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SUPPLEMENTAL AGENDA REPORT

2011 DEC 22 PM 3:22

TO: Office of the Agency Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: January 10, 2012

RE: **Supplemental Report and Recommended Community Benefits Policy Framework Associated with the Development and Operations at the Former Oakland Army Base**

SUMMARY

This Supplemental Report is intended to clarify staff recommendations presented in the Army Base Community Benefits staff report, which was scheduled for the December 13, 2011 Community and Economic Development (CED) Committee, and rescheduled for the January 10, 2012 CED Committee meeting.

This report tiers off of the original report and attempts to provide the Agency Board with clearly articulated recommendations and rationale on six Army Base Community Benefits terms and conditions.

RECOMMENDATIONS AND RATIONALE

A. JOBS AND CAREERS FOR LOCAL RESIDENTS

Recommendation #1: That the Agency Board adopt the policy recommendations of the Jobs Working Group as the platform for developing a Community Jobs Agreement for the Oakland Army Base project.

These recommendations were developed during a one-year, inclusive, consensus-building process led by Councilmember Jane Brunner. The Jobs Working Group recommendations are summarized as follows:

Local Hire

- The goal for local hire is 50% of work hours for Oakland residents. It applies to both construction jobs work hours (similar to the City's existing Local Employment Program), and also to operations jobs work hours.

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- “Local” is defined as the City of Oakland, with first priority being given to the zip codes that comprise West Oakland and City Council District 3, and second priority to areas within the Oakland Enterprise Zone Targeted Employment Area.

Jobs Center

- The Working Group recommends the development of a one-stop Jobs Center located in West Oakland. The Jobs Center is a critical piece for the community. The Center should be readily accessible, and serve as a resource for contractors, employers and job seekers during construction and operations phases of the Army Base project. The Jobs Center will also connect job seekers with existing job training, education and other support services.
- The Working Group developed a tracking system for construction work that met the needs of both the Building Trades and community groups to ensure transparency regarding hiring. Every request for workers to hiring halls and dispatches will be forwarded to Jobs Center staff to track retention and compliance with the 50% local hiring goal craft by craft.
- The Jobs Center will also serve as a resource for matching local residents with operations jobs on the former Army Base.

Apprenticeships

- Working Group members support providing career pathway opportunities for Oakland residents, not just temporary jobs. In line with this goal, the Working Group recommends that:
 - The goal for the percent of overall apprentice work hours should be raised from 15% to 20% of total work hours.
 - All new apprentices must be Oakland residents.
 - There should be a requirement for a specific number of new apprentices, craft by craft. The recommended range for new apprentice utilization is 5-10% of total work hours (which translates to about 25-50% of apprentice hours).
 - New apprenticeship hiring opportunities shall be given first to qualified graduates of Oakland pre-apprenticeship training programs. (The process of developing the Community Jobs Agreement and Jobs Center will also include the establishment of pre-apprenticeship training standards.)

Disadvantaged Workers

- The Working Group wants to ensure that there are opportunities for segments of the populations facing significant obstacles to employment, such as low income young adults ages 18 to 25, disabled individuals, and the formerly incarcerated.

- For operations jobs, the Group recommends a goal of 25% of hours for disadvantaged workers.
- For construction jobs, the Group recommends a goal of 25% apprentice hours to be completed by workers qualifying as disadvantaged.
- The Working Group also supported requiring employers to ban the box on job applications and preventing employers from asking for credit references.

Oversight Committee

- The Working Group recommends establishment of a trained Stakeholder Oversight Committee charged with monitoring the good faith efforts of contractors (for construction jobs) and employers (for operations jobs) to comply with the goals of a Community Jobs Agreement, including local hiring and the City's Local Employment Program goals.
- The Stakeholder Oversight Committee will be made up of representatives from the community, labor, City and Port government, contractors and developers, with a majority representing community groups from a cross-section of the community. Representatives would serve specific terms and be expected to participate regularly.
- The Working Group recommends dedicating resources to train community members to serve on the Stakeholder Oversight Committee and to provide stipends for community Committee members who are not paid by another organization.
- The Stakeholder Oversight Committee will have the authority to recommend solutions and to enforce penalties when contractors are out of compliance. Tough penalties are needed to hold contractors responsible for meeting goals. There should be non-monetary penalties in addition to monetary penalties such as:
 - An increase in local hiring percentage (as an option instead of withholding retainer funds);
 - Banning contractors from future City/Agency funded work.
- There should also be incentives for contractors who exceed goals by 10% or more (and are on schedule).

Project Labor Agreement/Community Jobs Agreement

- The Working Group recommends the development of a binding Community Jobs Agreement (CJA), which will serve as the overarching policy and program framework for construction and operations jobs. The CJA would be a "3rd party agreement" between the developers, the City/Agency, community stakeholders (representatives to be determined) and labor. A CJA would provide signatories with legally enforceable rights and obligations.

- The Agency would also enter into Project Labor Agreements (PLAs) for the construction jobs with the trade unions and developers. All PLAs would conform to the mutually agreed upon local hiring and program operations requirements within the CJA. The terms and conditions of a Project Labor Agreement, Community Jobs Agreement and City of Oakland/Redevelopment Agency Development Agreements will be aligned and consistent.
- A CJA should be developed and approved prior to the City of Oakland signing a PLA for the Army Base development.

Operations Jobs

- The Working Group confirms that all of the policies developed for local hire, disadvantaged workers, the CJA and the Jobs Center shall be the baseline policies for operations jobs, including the 50% local hire goal and 25% disadvantaged worker goal.
- The goal for operations jobs at the redeveloped Army Base is permanent jobs not temporary ones. The Working Group does not support the use of temporary employment agencies. If temporary workers are employed, there should be a time limit on their employment and a pathway for temporary workers to become permanent.
- Seasonal workers (“casual workforce”) hired directly by employers are permissible but temporary employment agencies should not be used.

The Army Base Jobs Working Group meetings facilitated by Councilmember Brunner and her staff occurred from December 2010 through October 2011. 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 the construction and operations phases of the Army Base project. Upwards of 50 people participated in this process. Councilmember Brunner and her staff recorded each recommendation offered by meeting participants. The group discussed each item at length, and voted on each item. Only those recommendations that achieved 100% approval of the entire group are included in this report.

Recommendation #2: That the City/Agency enter into a Project Labor Agreement (PLA) with the Building Trades to ensure labor peace during construction to strengthen the project’s local hiring outcomes by ensuring that the terms and conditions of the PLA completely support and are aligned with the terms and conditions of the Army Base Community Jobs Agreement.

During the Jobs Working Group process, questions and issues arose regarding the pros and cons of having a Project Labor Agreement. The Working Group appointed a Task Force comprised of members of the Jobs Working Group to address concerns regarding a Project Labor Agreement

for the construction phase of the Army Base development project. The key stakeholders represented on this Task Force included:

- Building and Construction Trades Council of Alameda County
- Construction Employers Association
- City of Oakland Contract Compliance and Employment Services
- Oakland WORKS
- Revive Oakland!
- The Oakland Workforce Investment Board

The Working Group's consensus recommendations are incorporated in this report and support a Project Labor Agreement, 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 "3rd party agreement" among the developers, the Agency, community stakeholders (representatives to be determined) and labor, and will provide signatories with legally enforceable rights and obligations.
- The Project Labor Agreement 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 Agency, the Community Jobs Agreement, and Army Base Development Agreements pertaining to projects on the Agency's portion of the Army Base will be aligned and consistent.
- The CJA should be developed and approved prior to the Agency 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 Agency acknowledges that all construction local hiring policies for federally funded projects must comply with the policies and conditions of the relevant federal agencies.

Recommendation #3: That the Agency Board affirm the following language included in the Community Benefits Term Sheet in the Exclusive Negotiating Agreement with Prologis/CCIG regarding operations jobs on the Agency's portion of the Army Base as part of the platform for developing a Community Jobs Agreement.

In order to advance the Agency's goal of providing economic opportunities to residents of communities that have borne the brunt of social, economic and health impacts, the Agency will require Lessee(s) to ensure that all project employers participate in a First Source hiring program (Jobs Center) for operations-phase jobs (i.e., non-construction jobs). This program will require employers to designate a first source system, prior to hiring; consider targeted applicants referred by the first source system; and hire a

percentage of targeted applicants. The Agency will designate one or more nonprofit entities (Jobs Center) to refer applicants as part of the first source system. Targeted hiring requirements will be monitored and enforced through a process to be established by the Agency and similar to the Port of Oakland's MAPLA program, through which employers and contractors report progress, and challenges are addressed in a collaborative manner by various stakeholders from a particular industry, including community representatives and any relevant labor union(s).

Affirming this text is a prelude to the development of the Community Jobs Agreement with detailed requirements that are enforceable by the Agency and community stakeholders. The onus of meeting the local hiring goals should be as much on the Jobs Center as on the employers. The Jobs Center must function effectively and be a valuable resource for employers to meet the project's local hiring goals.

Next Steps for the Local Hiring Process

Using a consensus process similar to the one led by Councilmember Jane Brunner, Army Base stakeholders will work out the terms and conditions for a binding Community Jobs Agreement with support from Agency staff. Essential by-products of the Community Jobs Agreement will include the West Oakland Jobs Center linked to sector-based skills training programs and competency standards for pre-apprenticeship training program graduates.

B. LOCAL CONTRACTING REQUIREMENTS

Recommendation #4: That the Army Base project comply with the newly adopted policy of 50% local business participation as applicable under the Ordinance.

The priority for a high local contracting requirement was expressed consistently during the Army Base Community Benefits workshops facilitated by Councilmember Nancy Nadel, and is consistent with the Ordinance Amendment on current Army Base demolition and remediation projects put forth by President Larry Reid and Vice Mayor Desley Brooks. Depending on the federal agencies funding the project, the Agency should negotiate agreements with each federal agency to enable us to meet our local contracting priorities to the greatest extent possible. The contractors and firms identified in the original AMB/CCG proposal should continue to perform their roles in the infrastructure master planning and infrastructure construction phases of the project. The Project Team has amassed an enormous amount of knowledge about the Army Base site and how to best prepare it for commercial development. Staff has Agency Board direction to work with the master developer to diversify the project team with more local businesses. There are and will be ample opportunities for the many certified Local/Small Local Business Enterprises in Oakland to perform major portions of this massive public works project.

C. WEST OAKLAND COMMUNITY FUND

Recommendation #5: That payment to the West Oakland Community Fund (WOCF) should be required of developers when the following conditions are met: a) the backbone infrastructure has been installed and a certificate of completion has been issued; b) the land to be developed is remediated per the RAP/RMP; and c) the developer has entered into a long-term ground lease or purchase agreement and has completed the first phase of vertical development.

Commercial developers will not invest large sums of money into a project without certainty of project scope, schedule and budget. Contribution to the WOCF at \$16,000 per acre is a large investment for any company. Requiring contributions prior to executing a long-term lease or purchase agreement for property that is not ready for vertical development is unreasonable in this era of fiscal constraints.

Regarding the use of the WOCF, staff will continue to work with the West Oakland Community Advisory Group in an effort to align its fund use recommendations with the community benefit priorities that have emerged from the local hiring and local contracting discussions.

The Agency Board is ultimately responsible for determining how the West Oakland Community Fund will be administered and granted.

D. LABOR PEACE

Recommendation #6: To protect the Agency's financial interests for the Army Base project, staff recommends that the existing language (below) in the Community Benefits Term Sheet be used as the framework for future discussions among labor unions and businesses regarding labor peace.

(The) Lessee is required to agree to the following language in its lease agreement with the Agency: The parties recognize that in order to protect the Agency's proprietary interests in uninterrupted receipt of the income and public services promised under this contract, labor disputes must be prevented. The parties agree that as a material condition of this agreement, Lessee shall cause each employer of employees rendering services on the premises to sign a labor peace agreement with any labor organization which has informed the Agency that it represents or seeks to represent such employees, unless the Alameda Labor Council advises that such labor organization is not actively organizing in such industry.

A "labor peace agreement" means 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" for these purposes means janitorial, security, building and grounds maintenance, warehousing and distribution, industrial, mechanics and truck services, retail, hotel (and any restaurant connected thereto), and grocery sales.

A Project Labor Agreement between the Building Trades and the Agency/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 Agency's financial interests as well as ensuring that workers are not at risk of losing wages due to work stoppages and disruptive labor disputes.

Beyond requiring labor peace to protect its own interests, the Agency has no direct role in the relationships between business and labor. Actual labor peace discussions and negotiations should be among the unions and businesses.

E. RELOCATION OF HAZARDOUS USES

Recommendation #7: That the relocation of California Waste Solutions and Custom Alloy Scrap Sales to the Army Base be deemed to have fulfilled priority.

Staff is in the process of obtaining authorization to enter into Exclusive Negotiating Agreements with California Waste Solutions (CWS) and Custom Alloy Scrap Sales (CASS). The area being planned for the relocation of these two local companies is 20 acres in the North Gateway Area. Other entities, such as the East Bay Municipal Utility District (EBMUD) and Pacific Coast Container, have expressed interest in purchasing all or portions of the North Gateway Area from the Agency. Staff have received clear and consistent direction from the Agency Board to enable the relocation of CWS and CASS to the Army Base, and is working diligently under that direction.

Regarding EBMUD, staff appreciates its concerns about the potential impact the North Gateway development project may have on its facility. Concurrent with the approval of the CEQA review for the Army Base project, staff may seek Agency Board authorization to enter into a Memorandum of Agreement with EBMUD to confirm our commitment to mitigating any potential negative impacts, such as access to and within its facility. Staff believes the binding agreement is important to consider in light of the Agency's legal issues with EBMUD during the Auto Mall project. While the Agency may not be in a position to sell land to EBMUD as it has requested, we should be pro-active in working with EBMUD to protect its vital operations.

F. OPEN SPACE AND WATERFRONT

Recommendation #8: That the Agency continue developing the “working waterfront” concept and begin the process of re-negotiating its Tidelands Trust obligation with the State Lands Commission regarding the proposed Shoreline Park.

There is a compelling case for maintaining the working waterfront along the West Gateway. The 15-acre Shoreline Park, while a nice amenity, would be costly to build and maintain, and would not generate revenue or create permanent jobs. The West Gateway is the only deep water break-bulk facility in Northern California and will attract a high volume of through-put.

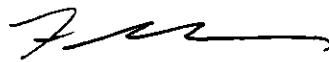
Staff will continue to participate in the Gateway Park planning process and will work on providing access to the south-western most tip of the West Gateway Area to the extent feasible so Park patrons may experience the stunning view of the Bay from that vantage point.

Regarding the other Community Benefit terms that do not have recommendations at this time, staff will flesh out those areas with the development team and return to the Agency Board with recommendations at a later date. Staff will also return to the Agency Board for any actions requiring the authorization of funding or entering into any binding agreements regarding Army Base Community Benefits.

ACTION REQUESTED OF THE AGENCY BOARD:

Staff requests that the Agency Board approve the recommendations summarized in this Supplemental Report.

Respectfully submitted,



Fred Blackwell, Assistant City Administrator
Community and Economic Development Agency

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

Prepared by:
Al Auletta, Redevelopment Area Manager

**APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**


Office of the City/Agency Administrator

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