



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** June 6, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **Update On Fair Workweek Implementation; And  
Resolution Of The City Council Of The City Of Emeryville  
Authorizing The City Manager To Execute A Professional Services  
Agreement With The Labor Compliance Managers In An Amount  
Not To Exceed \$150,336 For Assistance With Enforcement And  
Administration Of City Labor Standards Ordinances**

### RECOMMENDATION

Staff recommends that the City Council receive an update on the implementation of the Fair Workweek Ordinance and authorize the City Manager to execute a Professional Services Agreement with The Labor Compliance Managers (TLCM) to conduct enforcement services for the City's Labor Standards Ordinances, including the Fair Workweek, Minimum Wage and Paid Sick Leave, and the Workplace Justice Standards at Large Hotels ("Measure C") Ordinances, for a total contract amount not to exceed \$150,336.

### BACKGROUND

In early 2016 the City Council expressed interest in a City ordinance to regulate local business employee scheduling. On May 17, 2016, the Council held a study session to review what was then the only extant employee scheduling ordinance in the nation: The San Francisco Formula Retail Employee Rights Ordinance (FRERO). The Council then directed staff to draft a Fair Workweek Ordinance modeled after the employee scheduling requirements of the FRERO but modified for Emeryville's unique circumstances. After an additional study session on August 16, 2016, an ordinance was developed and introduced for first reading on October 16, 2016, with an effective date of July 1, 2017 (Ordinance No. 16-007). The second reading of the ordinance was approved on November 1, 2016; during that meeting staff communicated to the City Council that implementation would require third party assistance for program development, roll-out and administration to ensure that the City has the capacity to effectively implement the ordinance by the effective date of July 1, 2017.

Between November 2016 and January 2017, staff initiated a procurement process to seek an experienced consultant to enhance its capacity for development, implementation, and enforcement of all labor standards, including the Fair Workweek Ordinance, the Minimum Wage and Paid Sick Leave Ordinance, and the Workplace Justice Standards at Large Hotels Ordinance (“Measure C”). On January 6, 2017, a Request for Proposals (“RFP”) was mailed to a list of nine consulting firms, posted on the City’s website and made available in the City Hall lobby.

The deadline to submit proposals was February 6, 2017 and staff received a total of five proposals. A panel of four reviewers was assembled consisting of two City staff and two members of other agencies’ staff, who reviewed and rated all five proposals. During this process, one proposal was deemed to be nonresponsive to the RFP. On February 22, 2017 two of the four panelists conducted interviews with the two top-rated firms, Management Resources Group (MRG) and Labor Enforcement Consulting (LEC), and the results of the interviews confirmed the relative rankings of these two firms. Consequently, staff commenced negotiations with the top scoring firm, MRG; however, during contract negotiations, staff received notice that this firm was withdrawing their proposal due to resource limitations that they had not fully understood earlier in the process. In addition, a key member of the LEC team also withdrew due to conflicts with their other employment.

On March 7, 2017 staff provided an update on the Fair Workweek implementation process to the City Council including all of the above information. The City Council requested that staff return with monthly updates on the contracting process.

On April 18, 2017 staff presented another update to the City Council along with a recommendation to enter into a Professional Services Agreement (PSA) with Mills College Lorry I. Lokey School of Business and Public Policy (“Mills College”) to conduct outreach and education services. This presentation was followed by an action of the City Council to designate an ad-hoc committee to further evaluate the qualifications and strategic plan of Mills College for outreach services. The meeting between the ad-hoc committee and Mills College was held on April 25, 2017.

At its April 27, 2017, Special Meeting, the City Council approved the contract with Mills College for outreach and education services for a total of \$182,218 (Resolution No. 17-56).

## **DISCUSSION**

### *Procurement Update*

As noted in prior reports on this matter, the withdrawal of the top-rated firm and a key member of the second-rated firm prompted staff to revisit the pool of applicants with the panelists to seek the next most qualified bidder to take on the work at the same level of diligence and professionalism required by the RFP. Based on this review, it was

determined that the quality of work required to most effectively deliver services in the best interest of all stakeholders necessitated dividing the original scope of work contemplated by the RFP into several separate contracts. This, in turn, required a combination of additional vetting of firms outside of the existing pool of proposers while still also evaluating the strengths of the existing proposers' qualifications for separate components of the work scope.

One of the remaining proposers, Mills College, was particularly well-suited for the outreach and education portion of the Fair Workweek Ordinance implementation process and, as noted above the City Council authorized execution of a PSA with Mills College on April 27, 2017 for these services. Meanwhile, the City Attorney's Office has engaged the law firm of Burke, Williams & Sorensen, LLP to assist in drafting implementing regulations. The remaining scope of work to complete implementation includes enforcement and administration, specifically, intake of complaints, answering questions from employees and employers, and conducting investigations.

#### *Enforcement and Administration Contract*

As previously stated, it was determined that it was in the best interest of all stakeholders including the City to divide the scope of work previously outlined in the RFP into several separate contracts. Ensuring that all options in the original pool of proposals were evaluated and exhausted, staff revisited the qualifications of the second rated proposal for suitability for the enforcement and administration contract. Staff determined that although the firm possesses a degree of knowledge and experience, the firm has no track record of working as a professional consultant firm in this capacity.

Subsequently, two referrals were provided to staff to evaluate for the enforcement and administration contract. CSG Consultants (CSG) provides services to community development and public works departments across the state. CSG is familiar with the City as one of its code enforcement officers has been a participant on the City's General Plan and Housing Committees and has been an Emeryville resident for over 15 years. CSG consists of a team of consultants with in-depth knowledge and experience in code enforcement, public works, building and safety, planning and fire prevention

The Labor Compliance Managers (TLCM) was referred by the City of El Cerrito, which has contracted with them for Minimum Wage enforcement based on their breadth of knowledge and experience in enforcing local, state and federal regulatory procedures among several municipal agencies for a number of years.

Both CSG and TLCM submitted proposals and budgets and were interviewed by staff. Based on the depth of knowledge and relevant experience and staff capacity necessary for this project, staff is recommending TLCM as the consultant for enforcement services. This selection was based on the following criteria:

### Suitability for Working in the Emeryville Community

TLCM consists of a diverse group of multilingual male and female professionals with extensive experience enforcing local, state, and federal regulatory procedures. Collectively as a team TLCM is proficient with contract administration, direct project inspections, auditing, and extensive reporting of audit findings to project stakeholders. They also coordinate community forums that benefit project constituents, research best practices and deliver exemplary results to clients as well as the community at large.

TLCM have served a host of public agencies such as San Francisco Bay Area Rapid Transit, San Francisco Public Utilities Commission, County of Santa Clara, County of Monterey (Multiple Public Works Redevelopment Agency), Marina Community Partners, Pittsburg Unified School District, etc. Individual team members have worked in the capacities of Contract Compliance Specialist, Senior Deputy Labor Commissioner for the City and County of San Francisco, Multilingual Investigator and Auditor, small business owners, and organizational managers. The language capacity among direct staff includes fluency in Chinese and Spanish.

### Availability of Staff

TLCM's proposed team consists of the following individuals:

Lin Robertson, is principal of TLCM and is fluent in English and Spanish. She will be responsible for all deliverables as well as support staff performance. Ms. Robertson was a Contract Specialist with the City of San Jose monitoring housing redevelopment block grant funds prior to starting her own business in 2005. Her client references include San Francisco Unified School District, where TLCM updated procedures for their Labor Compliance program; San Francisco Public Utilities Commission, where TLCM provides Davis Bacon Consulting Services and the City of El Cerrito, where TLCM is an on-call consultant for minimum wage enforcement and investigation services. Ms. Robertson has advanced degrees in Public Administration, Humanities, and Health Sciences.

Shirley Trevino, general manager of TLCM, is responsible for enforcement procedures. She was formerly a Senior Deputy Labor Commissioner with the State Department of Industrial Relations' (DIR) Division of Labor Standards Enforcement as well as Senior Labor Compliance Office for the City and County of San Francisco. Ms. Trevino is fluent in Spanish and is well versed in enforcement procedures as well as worker advocacy. Shirley worked in multiple roles for over 20 years at the DIR as well as 15 years at the City and County of San Francisco Office of Labor Standards Enforcement. Ms. Trevino has been successful in creating process and procedures during the very early stages of the many labor standards currently in place in San Francisco today.

Jordon Chow, TLMC's Labor Compliance Monitor and Field Agent, is fluent in English, Mandarin and Cantonese and will audit records, communicate with workers as necessary and review documentation and submittal requirements by the City.

Janice Taylor, TLMC's project manager, is responsible for all organizational management, reporting and coordination of project activities. Ms. Taylor possesses in-depth experience as a business owner herself as well as a strong background in financial forecasting and management.

#### Approach to Project Management

TLMC has demonstrated a solid background in local labor standards enforcement and has proposed a plan for successful coordination and enforcement procedures to ensure that proper measures are taken to monitor affected stakeholders. TLMC will work closely with the outreach and education team, Mills College, as well.

For these reasons, staff recommends entering into a contract (Exhibit A of the attached Resolution) with TLMC beginning June 12, 2017 and extending through June 30, 2018 for enforcement and administration.

#### **FISCAL IMPACT**

The cost of enforcement and administration for Fair Workweek, Minimum Wage and Paid Sick Leave and Measure C will be approximately \$150,336. It is important to note that this is based on an average of 96 hours per month. In practical terms, this would be only a slight increase from the current caseload, i.e. without Fair Workweek. The precise caseload and level of effort required is unpredictable and depends in part on the complexity of the case. For example, if multiple employees are involved in a case that begins with a single complaint, the claim is for retaliation or the case disposition results in a need to collect restitution, greater effort will be required. These types of cases could take up to 20 hours per month, in contrast to a case that could be resolved by mediating between the employee and employer, which could be resolved in one hour with no requirement for an audit.

The City currently has one Management Analyst on staff to administer the City's labor standards at a fully burdened cost of approximately \$135,000 per year. Since the intent was to combine enforcement of all three labor standards ordinances under the oversight of the Management Analyst, the total work associated with the program continues to be estimated at about \$507,000 in fiscal year 2017-18, with a reduction to about \$407,000 in subsequent years.

Staff will closely coordinate with the outreach and enforcement consultants to ensure that these activities stay within the budgetary limits.

## **STAFF COMMUNICATION WITH THE PUBLIC**

Staff communicated with various consultants both under contract and being considered for the enforcement contract, including a kickoff meeting with Mills College and outside counsel.

## **CONCLUSION**

The City Attorney has reviewed this staff report and the proposed PSA with TLCM.

**PREPARED BY:** April Shabazz, Management Analyst

**REVIEWED BY:** Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Carolyn Lehr, City Manager

## **ATTACHMENTS**

1. Resolution
2. Exhibit A: Professional Services Agreement