

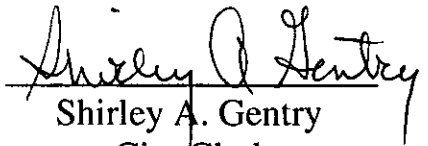
**RESOLUTION NO. 20121011-012**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

In accordance with Section 2258.052 of the Texas Government Code, the City Council makes the initial determination and findings as to whether good cause exists on the alleged prevailing wage violations on the City projects as described in the attached Exhibit "A," incorporated by reference for all purposes.

**ADOPTED:** October 11, 2012

**ATTEST:**

  
Shirley A. Gentry  
City Clerk

## **Exhibit "A"**

### **1. North West Recreation Center Expansion and Improvements**

(Complaint received 04/30/2012, contract closed on 11/18/2011)

**Initial Determination: Based on a review of the City records, written and oral evidence presented to staff and City Council, there is insufficient evidence at this time to make an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the following workers:**

Pedro Mancera	Javier Cruz
Adolfo Jimenez	Jose Luis Cruz
Adelaido Cruz	Edgar Martinez
Gerardo Cruz	

- a. Prime Contractor: Fazzone Construction Co.
- b. Subcontractor: Phoenix Mechanical Corporation
- c. Allegation: The complaint received after contract closeout alleges that seven individuals were employed on this project by Phoenix Mechanical, and were paid below the prevailing wage for performing Sheet Metal work. Additionally, a subset of the seven individuals was allegedly not paid for additional work hours that were not identified on the payroll.
- d. Findings: The certified payroll indicates that all employees in the complaint were classified as HVAC Mechanics and were paid the proper prevailing wage for that classification.

### **2. Dittmar Gym Enclosure Rebid**

(Complaint received 04/30/2012, contract closed on 7/14/2011)

**Initial Determination: Based on a review of the City records, written and oral testimony presented, good cause does exist to make the initial determination that a prevailing wage violation occurred and two workers are owed back wages in the following amounts:**

Adelaido Cruz	\$205.12
Teodoro G. Cruz	\$ 1.94

**Based on a review of the City records, written and oral testimony presented to staff and City Council, there is insufficient evidence at this time to make an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the following workers:**

Edgar Martinez	Gerardo Cruz
Pedro Mancera	Adolfo Jimenez
Jose Luis Cruz	Javier Cruz

- a. Prime Contractor: Barecky Construction Co.
- b. Subcontractor: Phoenix Mechanical Corporation (Out of business)
- c. Allegation: The complaint received after contract closeout alleges that eight

individuals were employed on this project by Phoenix Mechanical, and were paid below the prevailing wage for performing Sheet Metal work and/or were not paid for additional hours worked that were not identified on the payroll.

- d. Findings: As described above, one individual was paid below the prevailing wage for some declared Sheet Metal work on the certified payroll, and is entitled to back wages of \$205.12. He was classified as an HVAC Mechanic for the remainder of his time on the payroll and was paid the proper wages for that classification. Another individual was underpaid for some declared Sheet Metal work on the certified payroll and is entitled to back wages of \$1.94. Again, the remainder of his time on the payroll he was classified as an HVAC Mechanic and paid the proper wages. Besides these two cases, no evidence was found or provided that substantiated the remaining claims that these employees were not paid prevailing wage rates on the project, or did not receive payment for additional hours worked that did not appear on the payroll.

### **3. Austin Resource Center for the Homeless (ARCH) Shower Renovations**

(Complaint was received on 8/1/2012)

**Initial Determination: Based on a review of the City records, written and oral testimony presented to staff and City Council, good cause does exist to believe a violation of the prevailing wage rates occurred on the project and two workers are owed back wages in the following amounts:**

Valentin Hernandez \$849.60

Saul Ramos \$849.60

**Based on a review of the City records, written and oral testimony presented to staff and City Council, there is insufficient evidence at this time to make an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the following:**

Alfonso Equia Vazquez  
Fernando Equia  
Abel Martinez

Luis Laureles Bahena  
Antonio Gaspar

- a. Prime Contractor: Kellogg, Brown and Root (KBR)
- b. Subcontractor: Bomax Contractors LLC
- c. Allegation: The complaint received after contract close out alleges that seven individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
- d. Findings: The workers identified above were paid less than the prevailing wage for work performed for a portion of the time worked on the project.

### **4. African American Cultural & Heritage Facility**

(Complaint received 8/1/2012)

**Initial Determination: Based on a review of the City records, written and oral testimony presented to staff and City Council, good cause does exist to make the initial determination that a prevailing wage violation occurred on the project and the**

**following workers are owed back wages:**

Fernando Equia	\$312.00
Dagoberto Sanguario	\$568.48

**Based on a review of the City records, written and oral testimony presented to staff and City Council, there is insufficient evidence at this time to make an initial determination of the existence of good cause that the alleged wage violations occurred or that wages are owed to the following:**

Luis Laurels Bahena	Alfonso Eguia Vasquez
Miguel Laurels Bahena	Oscar Rodriguez
Antonio Gaspar	Abel Martinez
Valentin Hernandez	Gaspar Tejeda (Gaspar T. Martinez)

- a. Prime Contractor: Barecky Construction Company
- b. Subcontractor: Bomax Contractors LLC
- c. Allegation: The complaint received alleges that nine individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
- d. Findings: The workers identified above were paid less than the prevailing wage for work performed for a portion of the time worked on the project.

**5. Austin Convention Center**

(Complaint received 8/1/2012)

- a. Prime Contractor: Kellogg Brown & Root Services, Inc.
- b. Subcontractor: Bomax Contractors LLC
- c. Allegation: The complaint received alleges that two individuals were employed on this project by Bomax and were paid below the prevailing wage for performing Carpentry work.
- d. Findings: Using the TCPN Cooperative, the contract issued did not specify the prevailing wage requirements, and specifically excluded Davis Bacon wage rates. The agreement describes the work completed at the Convention Center as renovation of the concessions area in the north hall.
- e. Section 2258.023 of the Government Code provides that a contractor or subcontractor does not violate state law if the rates are not specified in the contract. Further, the State Statute does not apply to maintenance work. Because the Statute is not applicable, no initial determination is required.