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OFFICE OF THE CITY CLERK
OAKLAND
2012 OCT 11 PM 2:54

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Army Base Project Labor Agreement

DATE: September 26, 2012

City Administrator
Approval

Date

10/3/12

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff recommends that the City Council approve:

A City Resolution Authorizing the City Administrator to Negotiate and Execute a Project Labor Agreement with the Building and Construction Trades Council of Alameda County, AFL-CIO, and Specified Local Unions for the Construction of the City's Portions of the former Oakland Army Base Without Returning to the City Council

An Oakland Redevelopment Successor Agency (ORSA) Resolution Authorizing The ORSA Administrator To Negotiate And Execute A Project Labor Agreement With The Building And Construction Trades Council Of Alameda County, AFL-CIO, And Specified Local Unions For The Construction Of Public Improvements At The Former Oakland Army Base Without Returning To The ORSA Board

EXECUTIVE SUMMARY

On July 3, 2012, by way of Ordinance No. 13131 C.M.S., the City Council authorized a Design-Build contract with CCIG Oakland Global, LLC for the construction of public improvements at the Army Base. These public improvements will involve a large, complex, and multi-craft effort. To ensure the efficient progress of construction, City staff negotiated a Project Labor Agreement (PLA) with the Building Trades to (1) provide a peaceful, efficient, expedited and binding procedure for settling labor disputes without labor action or lockouts; (2) facilitate implementation of the Construction Jobs Policy for Public Improvements for the Oakland Army Base; (3) stabilize wages and working conditions; and (4) ensure an adequate supply of skilled craftspeople. The PLA references the terms of the Construction Jobs Policy, which is included as a material term of the Lease Disposition and Development Agreement with Prologis CCIG Oakland Global, LLC ("Developer"), and which will govern all construction work on for the Army Base. The City will apply this PLA as a contract specification of all construction contracts

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awarded by the City and its Construction Manager for the public infrastructure and site preparation work that is required to the prepare the former Oakland Army Base site for commercial development.

OUTCOME

The PLA would constitute a cooperative effort of the Building Trades and the City toward establishing a stable working environment for the workers who will be employed in the construction of the public infrastructure for the Oakland Army Base, and ensuring that construction will proceed in an orderly manner. The City could realize cost savings from the labor peace. In addition, the PLA contains important provisions for the community, including key assistance by unions in advancing local hiring goals and apprenticeship requirements, ensuring that a significant number of Oakland residents will benefit from the City's investment in the revitalization of the Oakland Army Base.

BACKGROUND/LEGISLATIVE HISTORY

In 2008, the Redevelopment Agency (Agency) issued a Request for Proposals (RFP) for a master developer for the Oakland Army Base. Among the expectations for developing the property were that: project construction would provide training and employment opportunities for targeted residents; all general contractors on the project would be required to create and utilize a plan incorporating requirements of the City of Oakland Apprenticeship Policy and City of Oakland Local Hire Policy; and the proposer could be required to enter into a labor peace agreement and cause each Army Base employer also to sign a labor peace agreement.

The RFP defined a "labor peace agreement" as any written agreement which (a) waives the right of the labor organization and its members to engage in picketing, work stoppages, boycotts, or other economic interference with the Agency's proprietary interests in the premises for the duration of the Agency's lease; and (b) provides that any services to be performed by employees of the employer's tenants, subtenants, contractors, or subcontractors will also be done under agreements containing the same labor peace assurance. "Services" included janitorial, security, building and grounds maintenance, warehousing and distribution, industrial, mechanics and truck services, retail, hotel (and any restaurant connected thereto), and grocery sales.

These expectations were reiterated in the Community Benefits Term Sheet attached to the Exclusive Negotiating Agreement (ENA) the Agency entered into with the Developer for the development of the Army Base. During the course of negotiations with the Developer, the City Council determined that the City should develop a Community Benefits Agreement within which the City would negotiate and implement the suite of programs and features that address the wide array of goals and priorities the Army Base project must fulfill.

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An Army Base Jobs Working Group consisting of representatives from West Oakland; community coalitions, such as OaklandWORKS and Revive Oakland!; the Building Trades Council of Alameda County, contractors, and the Developer came together to work on developing policies addressing job creation at the Army Base. The Working Group appointed a Task Force to address specific concerns regarding PLAs.

The Working Group's consensus recommendation supported a PLA based on the following conditions:

- There will be a binding Community Jobs Agreement (CJA), which will serve as the overarching policy and program framework for construction and operations jobs. The CJA will be a third party agreement among the developers, the City, community stakeholders (representatives to be determined) and labor, and will provide signatories with legally enforceable rights and obligations.
- The CJA should be developed and approved prior to the City executing a PLA for the Army Base development to ensure that the PLA strengthens local hiring outcomes by completely supporting the goals and processes articulated in the CJA.
- The PLA for Army Base construction shall conform to the mutually agreed upon local hiring and program operations requirements within the CJA. The terms and conditions of a PLA among the Building Trades and the City, the CJA, and Army Base Development Agreements pertaining to projects on the City's portion of the Army Base will be aligned and consistent.
- The PLA must support and agree with the terms and conditions of an over-arching CJA, and must recognize and support the goals and policies of the CJA as a condition of approval for commencing infrastructure construction on City property.
- The City would enter into a PLA with the trade unions for the construction jobs.

The conditions for a PLA were incorporated into a set of recommendations from the Working Group that formed the basis of a Community Jobs Policy Framework for the Army Base. Staff first presented the Jobs Policy framework to the CED Committee on January 10, 2011, and further articulated it on January 24, 2012. The Community Jobs Policy Framework has guided the City's negotiation of (I) Jobs Policies regarding hiring and employment at the Army Base; (2) a Cooperation Agreement, which, among other things, commits the City to (i) ensure the Developer's compliance with the Jobs Policies, (ii) enter into a Project Labor Agreement (PLA) with the Building and Construction Trades Council for the publicly funded portion of Army Base construction, and (iii) require the Developer to enter into its own PLA with the Building Trades

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for all other portions of project construction; and (3) a PLA, which secures labor peace during construction.

Staff presented a draft of the Cooperation Agreement and associated Community Jobs Policies to the City Council on June 19, 2012. By way of Resolution No. 83933 C.M.S. the Council authorized the City Administrator to negotiate and enter into the Cooperation Agreement with specified community and labor groups. In accordance with the Cooperation Agreement and the recommendations of the Working Group, staff has negotiated a PLA which is aligned with the terms and conditions of the Cooperation Agreement, including local hiring, and consistent with the Construction Jobs Policy. The most current information on the contents of the PLA will be provided in a supplemental report.

ANALYSIS

Since delays on any public construction project can be costly for the taxpayer, the PLA prevents such delays by barring strikes, lockouts and other work stoppages. It requires disputes to be submitted to impartial arbitration for resolution, saving taxpayers' money and insuring the project proceeds on time. Beyond requiring labor peace to protect its own interests, the City has no direct role in the relationships between business and labor. Actual labor peace discussions and negotiations should be among the unions and businesses.

The Army Base project must also consider the Port's contracting and hiring policies governed by the State Lands Commission and prescribed within its Maritime and Aviation Project Labor Agreement (MAPLA). The Port's Local Impact Area, for example, includes not only Oakland but also the cities of Alameda, Emeryville, and San Leandro. In addition, local policies and priorities, such as for contracting and hiring, may conflict with state and federal law and funding source guidelines and restrictions. State Prop 209, for example, usually prohibits race-based targeting to enhance participation of local minority and women owned businesses. The Department of Transportation Highway Administration (FHWA), which will likely be the largest source of federal funding for the Army Base infrastructure development project, does not typically support geographic targeting for local business outreach or local hiring for that matter. There are, however, examples of projects for which funding recipients have negotiated contract terms with FHWA to help meet local contracting and hiring priorities.

PUBLIC OUTREACH/INTEREST

The Army Base Jobs Working Group meetings, facilitated by Councilmember Brunner and her staff, occurred from December 2010 through October 2011. This group held nine meetings over the course of the period. The meetings were open to anyone wishing to weigh in on developing a comprehensive set of goals, conditions and implementation processes regarding local hiring for

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the construction and operations phases of the Army Base project. Upwards of 50 people participated in this process. The Working Group consisted of representatives from West Oakland; community coalitions, such as OaklandWORKS and Revive Oakland!; the Building Trades Council of Alameda County, contractors, and the Developer.

COORDINATION

In addition to the community-based and labor groups, staff coordinated with the City Administrator's Contract Compliance Office.

COST SUMMARY/IMPLICATIONS

A conservative estimate for staff costs for on-going monitoring and compliance per annum is \$300,000 - \$450,000 for the entire project at its peak.

Potential sources of revenue to fund these costs include:

- a) West Oakland Community Fund
This Fund is expected to generate up to \$2,000,000 based on a one-time payment of \$16,000 per developable leased and sold acre of land on the over the next two to seven years. The West Oakland Community Advisory Group has presented a number of recommendations for the use of these funds. The City Council has the ultimate authority over how these funds are allocated.
- b) Billboard revenue
The City's share of proposed Army Base billboard plan could be as high as \$490,000 annually beginning in 2014. With expedited approvals, a portion of these estimated funds could be available sooner.
- c) Special Development Fee in lieu of the Jobs/Housing Impact Fee
The current Jobs Housing Impact Fee could be waived and a new in lieu fee could be approved based on a commercially viable per square foot basis. Staff has no estimate at this time for this potential source of one time funding, and recommends that the City Council consider the option.
- d) Commercially Viable Community fee on tenants
This fee based on square footage leased to master developer tenants would not be available until 2016 and beyond, and may amount to approximately \$50,000 per year by 2019.
- e) Possessory interest (property taxes) targeted to support OAB Community Benefits

The City Council could elect to divert a portion of the possessory interest generated by the Army Base project for Community Benefits. This option is also out in the future when there is new development and property values increase substantially.

SUSTAINABLE OPPORTUNITIES

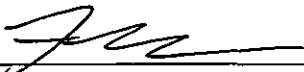
Economic: A Project Labor Agreement between the Building Trades and the City will ensure that there are no costly work stoppages or disruptions during the construction phase: The Labor Peace provision for the operations jobs has the same intent of protecting the City's financial interests as well as ensuring that workers are not at risk of losing wages due to work stoppages and disruptive labor disputes.

Environmental: This report does not directly address environmental sustainability.

Social Equity: A PLA sets out uniform and fair working conditions and advanced the purposes of the Construction Jobs Policy.

For questions regarding this report, please contact Al Auletta, Program Manager, at 238-3752.

Respectfully submitted,



FRED BLACKWELL
Assistant City Administrator

Prepared by:
Al Auletta, Program Manager
Office of Neighborhood Investment

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October 23, 2012

D. Melloni

Deputy City Attorney

2012 OCT 11 PM 5:56 RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PROJECT LABOR AGREEMENT WITH THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, AFL-CIO, AND SPECIFIED LOCAL UNIONS FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AT THE FORMER OAKLAND ARMY BASE WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, the site preparation and construction of public infrastructure for the former Oakland Army Base ("OARB") will be a large, complex, multi-craft, and long-term project; and

WHEREAS, construction contractors ("Contractors") will be engaged in the construction of the project; and

WHEREAS, a skilled labor pool represented by local labor union(s) will be required to complete the work involved; and

WHEREAS, the Building and Construction Trades Council of Alameda County, AFL-CIO, and specified local unions (the "Unions") and the City wish to ensure labor peace at the OARB devoid of any disruption that could jeopardize the schedule and timeliness of the construction process; and

WHEREAS, the interests of the general public, the City of Oakland, the Unions and Contractors would best be served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the City desires to provide construction training and employment opportunities for students of and residents within the City through apprentice and pre-apprentice programs; and

WHEREAS, the City recognizes the need for safe, efficient and speedy construction in order to reduce unnecessary delays and insure timely and economical completion of the project and that this promotes the public interest; and

WHEREAS, the City in collaboration with Community-based groups and labor unions has developed a Construction Jobs Policy for Public Improvements for the Oakland Army Base ("Construction Jobs Policy") that sets forth certain requirements regarding hiring and employment for the construction of the City's planned public improvements for the OARB (Public Improvements) and requires Contractors participating in the construction of the Public Improvements to comply with terms of the Construction Jobs Policy as a condition of operation;

and

WHEREAS, the City wishes to advance the goals of the Construction Jobs Policy, and establish and stabilize wages, hours and working conditions for the employees employed on the project by Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship among City, the Unions and Contractors; and

WHEREAS, the Project Labor Agreement secures the agreement of the City, Unions, and Contractors to be bound by the provisions of the Agreement, including mutual cooperation and compliance with the City's Construction Jobs Policy for the OARB; now, therefore be it

RESOLVED: That the City Administrator is authorized to negotiate and execute a Project Labor Agreement among the City of Oakland, the Building and Construction Trades Council of Alameda County, AFL-CIO, and specified local unions governing the construction of the Public Improvements at the former Oakland Army Base without returning to City Council; and be it

FURTHER RESOLVED: Contractors participating in the construction of the Public Improvements shall be required to be signatories to the Project Labor Agreement; and be it

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the Project Labor Agreement contemplated herein in support of the development on the former Oakland Army Base consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That, prior to execution the City Attorney must approve the Project Labor Agreement as to form and legality, and a copy shall be filed with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -


ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

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APPROVED AS TO FORM AND LEGALITY


ORSA COUNSEL

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

RESOLUTION NO. 2012- _____

RESOLUTION AUTHORIZING THE ORSA ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PROJECT LABOR AGREEMENT WITH THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, AFL-CIO, AND SPECIFIED LOCAL UNIONS FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AT THE FORMER OAKLAND ARMY BASE WITHOUT RETURNING TO THE ORSA BOARD

WHEREAS, the site preparation and construction of public infrastructure for the former Oakland Army Base ("OARB") will be a large, complex, multi-craft, and long-term project; and

WHEREAS, construction contractors ("Contractors") will be engaged in the construction of the project; and

WHEREAS, a skilled labor pool represented by local labor union(s) will be required to complete the work involved; and

WHEREAS, the Building and Construction Trades Council of Alameda County, AFL-CIO, and specified local unions (the "Unions") and the Oakland Redevelopment Successor Agency ("ORSA") wish to ensure labor peace at the OARB devoid of any disruption that could jeopardize the schedule and timeliness of the construction process; and

WHEREAS, the interests of the general public, ORSA, the Unions and Contractors would best be served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, ORSA desires to provide construction training and employment opportunities for students of and residents within the City through apprentice and pre-apprentice programs; and

WHEREAS, ORSA recognizes the need for safe, efficient and speedy construction in order to reduce unnecessary delays and insure timely and economical completion of the project and that this promotes the public interest; and

WHEREAS, the City of Oakland in collaboration with Community-based groups and labor unions has developed a Construction Jobs Policy for Public Improvements for the Oakland Army Base ("Construction Jobs Policy") that sets forth certain requirements regarding hiring and employment for the construction of the City's planned public improvements for the OARB (Public Improvements) and requires Contractors participating in the construction of the Public Improvements to comply with terms of the Construction Jobs Policy as a condition of operation; and

WHEREAS, ORSA wishes to advance the goals of the Construction Jobs Policy, and establish and stabilize wages, hours and working conditions for the employees employed on the project by Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship among ORSA, the Unions and Contractors; and

WHEREAS, the Project Labor Agreement secures the agreement of ORSA, Unions, and Contractors to be bound by the provisions of the Agreement, including mutual cooperation and compliance with the City's Construction Jobs Policy for the OARB; now, therefore be it

RESOLVED: That the ORSA Administrator is authorized to negotiate and execute a Project Labor Agreement among ORSA, the Building and Construction Trades Council of Alameda County, AFL-CIO, and specified local unions governing the construction of the Public Improvements at the former Oakland Army Base without returning to the ORSA Board; and be it

FURTHER RESOLVED: Contractors participating in the construction of the Public Improvements shall be required to be signatories to the Project Labor Agreement; and be it

FURTHER RESOLVED: That the ORSA Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the Project Labor Agreement contemplated herein in support of the development on the former Oakland Army Base consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That, prior to execution ORSA Counsel must approve the Project Labor Agreement as to form and legality, and a copy shall be filed with the City Clerk.

BY SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Oakland Redevelopment
Successor Agency