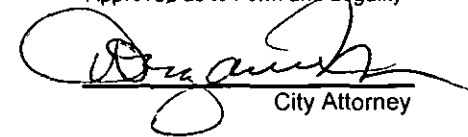FILE
OFFICE OF THE CITY CLERK
OAKLAND

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Approved as to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 84071 C.M.S.

Introduced by Councilmember Desley Brooks

RESOLUTION AMENDING THE OAKLAND ARMY BASE CONSTRUCTION JOBS POLICIES FOR PUBLIC IMPROVEMENTS AND VERTICAL CONSTRUCTION; ESTABLISHING WEEKLY REPORTING REQUIREMENTS FOR CONTRACTORS AND SUB-CONTRACTORS; AUTHORIZING THE ESTABLISHMENT OF A WEBSITE WHICH WILL POST COMPLIANCE INFORMATION IN REAL TIME; MANDATE USE OF THE CITY'S LCP TRACKER PROGRAM; AND ESTABLISHING SANCTIONS ON CONTRACTORS AND SUB-CONTRACTORS FOR NONCOMPLIANCE WITH OAKLAND'S JOBS POLICY

WHEREAS, the Oakland City Council adopted the Jobs Policies for Public Improvements and Vertical Construction ("Construction Jobs Policies") under legislation approved June 19, 2012, which authorized several agreements, including a lease disposition and development agreement, ground leases, a billboard franchise and lease agreement, a property management agreement, and related documents (collectively "LDDA") with Prologis CCIG Oakland Global, LLC, for the development of a mixed-use industrial (warehousing and logistics), commercial, including billboard, maritime, rail, and open space project on approximately 130 acres in the Central, East, and West Gateway areas of the former Oakland Army Base ("Project"); and

WHEREAS, the Construction Jobs Policies govern contracts involving public improvements and vertical construction related to the Project; and

WHEREAS, Certified Payroll Reports (CPR) outline the wages paid to workers employed in government contracted jobs in order to ensure these workers receive fair and reasonable compensation, as determined by the U.S. Department of Labor; and

WHEREAS, the U.S. Department of Labor reviews these certified reports, also known as prevailing wage reports, as part of the federal law stipulated by the Davis-Bacon Act; and

WHEREAS, this act requires documentation of any construction work, including professionals who provide plumbing, electrical work, painting, decorating, HVAC, and drywall on public buildings or public works projects, which includes roads and bridges; and

WHEREAS, companies awarded government contracts must file a weekly Certified Payroll-Report with the U.S. Department of Labor for jobs in excess of $2,000 and which are funded by federal, state, or local government; the most commonly used certified-payroll form is U.S.

Department of Labor Form WH-347, and "No Work" reports must also be submitted if work is temporarily suspended for any reason; and

WHEREAS, contractors are governed by state laws relative to the payment of prevailing wage rates and state prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771, workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn, and the California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages; and

WHEREAS, the City of Oakland collects Certified Payroll Reports by way of a real-time web-based program, Labor Compliance Program Tracker (LCPtracker) to satisfy Davis-Bacon Act reporting requirements; and

WHEREAS, the City evaluates and determines compliance with prevailing wage laws, the Oakland Apprenticeship and the 50% Local Employment Program; and

WHEREAS, benefits of the LCPtracker system include:

- Construction workers are assured of being paid the correct prevailing wage rates while employed on city funded construction projects;

- Monitoring compliance is made faster and easier using an automated method of entering and reviewing data;

- Allows data entry in a standardized format and the level of accuracy in the data used is increased tremendously;

- Staff time required to analyze data is more efficiently utilized, since paper reporting from contractors is eliminated, and reports can be generated from data quickly and easily;

- Provides a complete audit trail for all affected parties; and

WHEREAS, in its meeting on June 19, 2012, Council requested a report on the existing real-time, web-based monitoring system utilized by the City to conduct real time assessments of contractor's compliance with Prevailing Wage requirements and the City's resident hiring requirements applied through the 50% Local Employment and 15% Apprenticeship Programs; and

WHEREAS, in order for the City to provide 'real time' compliance monitoring and enforcement with the City's Local Employment Program and 15% Apprenticeship Program resident hiring goals as well as satisfying prevailing wage requirements, the Contracts and Compliance division of the Office of the City Administrator utilizes the Labor Compliance Program Tracker (LCPtracker); and

WHEREAS, LCPtracker is a web-based labor compliance software for contractor reporting and City monitoring of certified payroll data and the data is validated according to local, state, or federal Davis-Bacon prevailing wage regulations; and

WHEREAS, the City's web-based system allows staff to review and analyze data in "real-time" and reduces the man hours needed to manually review hundreds of certified payroll records for any given project; and

WHEREAS, failure to comply with the jobs policy results in a determination of non-compliance and shortfalls are assessed at one and one half times the base shortfall and shortfalls may be satisfied by employing Oakland residents at one and one half times the shortfall hours or a by payment of a penalty in the amount of one and one half times the wages that should have been paid to an affected Oakland resident; now, therefore be it

RESOLVED: The Oakland City Council hereby amends the Construction Jobs Policies for Public Improvements and Vertical Construction approved June 19, 2012, as follows:

- Article III, Section D, Damages, p. 4 in the Construction Jobs Policy for Public Improvements – delete the existing language and insert the following in Article IV, Monitoring and Enforcement; and Article IV, Section F.1, Remedies in the Construction Jobs Policy for Vertical Construction -- delete the existing language and insert the following:

  1. All contractors and subcontractors are required to submit weekly certified payroll reports or workforce charts through the City's LCPtracker system and format, listing workers by name, residential address, craft, job category, hours worked, sex and race. These charts will be public records subject to public disclosure, with redaction of personal/confidential information; the workforce information shall be posted, in real time on a website that the public may view.

  2. ~~The City is a third-party beneficiary of the jobs policy and developer, prime contractors and subcontractors shall include such provisions in their contracts with prime and sub-contractors. The City shall have the power by means of these third-party contract provisions to impose sanctions on the developer(s), prime contractors and subcontractors found to be in non-compliance with the Jobs Policy. Such sanctions shall include, but not be limited to: i) suspension of payments, ii) tomiination of the contract, iii) recovery by the city of tho contract award price as liquidated damages, and iv) debarment (denial of the right to participate in future City projects) for a period of years as determined by proceeding under the Oakland Debarment Ordinance (OMC Chapter 2.12).~~

- Section H, Employment Projections, Subsection 1, p. 5 – add the following to Subsection 1:

  Prime contractor: Within one month of being awarded a contract, the prime contractor shall:

  1. Identify the estimated number of job positions to be created by contract;
  2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;

3. Identify the estimated number of apprentices jobs to be created by the contract;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce- charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

- Section H, Employment Projections, p.5 – add the following subsection:

  Subsection 2. Subcontractor: Each contractor shall at least one month before commencing performance of any work:

1. Identify the estimated number of job positions to be created by contract;
2. Developer shall work with the unions to specify training needed for entry level and semi-skilled positions by title;
3. Identify the estimated number of apprentices jobs to be created by the contractor;
4. Identify the estimated Project Hours needed by trade at each stage of the contract;
5. Information contained in 1 through 5 above shall be forwarded to the Job Center and the City Contract Compliance Office;
6. Said prime contractor shall be required to submit to the Jobs Center and City Contract Compliance Office weekly workforce- charts listing workers by name, residential address, craft, job category, hours worked, sex and race;
7. The weekly workforce chart shall be submitted in the format on the attached template; the workforce information shall be posted in real time on a website which the public may view.

FURTHER RESOLVED: Oakland residents will benefit from the real time monitoring and enforcement.

IN COUNCIL, OAKLAND, CALIFORNIA,   OCT 3 0 2012
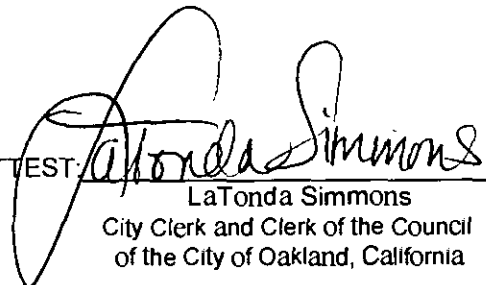
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID – 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

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

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