

11 NOV -3 PM 2: 13

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara J. Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
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November 15, 2011

Honorable City Council  
Oakland, California

Re: Revised Proposed Ordinance for Army Base Demolition and Remediation Contracts  
Reflecting Changes Made at the November 1, 2011, City Council Meeting

Dear President Reid and Members of the Council:

The Council considered at the November 1, 2011 a proposed ordinance for Oakland Army Base Demolition and Remediation Contracts that would establish Oakland business enterprise and resident workforce requirements for contractors that bid on the work.

The Council made several revisions to the ordinance on the floor and rescheduled the item for the November 15, 2011 Council meeting. Redline and clean versions of the ordinance are in the agenda packet.

Due to the number of revisions requested, we will provide a description of the changes with the sources in the attached documents. The changes are as follows:

- Title: The title is amended per Councilmember Brooks' request in the letter distributed to the council at the November 1, 2011 meeting. Attachment 1.
- Whereas paragraph 7: this finding was added on the floor by the City Attorney
- Whereas paragraphs 8 – 11, 13 -14 and 16: These findings were added per Councilmember Brooks' request in the letter distributed to the council at the November 1, 2011 meeting. Attachment 1.
- Whereas paragraph 15: this finding was amended to add the exception for the workforce requirement if less than 3 Oakland certified contractors qualify, per Councilmember Brunner's amendment on the floor.
- Whereas paragraph 16: an additional finding recommended by the City Attorney has been added - "and to sustain in the troubled economy existing Oakland contractors that have contributed to Oakland's economy by making a significant and meaningful commitment to hire Oakland residents."
- Section 1, subsection 2: language making the core workforce requirement a pre-qualification requirement was substituted for the original text in accord with Councilmember Brooks' revised findings in the letter distributed to the council at the November 1, 2011 meeting. Attachment 1.
- Section 1, subsection 3: an exception for the workforce requirement if less than 3 Oakland certified contractors qualify was added per Councilmember Brunner's amendment on the floor.

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ORA/COUNCIL

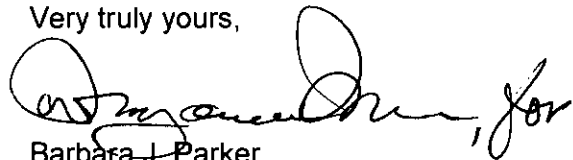
NOV 15 2011

November 15, 2011

Page Two

- Section 1, subsections 4 – 7: these requirements, based on staff's recommendations in the November 1, 2011 Supplemental Agenda, page 4, were added per Council's direction. Attachment 2.
- Section 1, subsection 8: this requirement was added per the Council's direction on the floor.
- Section 2, subsections 1 – 5: these scope requirements, based on staff's recommendations in the November 1, 2011 Supplemental Agenda, page 3, were added per Council's direction. Attachment 2.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barbara J. Parker, for". The signature is fluid and cursive, with a large loop at the beginning and a trailing flourish at the end.

Barbara J. Parker  
City Attorney

cc: Deanna Santana



# CITY OF OAKLAND

CITY HALL-1 FRANK H. OGAWA PLAZA,-OAKLAND, CALIFORNIA 94612

Desley A. Brooks  
Councilmember, District 6  
Email:dbrooks@oaklandnet.com

(510) 238-7006 Direct  
(510) 238-6910 Fax

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OAKLAND

11 NOV -3 PM 2:13

TO: President Reid and Members of the Council.

FROM: Vice Mayor Desley Brooks

SUBJECT: Amendments to Item 13 on the November 1, 2011, City Council Agenda Proposed Ordinance Establishing a Sheltered Market for Oakland Certified Local Businesses for Demolition and Remediation Contracts at the Oakland Army Base and for purposes of this program Adding eligibility screening requirements to be considered an Oakland firm.

Mr. President and Members of the Council:

Please make the following amendments to Item #13 on tonight's agenda:

1. Please correct the title by striking :  
"Adding Oakland Residency Workforce Requirements for Prime Contractors Bidding on the Contracts"

In its place add:

*Adding eligibility screening requirements to be considered an Oakland firm.*

2. Add the additional findings to the Ordinance:

Whereas, the U.S. Supreme Court has ruled that "local government should have considerable leeway in analyzing local evils and prescribing appropriate cures, particularly when government is merely setting conditions on the expenditure of funds it controls and it is limited in scope to employees working directly on City public works projects"; and

Whereas, in accordance with the leeway granted by the U.S. Supreme Court and based upon the 17% official unemployment rate, the unofficial unemployment rate of 25+% and African-American male and Latino male unemployment rate upwards of 35% the City Council desires to prescribe that for purposes of this program that to be eligible to apply for contracts for the demolition and remediation work at the Oakland Army Base, 33% of the firm's core workforce must be Oakland residents. This screening mechanism is necessary and narrowly tailored to bolster the number of Oaklanders working on city funded construction projects and decrease Oakland's unemployment and poverty levels. This program is necessary and narrowly tailored so as not to unduly infringe upon the privileges and immunities of nonresidents; and

CITY OF OAKLAND  
AGENDA REPORT

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11 NOV - 3 PM 2:38

TO: Office of the City Administrator  
ATTN: Deanna J. Santana  
FROM: Community and Economic Development Agency  
DATE: November 1, 2011

RE: A Supplemental Report on the Proposed Ordinance Amending Ordinance 12389 C.M.S. to Add Local and Small Local Business Contracting Requirements to Oakland's Local and Small Local Business Enterprise Program Specific to the Demolition and Remediation Carried Out at the Oakland Army Base

SUMMARY

During the October 11, 2011 Community and Economic Development Committee meeting, staff was directed to prepare a Supplemental Report on the proposed Ordinance Amending Ordinance 12389 C.M.S. regarding local contracting requirements for demolition and remediation work on the Oakland Army Base.

The items the Committee directed staff to address, in addition to amendments to the proposed made by the Committee, are as follows:

1. Describe the field of certified Local Business and Small Local Business Enterprises (LBE/SLBE) in Oakland which are qualified to compete for contracts under the proposed Ordinance Amendment conditions;
2. Describe ways to add provisions which would encourage companies to hire the hardest to employ, such as formerly incarcerated residents; and
3. Identify any unforeseen challenges or issues that may arise in the implementation of the proposed Ordinance Amendment.

Legal Opinion

The City Attorney's Office will provide its opinion regarding any legal considerations it may have regarding the proposed Ordinance Amendment separate from this Supplemental Report.

Field of Qualified LBE/SLBE Contractors

The Public Works Agency Environmental Services Division with verification from the Office of Contract Compliance performed a search of certified LBE/SLBE companies qualified to perform all or parts of a demolition and remediation construction contract, and provide the following results:



Item: ~~13~~  
City Council  
November 1, 2011

Type of Work	Required License/Certification	Number of Certified LBE	Number of Certified SLBE	Total Certified LBE/SLBE
Demolition Only	General Contractor (A or B)	34	91	125
Asbestos Removal Only	Asbestos Certification (ASB)	1	3	4
Demolition + Asbestos Removal	General Contractor (A) + Asbestos Certification (ASB)	3	3	6
Excavation Only	Earthwork and Paving (C12)	2	1	3
Hazardous Waste Removal Only	Hazardous Substance Removal Certification (HAZ)	7	6	13
Excavation + Hazardous Waste Removal	Earthwork and Paving (C12) + Hazardous Substance Removal Certification (HAZ)	1	1	2
Trucking and Disposal of Hazardous Waste	CA Hazardous Material Transportation License + DTSC Hazardous Waste Transporter Registration + DOT Hazardous Materials Transportation Certification	0	2	2

As the data indicate, Oakland has a number of certified LBE/SLBE firms that could potentially perform demolition and remediation work remaining on the Army Base. The prime contractor does not have to perform 50% of the actual work, which is a standard preference but not a hard requirement for construction contracts. The prime contractor must have a General Contractor A or B License. The universe of that pool in Oakland is 125, although not every contractor with these licenses specializes in demolition and remediation. Nonetheless, the pool for primes appears to be robust. It is not known at this time what percentage of the General Contractors' core workforces are Oakland residents.

#### Ways to Encourage Employment of Hardest-to-Serve

Current Local Employment Program policy requires that 50% of the work hours on a craft-by-craft basis be performed by Oakland residents. The proposed Ordinance Amendment requires that at least 33% of the prime contractor's workforce be Oakland residents.

Current Local Employment Program policy does not support a requirement for hiring people with barriers to employment, such as the formerly incarcerated. That said, the City Council can approve special provisions whereby contractors are offered incentives to hire disadvantaged workers. While hiring of the formerly incarcerated may not be a condition of contract award, bidders may be offered incentives to hire this population by counting each hour they work as 1.5 hours towards meeting the 50% local hours worked requirement.

Item: \_\_\_\_\_  
 City Council  
 November 1, 2011

Staff also recommends that all new hires for demolition and remediation work subject to this local contracting Ordinance Amendment come by way of referrals from local pre-apprenticeship training programs, which serve local residents with barriers to employment. This provision should pertain to entry-level work and not to work that requires journey-level skills or special certifications.

#### Identify Unforeseen Challenges or Issues

With regard to demolition and remediation work currently being contemplated on the Army Base, staff requests confirmation of, or clarification on, the following assumptions:

- A. The proposed Ordinance Amendment applies only to the Agency's portion of the Army Base;
- B. The proposed Amendment does not apply to the wide-scale site preparation and infrastructure construction project currently being master planned with the Master Developer and the Port. Local contracting and local hiring provisions for that work will be detailed in binding Development and Community Benefit Agreements, to be developed. In addition, federal contracting regulations, which do not currently apply, may apply to that future work;
- C. When referring to Remediation, the intent is for the proposed Amendment to apply to abatement, excavation, transport, and disposal of hazardous materials or non-universal hazardous wastes, excluding small-quantity spoils generated during field-testing. The distinction staff recommends for the implementation of the proposed Ordinance Amendment is that it apply to remediation work requiring a Construction Contract, and not routine investigation and documentation, which is currently being conducted by Environmental consultants through existing professional services contracts with Public Works;
- D. The \$9 million referred to in the proposed Ordinance Amendment represents the estimated balance of the Joint Environmental Remediation Fund established by the Agency and the Port of Oakland. These funds can be used for work specific to the Remediation Action Plan/Risk Management Program (RAP/RMP) approved by the U.S. Army and overseen by the Department of Toxic Substances Control. Demolition is not an allowable use of those funds. Investigation and remediation of hazardous materials that exceed Industrial Standards, as well as documentation and reporting necessary to obtain Regulatory Closure of RAP/RMP sites, is the general framework of allowable uses for the Joint Environmental Remediation Fund.

### Recommendations

Staff supports the intent of the proposed Ordinance Amendment to provide opportunities for local businesses to perform work on the City's portion of the Army Base and to employ as many Oakland residents as possible. To achieve these goals, staff recommends following:


- 50% or more of the work shall go to certified LBE/SLBEs, in addition to the requirement that the prime contractor be a certified LBE/SLBE;
- 50% or more of the workers' hours shall be performed by Oakland residents;
- Employment opportunities shall be available for formerly incarcerated and other Oakland residents with barriers to employment by counting each hour they work as 1.5 hours toward meeting the 50% local hours worked requirement; and
- In line with the City's First Source Hiring policy, contractors shall be required to seek referrals for new hires from local pre-apprenticeship training programs.

These goals are consistent with the work City, community, and labor leaders are doing to develop a package of Community Benefits to be derived from the Army Base project.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council accept this supplemental report and its recommendations.


Respectfully submitted,


  
Fred Blackwell, Assistant City Administrator  
Community and Economic Development Agency

Reviewed by:  
Gregory D. Hunter, Deputy Director  
Economic Development and Redevelopment

Prepared by:  
Al Auletta, Redevelopment Area Manager

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
Office of the City Administrator

  
Item: ~~13~~  
City Council  
November 1, 2011

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REVISED

APPROVED AS TO FORM AND LEGALITY

11 NOV 9 11 29 AM '11 INTRODUCED BY COUNCIL MEMBERS DESLEY BROOKS AND LARRY REID

~~DRAFT~~ CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE AMENDING ORDINANCE 12389 C. M. S. TO ADD LOCAL AND SMALL LOCAL BUSINESS CONTRACTING REQUIREMENTS TO OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM SPECIFIC TO THE DEMOLITION AND REMEDIATION CARRIED OUT AT THE OAKLAND ARMY BASE AND, FOR THE PURPOSES OF THIS PROGRAM, ADDING ELIGIBILITY SCREENING REQUIREMENTS TO BE CONSIDERED AN "OAKLAND" FIRM**

1. WHEREAS, the City of Oakland faces the worst economic crises since the Great Depression; and
2. WHEREAS, the official unemployment rate in the City of Oakland is approximately 17%; the unofficial rate is estimated to be in the mid 20's.
3. WHEREAS, the 2010 Census data indicates that the jobs growth rate in the City of Oakland decreased by 3%; and
4. WHEREAS, it is the intent of the City of Oakland City Council to use the power of the public purse to stimulate the local Oakland economy and to ensure Oakland businesses have equal opportunities to do business with the City of Oakland; and
5. WHEREAS, the Oakland Army Base has a number of demolition and remediation projects which must be completed by August of 2013, and the Oakland Army Base currently has a \$9-million-dollar Remediation fund; and
6. WHEREAS, the Oakland City Council understands there is a direct correlation between high rates of unemployment and increased crime rates and as such is desirous of finding ways to create contracting opportunities for Oakland Businesses and employment opportunities for Oakland residents; and
7. WHEREAS, research shows that for every dollar paid by a jurisdiction to a "resident" contractor seven dollars are circulated in the jurisdiction's local economy; and
8. WHEREAS, Oakland LBEs that are qualified to do demolition and remediation work are underutilized for such work in Oakland; and
9. WHEREAS, a sheltered market for Army Base demolition and remediation contracts for Oakland LBEs may increase the number of firms with primary business offices in



Oakland by encouraging firms to move to Oakland and creating opportunities for the formation of new Oakland-based firms; and

10. WHEREAS, Army Base demolition and remediation contracts present a significant financial opportunity for underutilized LBEs to get work and thereby bolster Oakland's economy; and

11. WHEREAS, Army Base demolition and remediation contracts present a significant opportunity for Oakland LBEs to build capacity and experience as prime contractors in the demolition and remediation fields, and will later assist them in gaining additional work in these fields in Oakland and other jurisdictions, which would significantly bolster Oakland's economy; and

12. WHEREAS, the Oakland City Council wishes to amend the City of Oakland's Local and Small Local Business Enterprise program to add new requirements, entitled the "Oakland Army Base Demolition and Remediation Contracting Program," ("Program") specific to the demolition and remediation activities carried out at the Oakland Army Base which will mandate that all contracts for demolition and remediation work at the Oakland Army Base shall be awarded either through a sole-source or competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and

13. WHEREAS, the U.S. Supreme Court has ruled that "local government should have considerable leeway in analyzing local evils and prescribing appropriate cures, particularly when government is merely setting conditions on the expenditure of funds it controls and it is limited in scope to employees working directly on City public works projects"; and

14. WHEREAS, in accordance with the leeway granted by the U.S. Supreme Court and based upon the 17% official unemployment rate, the unofficial rate of 25+% and African-American male and Latino male unemployment rates upwards of 33% the City Council desires to prescribe that for purposes of this program that to be eligible to apply for contracts for the demolition and remediation work at the Oakland Army Base, 33% of the firms core workforce must be Oakland residents; and

15. WHEREAS, this program will require prime contractors and their subcontractors that wish to obtain or participate in contracts for demolition and remediation at the Oakland Army Base to submit bids showing that their Core Employee workforces for these jobs will must be comprised of at least thirty-three-percent (33%) Oakland residents, unless less than three (3) Oakland certified local contractors have the core workforce required to qualify for the work; and

16. WHEREAS, the core workforce screening mechanism is necessary and narrowly tailored to bolster the number of Oaklanders working on City-funded construction projects and decrease Oakland's unemployment and poverty levels, and to sustain in this troubled economy existing Oakland contractors that have contributed to Oakland's economy by making a significant and meaningful commitment to hire Oakland residents, and is necessary and narrowly tailored so as not to unduly intringe upon the privileges and immunities of nonresidents; and

17. WHEREAS, all of the City of Oakland local hire requirements of the City's Local Employment program with respect to new hires shall continue to be applicable to demolition and remediation contracts subject to the Oakland Army Base Demolition and Remediation Contracting Program;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1. Oakland Army Base Demolition and Remediation Contracting Program.**

Ordinance No. 12389 C. M. S., passed December 18, 2001, which established that the City of Oakland's Local and Small Local Business Enterprise, Local Employment, Prevailing Wages and Apprenticeship programs would apply to Oakland contracts involving construction and construedon-related work, is hereby amended to add a new section titled the "Oakland Army Base Demolition and Remediation Contracting Program" to the City of Oakland's Local and Small Local Business Enterprise program (Program). This new Program adds new requirements specific to the demolition and remediation activhies carried out at the Oakland Army Base, as follows:

- 1) all demolition and remediation contracts for the Oakland Army Base shall be awarded eidier through a sole-source-or competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and
- 2) to be eligible to apply for prime contracts for the demolition and remediation work at the Oakland Army Base, 33% of the prime contractor's core workforce must be Oakland rcsidentsprime-contractors-and-their-subcontractors-that-wish-to-obtain-or-participate-in contracts-for-demolition-and-remcdiation-work-at-the-Oakland-Anny-Base-must-submit bids-showing-that-their-Core-Employee-workforces-for-these-jobs-will-must-be-comprised of-at-least-thirty-three-percent-(33%)-Oakland-residents-to-be-considered-for-the-contract; and
- 3) if less than three (3) Oakland certified local prime contractors have the 33% core workforce required to qualify as an "Oakland" firm to bid on the Army Base demolition and remediation contracts, the core workforce requirement shall be eliminated; and

- 4) to be considered for the work eligible Oakland certified local prime contractors must submit bids showing that fifty percent (50%) of the dollar value of the bid will go to Oakland certified local or small local business enterprises with at least twenty five percent (25%) going to small local business enterprises; and
  
- 5) the successful Oakland certified local prime contractor shall be required to assign fifty percent (50%) of the work hours to Oakland residents, in accord with the City's existing local-hire requirements; and
  
- 6) to provide an incentive for the successful bidder to offer employment opportunities to formerly incarcerated and other Oakland residents with barriers to employment, the City will count/credit hours worked by such persons at the rate of 1 and 1/2 times or 1.5 hours for each actual hour worked toward meeting the fifty percent (50%) local hours requirement; and
  
- 7) the prime contractor and subcontractors hired for the work shall be required to seek referrals for new hires from local pre-apprenticeship training programs in line with the City's First Source Hiring policy; and
  
- 8) except as modified herein, requirements of Oakland's Local and Small Local Business Enterprise Program, which generally requires prime contractors to assign a certain percentage of the work to Oakland Certified Local and Small Local business Enterprises, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base; and
  
- 9) requirements of Oakland's Local Employment program, which requires that a certain percentage of new hires be Oakland residents, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base.

Section 2. Scope and Application of Army Base Demolition and Remediation Contracting Program

The Army Base Demolition and Remediation Program shall apply to the demolition and remediation work at the Army Base with the following restrictions and clarifications:

- 1) The proposed Army Base Program shall apply only to the City's/Oakland Redevelopment Agency's portion of work at the Army Base.
  
- 2) The proposed Program shall not apply to the wide-scale site preparation work or infrastructure construction work currently being master planned by the Master Developer

and the Port of Oakland, for which local contracting and local hiring provisions for that work will be detailed in binding Development and Community Benefit Agreements, to be developed later.

- 3) Federal procurement regulations do not apply to the Army Base demolition and remediation work that is subject to the Program because that work is not federally – funded. But, federal procurement regulations may apply to some extent to any future work paid for with federal funds.
- 4) The term “remediation” for the purposes of the Program is defined as including abatement and excavation work as well as transportation and disposal of hazardous materials or non-universal hazardous wastes, but shall exclude the removal of small-quantity spoils generated during field-testing. Further, Program remediation work shall include only such abatement, excavation and transportation and disposal of hazardous materials or non-universal hazardous wastes performed under a public works construction contract, and shall not include routine, pre-construction remediation-related investigation and documentation work that is currently conducted by Environmental consultants through the City’s existing professional services contracts.
- 5) The \$9 million budget for demolition and remediation work represents the estimated balance of the Joint Environmental Remediation Fund established by the Agency and the Port of Oakland. These funds can be used for work specific to the Remediation Action Plan/Risk Management Program (RAP/RMP) approved by the U.S. Army and overseen by the Department of Toxic Substances Control. Demolition is not an allowable use of those funds. Investigation and remediation of hazardous materials that exceed Industrial Standards, as well as documentation and reporting necessary to obtain Regulatory Closure of RAP/RMP sites, is the general framework of allowable uses for the Joint Environmental Remediation Fund.

Section 3. Enforcement

The City Administrator shall ensure that the Oakland Army Base Demolition and Remediation policy outlined above is applied to all contracts for demolition and remediation work at the Oakland Army Base, to the extent permitted by law.

Section 34. Severability.

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

Section 45. Effective Date.



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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**REVISED**

APPROVED AS TO FORM AND LEGALITY

~~DRAFT~~  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE AMENDING ORDINANCE 12389 C. M. S. TO ADD LOCAL AND SMALL LOCAL BUSINESS CONTRACTING REQUIREMENTS TO OAKLAND'S LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM SPECIFIC TO THE DEMOLITION AND REMEDIATION CARRIED OUT AT THE OAKLAND ARMY BASE AND, FOR THE PURPOSES OF THIS PROGRAM, ADDING ELIGIBILITY SCREENING REQUIREMENTS TO BE CONSIDERED AN "OAKLAND" FIRM**

WHEREAS, the City of Oakland faces the worst economic crises since the Great Depression; and

WHEREAS, the official unemployment rate in the City of Oakland is approximately 17%; the unofficial rate is estimated to be in the mid 20's.

WHEREAS, the 2010 Census data indicates that the jobs growth rate in the City of Oakland decreased by 3%; and

WHEREAS, it is the intent of the City of Oakland City Council to use the power of the public purse to stimulate the local Oakland economy and to ensure Oakland businesses have equal opportunities to do business with the City of Oakland; and

WHEREAS, the Oakland Army Base has a number of demolition and remediation projects which must be completed by August of 2013, and the Oakland Army Base currently has a \$9-million-dollar Remediation fund; and

WHEREAS, the Oakland City Council understands there is a direct correlation between high rates of unemployment and increased crime rates and as such is desirous of finding ways to create contracting opportunities for Oakland Businesses and employment opportunities for Oakland residents; and

WHEREAS, research shows that for every dollar paid by a jurisdiction to a "resident" contractor seven dollars are circulated in the jurisdiction's local economy; and

WHEREAS, Oakland LBEs that are qualified to do demolition and remediation work are underutilized for such work in Oakland; and

WHEREAS, a sheltered market for Army Base demolition and remediation contracts for Oakland LBEs may increase the number of firms with primary business offices in Oakland by encouraging firms to move to Oakland and creating opportunities for the formation of new Oakland-based firms; and

WHEREAS, Army Base demolition and remediation contracts present a significant financial opportunity for underutilized LBEs to get work and thereby bolster Oakland's economy; and

WHEREAS, Army Base demolition and remediation contracts present a significant opportunity for Oakland LBEs to build capacity and experience as *prime* contractors in the demolition and remediation fields, and will later assist them in gaining additional work in these fields in Oakland and other jurisdictions, which would significantly bolster Oakland's economy; and

WHEREAS, the Oakland City Council wishes to amend the City of Oakland's Local and Small Local Business Enterprise program to add new requirements, entitled the "Oakland Army Base Demolition and Remediation Contracting Program," ("Program") specific to the demolition and remediation activities carried out at the Oakland Army Base which will mandate that all contracts for demolition and remediation work at the Oakland Army Base shall be awarded through a competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and

WHEREAS, the U.S. Supreme Court has ruled that "local government should have considerable leeway in analyzing local evils and prescribing appropriate cures, particularly when government is merely setting conditions on the expenditure of funds it controls and it is limited in scope to employees working directly on City public works projects"; and

WHEREAS, in accordance with the leeway granted by the U.S. Supreme Court and based upon the 17% official unemployment rate, the unofficial rate of 25+% and African-American male and Latino male unemployment rates upwards of 33% the City Council desires to prescribe that for purposes of this program that to be eligible to apply for contracts for the demolition and remediation work at the Oakland Army Base, 33% of the firms core workforce must be Oakland residents; and

WHEREAS, this program will require prime contractors that wish to obtain or participate in contracts for demolition and remediation at the Oakland Army Base to submit bids showing that their Core Employee workforces for these jobs must be comprised of at least thirty-three-percent (33%) Oakland residents, unless less than three (3) Oakland certified local contractors have the core workforce required to qualify for the work; and

WHEREAS, the core workforce screening mechanism is necessary and narrowly tailored to bolster the number of Oaklanders working on City-funded construction projects and decrease Oakland's unemployment and poverty levels, and to sustain in this troubled economy existing Oakland contractors that have contributed to Oakland's economy by making a significant and meaningful commitment to hire Oakland residents, and is necessary and narrowly tailored so as not to unduly infringe upon the privileges and immunities of nonresidents; and

WHEREAS, all of the City of Oakland local hire requirements of the City's Local Employment program with respect to new hires shall continue to be applicable to demolition and remediation contracts subject to the Oakland Army Base Demolition and Remediation Contracting Program;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1. Oakland Army Base Demolition and Remediation Contracting Program.**

Ordinance No. 12389 C. M. S., passed December 18, 2001, which established that the City of Oakland's Local and Small Local Business Enterprise, Local Employment, Prevailing Wages and Apprenticeship programs would apply to Oakland contracts involving construction and construction-related work, is hereby amended to add a new section titled the "Oakland Army Base Demolition and Remediation Contracting Program" to the City of Oakland's Local and Small Local Business Enterprise program (Program). This new Program adds new requirements specific to the demolition and remediation activities carried out at the Oakland Army Base, as follows:

- 1) all demolition and remediation contracts for the Oakland Army Base shall be awarded through a competitive bid process open only to City of Oakland Certified Local Business Enterprise (LBE) or Small Local Business Enterprise (SLBE) firms; and
- 2) to be eligible to apply for prime contracts for the demolition and remediation work at the Oakland Army Base, thirty three percent (33%) of the prime contractor's core workforce must be Oakland residents; and
- 3) if less than three (3) Oakland certified local prime contractors have the 33% core workforce required to qualify as an "Oakland" firm to bid on the Army Base demolition and remediation contracts, the core workforce requirement shall be eliminated; and
- 4) to be considered for the work eligible Oakland certified local prime contractors must submit bids showing that fifty percent (50%) of the dollar value of the bid will go to Oakland certified local or small local business enterprises with at least twenty five percent (25%) going to small local business enterprises; and
- 5) the successful Oakland certified local prime contractor shall be required to assign fifty percent (50%) of the work hours to Oakland residents, in accord with the City's existing local-hire requirements; and
- 6) to provide an incentive for the successful bidder to offer employment opportunities to formerly incarcerated and other Oakland residents with barriers to employment, the City will count/credit hours worked by such persons at the rate of 1 and 1/2 times or 1.5 hours for each actual hour worked toward meeting the fifty percent (50%) local hours requirement; and
- 7) the prime contractor and subcontractors hired for the work shall be required to seek referrals for new hires from local pre-apprenticeship training programs in line with the City's First Source Hiring policy; and



- 8) except as modified herein, requirements of Oakland's Local and Small Local Business Enterprise Program, which generally requires prime contractors to assign a certain percentage of the work to Oakland Certified Local and Small Local business Enterprises, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base; and
- 9) requirements of Oakland's Local Employment program, which requires that a certain percentage of new hires be Oakland residents, shall continue to apply to all demolition and remediation contracts for the Oakland Army Base.

## Section 2. Scope and Application of Army Base Demolition and Remediation Contracting Program

The Army Base Demolition and Remediation Program shall apply to the demolition and remediation work at the Army Base with the following restrictions and clarifications:

- 1) The proposed Army Base Program shall apply only to the City's/Oakland Redevelopment Agency's portion of work at the Army Base.
- 2) The proposed Program shall not apply to the wide-scale site preparation work or infrastructure construction work currently being master planned by the Master Developer and the Port of Oakland, for which local contracting and local hiring provisions for that work will be detailed in binding Development and Community Benefit Agreements, to be developed later.
- 3) Federal procurement regulations do not apply to the Army Base demolition and remediation work that is subject to the Program because that work is not federally -funded. But, federal procurement regulations may apply to some extent to any future work paid for with federal funds.
- 4) The term "remediation" for the purposes of the Program is defined as including abatement and excavation work as well as transportation and disposal of hazardous materials or non-universal hazardous wastes, but shall exclude the removal of small-quantity spoils generated during field-testing. Further, Program remediation work shall include only such abatement, excavation and transportation and disposal of hazardous materials or non-universal hazardous wastes performed under a public works construction contract, and shall not include routine, pre-construction remediation-related investigation and documentation work that is currently conducted by Environmental consultants through the City's existing professional services contracts.
- 5) The \$9 million budget for demolition and remediation work represents the estimated balance of the Joint Environmental Remediation Fund established by the Agency and the Port of Oakland. These funds can be used for work specific to the Remediation Action Plan/Risk Management Program (RAP/RMP) approved by the U.S. Army and overseen by the Department of Toxic Substances Control. Demolition is not an allowable use of those funds. Investigation and remediation of hazardous materials that exceed Industrial Standards, as well as documentation and reporting necessary to obtain Regulatory Closure of RAP/RMP sites, is the general framework of allowable uses for the Joint Environmental Remediation Fund.

Section 3. Enforcement

The City Administrator shall ensure that the Oakland Army Base Demolition and Remediation policy outlined above is applied to all contracts for demolition and remediation work at the Oakland Army Base, to the extent permitted by law.

Section 4. Severability.

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date.

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, SCHAAF,  
NADEL AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California