlling documents related to the construction, repair, remodeling or demolition of a facility;

Whereas, The Courts have adjudged PA 98 preempted by operation of the Supremacy Clause of the U.S. Constitution and the National Labor Relation Act and unenforceable *Michigan Building and Construction Trades Council, AFL-CIO, and Genesee, Lapeer, Shiawassee Building and Construction Trades Council, AFL-CIO v. Richard Snyder*;

Whereas, City Council has determined, in reliance on the holding in *Michigan Building and Construction Trades Council, AFL-CIO, and Genesee, Lapeer, Shiawassee Building and Construction Trades Council, AFL-CIO v. Richard Snyder*, it is in the best interest of the City to adopt as a condition of award for contracts for new construction with a value over \$25,000 a CUB Agreement requiring that any labor used on a City construction project be governed by the current collective bargaining agreement of the appropriate Local Unions of the Washtenaw County Skilled Building Trades Council;

Whereas, Mandating as part of the City's standard terms and conditions in new construction contracts \$25,000 and over that contractors sign an agreement with the Construction Unity Board (CUB Agreement) is consistent with the provisions of Section 1:320 of the Ann Arbor City Code and a means to accomplish prompt and effective resolutions of any disputes between the Union and any contractor or subcontractor over payment of wages and fringes;

Whereas, Such a provision would result in the execution of a standard project labor agreement

between the Washtenaw County Skilled Building Trades Council (“SBTC”) and each contractor and subcontractor on the construction project would become signatory parties to the respective current collective bargaining agreement of the appropriate local union of the SBTC; and

Whereas, As a condition of the CUB Agreement, SBTC would agree there would be no work stoppages for any reason during the construction of the project;

RESOLVED, That, excluding impacted bids opened as of 6/04/12, City Council require all City invitations to bid on new construction contracts over \$25,000 include as a condition of award the requirement that all contractors and subcontractors execute CUB Agreements with the Washtenaw County Skilled Building Trade Council.

RESOLVED, That the City Administrator and City Attorney are directed to implement the necessary changes to the City procurement procedures and contracting documents to bring the City in compliance with this Resolution.