SMART AND SMACNA SUPPORT COMMUNITY BENEFIT AGREEMENTS TO FACILITATE FAIR AND EQUITABLE EXPANSION OF DATA CENTERS

The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) are partners in producing highly trained sheet metal workers employed in the construction industry.

We support fair and equitable growth in the expansion of data centers through legally-enforceable and collaboratively-developed community benefit agreements ("Community Agreements"). Transparency and accountability promote community support and strengthen public trust.

SMART and SMACNA

SMART represents over 203,000 members nationwide in diverse industries, with over 136,000 workers in the sheet metal trade, which encompasses a broad range of work functions. SMACNA is a national employer association representing 3,500 unionized sheet metal contractors.

SMART and SMACNA jointly sponsor a national training fund, the International Training Institute for the Sheet Metal and Air Conditioning Industry (ITI), which works in conjunction with our 148 local joint apprenticeship and training committees (JATCs) in the United States to provide high-quality training to apprentices throughout the country.[1] The skill sets of our members and contractors are critical to construction of data centers, particularly the construction of cooling systems that are necessary to minimize water consumption. Our testing, adjusting, and balancing (TAB) technicians, for example, possess specialized expertise in airflow management, system optimization, and verification of mechanical performance metrics.

SMART and SMACNA also jointly sponsor the National Energy Management Institute (NEMI), which affords apprentices and journeypersons the opportunity to obtain third-party certification of their skills through the Testing, Adjusting and Balancing Bureau (TABB), a certification body that is accredited by ANSI National Accreditation Board (ANAB). Accreditation is an accountability mechanism to ensure the quality and legitimacy of organizations offering personnel credentials and is a key component of an effective standardization system. In our industry, accreditation

[1] The ITI serves many functions that assist local JATCs, including 50 years of curriculum development that anticipates the need for training and re-training as technology evolves.

providers regulators, developers, and communities with confidence that mechanical systems are operating safely, efficiently, and in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

Overview

Growth in U.S. data centers is providing jobs and training opportunities in highly skilled trades, such as sheet metal work, and is thus, providing career-sustaining employment and a pathway to the middle class for tens of thousands of Americans. These jobs are particularly important to local communities at a moment when job opportunities are shrinking in other sectors of the construction industry. At the same time, the rapid expansion of data centers has triggered concerns in many communities. To address these concerns and promote sustainable growth, developers and contractors should engage with community stakeholders early in the development process.

Community Agreements can serve as effective tools to advance local priorities, such as job growth, opportunities for workforce training pathways into the construction trades, economic development, infrastructure coordination, protection of all populations within communities regardless of zip code, environmental protection, responsible energy usage, reliable digital access, accountability, and transparency. To accomplish these local goals, Community Agreements should require developers to produce pre-construction studies and publicly disclose quantitative data on anticipated energy usage, clean energy alternatives, mitigation of environmental and economic impacts, defraying costs to residential consumers of electricity and water, infrastructure support, projected tax revenue, job opportunities, workforce development programs, and construction practices and project design commitments, such as incorporating cooling systems that promote water efficiency consistent with operational and regulatory requirements. Finally, in recognition of the economic benefits to developers of data centers, Community Agreements should require annual financial contributions to high-priority community projects.

This document sets forth the components that a quality Community Agreement for data center expansion should include to advance local priorities, while persevering the flexibility necessary for successful project delivery.

Contents of Community Agreements

Protection and Support of All Sectors of the Community

1. Disclosure of Quantifiable Data on Community Impact Before Approval of Permits

To provide protection to all sectors in the community, Community Agreements should require that approval of siting be contingent upon minimizing the impact on all residents and local businesses, regardless of zip code. Community Agreements should require developers to undertake a comprehensive study and production of quantifiable data on the economic, environmental, health, and quality of life (e.g., light and noise pollution) impact on residents and local businesses on a ward-by-ward basis (or other relevant political subdivision) before the city or county grants a permit for construction. Before issuance of a permit, the developer should also be required to provide the city or county with alternatives on site selection, clean energy sources, construction

practices, project design commitments, infrastructure support, and other measures to reduce energy usage and mitigate environmental and economic impacts.

2. *Public Forum for Petitioning the Local Board Prior to Approval of a Permit*

Community Agreements should provide all community stakeholders, including advocates for economically disadvantaged sectors, to file a petition to the Local Board to address inequitable impacts of siting or serious and unjustifiable risks presented to the community. Before approval of a pending permit, the Local Board should hold a public forum at which developers will be required to respond to issues raised in the petitions.

Local Job Opportunities, Technical Skills, and Labor Standards

3. Support Creation of Job Opportunities in the Community with Local Hiring Requirements

Community Agreements should require developers to enumerate the projected number of construction and operating jobs by classification from pre-construction and construction to post-building development and commit to local hiring to fill ____ % [number will vary based on local demographics] of these jobs to expand access to job opportunities for local residents, using delineated strategies for achieving local hiring targets.[2]

4. *Promote Local Wage and Benefit Standards to Protect Workers*

Community Agreements should require the payment of prevailing wages to workers employed in the construction, alteration, and repair of data centers, as established by wage determinations under federal, state, or local prevailing wage standards, whichever best protects the interests of workers. This requirement, along with a local hiring provision, would help maintain area wage and benefit standards, support a skilled workforce, and promote fair competition among contractors and subcontractors.

To promote compliance with wage standards, Community Agreements should require developers to monitor and verify that contractors and subcontractors properly classify workers and pay them the hourly wages and benefits to which they are entitled, with the goals of preventing misclassification of workers as independent contractors and ensuring that workers are paid at the prevailing rate applicable to their actual classification rather than a lower paying one. The Community Agreements should further require that when the developer detects violations of prevailing wage or worker misclassification laws, the developer must ensure that workers are made whole.

[2] Such strategies may include targeted hiring efforts, partnerships with apprenticeship and pre-apprenticeship programs, workforce development initiatives, and collaboration with community-based training providers to strengthen the local construction workforce.

5. *Support "Reliable" and "Fair" Contractors and Subcontractors Through Pre-Qualification*

Community Agreements should require that developers award project work to only "reliable" and "fair" contractors and subcontractors, as determined through use of a pre-qualification process, with a scoring system that considers a consistent ability to deliver quality construction on-time and within budget while complying with all legal requirements and labor standards.

The pre-qualification process should use the following point system to root out unreliable and unfair contractors and subcontractors:

- Verification that all contractors and subcontractors (including sole proprietorships) maintain appropriate business requirements and documentation, including general liability insurance, workers' compensation insurance, licensing, bonding, and tax registration. Without verification of each factor, contractors and subcontractors are automatically deemed unreliable.
- Award or subtract points based on compliance (or lack thereof) over the preceding five (5) years with prevailing wage, the National Labor Relations Act, safety and health standards, anti-discrimination laws, wage and hour standards including but not limited to overtime, worker classification, and family and medical leave.
- Award points based on current preventive programs and/or positive safety and health records, including low total number of injuries and illnesses or lost time injuries over the previous five years, low Experience Modification Rate (EMR), and evidence of a formal safety programs and training designed to assess risk and prevent future injuries and fatalities, such as qualified risk-assessment on-site supervisors, fall protection, ladder safety, respiratory protection, a hearing conservation plan, and mental health support.
- Award or subtract points based on a five-year history of performance, with factors such as change orders, size of prior projects, on-time completion rate, cost overruns, breach of contract, performance ratings from government agencies on public contracts, assessment of liquidated damages after completion of public construction projects, damage to property, and debarments and suspensions from future bidding.

6. Community Agreements Should Include Apprenticeship Utilization, Ratio Requirements, and Minimum Standards for Graduation Rates

Utilization Requirements: Community Agreements should require developers to monitor and ensure that registered apprentices (in accordance with 29 CFR part 29) [3] perform not less 15% of the labor hours in the construction, alteration, or repair of data centers.

Ratio Requirements: Community Agreements should require developers to monitor and ensure that the allowable ratio of apprentices to journeypersons on the job site in any occupation and its

[3] Part 29—Labor Standards for the Registration of Apprenticeship Programs.

corresponding classification on any day comply with the applicable apprentice-to-journeyperson ratio of the registered apprenticeship program in accordance with 29 CFR part 29.

Graduation Rates: The Community Agreements should further require developers to monitor and ensure that apprentices used on the projects are enrolled in a RAP with a graduation rate of at least 30%, with documentation demonstrating the program's graduation rates for a period of time equal to the length of the apprentice training program.

Monitoring Compliance: The Community Agreements should specify that contractors and subcontractors must submit weekly to the developer the following information: the number of journeypersons and hours of work performed by journeypersons in each job classification, the number of apprentices and hours of work performed by apprentices in each job classification, apprenticeship utilization rates, and ratios of journeypersons to apprentices. The developer should also require the sponsors of RAPs to submit every six months the graduation rates of each RAP with apprentices employed on the project during their term of apprenticeship.

7. Development of the Supply of Skilled Construction Workers in the Community

To combat skill shortages in key trades, Community Agreements should require developers of data centers to submit a workforce development plan to the relevant local board. The plan should disclose the dollar value of grants that the developer will award to support robust pre-apprenticeship programs, which have direct entry to a RAP, to create meaningful career pathways for community members to acquire training in skills needed to construct data centers.

8. Require Independent Third Party Certification by an Accredited Certification Body of Technicians Responsible for the Safe and Efficient Operation of Mechanical Systems in Data Centers

Community Agreements should require independent third-party certification of mechanical technicians, such as TAB technicians, who have the skills to verify compliance with national performance standards established by ASHRAE. Certified TAB technicians have the skills to verify that that cooling systems operate as designed and achieve projected efficiency and water performance outcomes.[4] As data center cooling systems become more complex, including incorporation of air-side economizers, hybrid liquid and air designs, and advanced containment strategies, independent verification of system performance is critical to ensure that facilities achieve intended energy efficiency and water conservation outcomes.

Annual Contributions to High-Priority Community Projects

9. Legally-Enforceable Commitment to Make Annual Financial Contributions to High-Priority Community Projects

Community Agreements should require developers to make direct payments to community funds for use in financing high-priority projects in the local area. The Community Agreements should

[4] Improper airflow balancing, excessive static pressure, pump oversizing, or incorrect control sequencing can materially increase both energy consumption and water usage.

specify an annual contribution equal of a percentage of gross revenue to a locally administered fund for infrastructure, apprenticeship and other workforce development initiatives, health care, and/or public services. The goal is to ensure that developers contribute to the communities at a level commensurate with their revenue streams to help localities mitigate the costs of projects expenses related to construction and operation of a data center.

10. Disclose to Residents the Developer's Projections of Tax Revenues

Prior to specifying annual contribution amounts, Community Agreements should provide realistic projections of tax revenues. Most large-scale projects commission expert assessments of tax revenues. These projections, along with models used to estimate them, should be publicly available so that residents can evaluate the impact on their community.

Minimize and Mitigate the Environmental Impact of Data Centers

11. Require Disclosure of Projected Water and Electricity Usage and Impose Mitigation Measures

Community Agreements should require transparent disclosure of project water and electricity usage, including seasonal and peak demand scenarios.[5] To avoid adverse impacts on community infrastructure, Community Agreements should require mitigation measures, including defraying increased costs of electricity and water to local consumers, financial contributions, infrastructure upgrades, and/or adoption of lower-impact cooling architectures when projected usage reach a level specified in the Community Agreement.

12. Require Developers to Maximize Use of Clean Energy

Community Agreements should require that developers maximize use of renewable or nuclear energy and to comply with federal, state, and local environmental laws.

13. Require Construction of Cooling Systems that Minimize Water Consumption

Community Agreements should require construction of cooling systems that minimize water consumption, including air-side and water-side economizers, dry coolers, and hybrid systems designed to maximize free (economizer) cooling hours. These systems are designed to maximize free cooling hours while limiting community water impact.

Dry cooling systems can reduce water consumption by up to 90 to 95% as contrasted with the excessive water usage consumed by traditional evaporative cooling towers. Prioritizing low-water or near-zero-water cooling designs protects municipal supply and supports long-term community

[5] Disclosure should include anticipated water consumption, projected water intensity per megawatt of IT load, and anticipated use of evaporative or adiabatic cooling systems. Projections of electricity demand should include peak load, expected free-cooling utilizations hours, and projected mechanical efficiency (including mPUE where applicable).

sustainability while maintaining reliable data center operation is a key environmental goal, particularly in geographic areas that are already experiencing water shortages.

14. Require Performance-Based Evaluation of Mechanical Systems by Certified Technicians

Community Agreements should further require performance-based evaluations of mechanical systems using measurable benchmarks[6] set forth in ASHRAE standards and undertaken by technicians certified by an accredited certification body.

Post-Construction Monitoring, Site Review, and Disclosure of Results

To ensure that data centers remain accountable partners within the community, Community Agreements should require developers to commit to undertake ongoing monitoring and site reviews at intervals specified in the Community Agreements and public disclosure of results.

1. ***Ongoing Monitoring***

   - Actual water consumption, mechanical system efficiency, and operational performance relative to design projections.
   - Water intensity and cooling system performance metric to ensure ongoing compliance with commitments in the Community Agreement.
   - Environmental hazards with appropriate testing and measurements to track air and water contaminants and ensure that data centers are not contributing to these risk factors.

2. ***Annual Site Reviews at a Minimum***

   - Site review to ensure compliance with federal, state, and local environmental laws.
   - Site review provisions should permit communities to reassess cooling technologies if water usage exceeds projected amount or if lower-impact technologies become reasonably available.

Respectfully submitted,

Michael Coleman
General President
SMART

Frank Wall
Chief Executive Officer
SMACNA

[6] These benchmarks include Mechanical Power Usage Effectiveness (mPUE) and Water Usage Effectiveness (WUE).