

**REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2011 APR 27 PM 12: 59

TO: Office of the City/Agency Administrator
ATTN: P. Lamont Ewell, Interim City/Agency Administrator
FROM: Community and Economic Development Agency
DATE: May 10, 2011

RE: 1) An Agency Resolution Authorizing The Agency Administrator to Amend And Execute, With The Port Of Oakland, For Continued Operation, Maintenance And Repair Of The Existing Integrated Utility Systems At The Former Oakland Army Base The Following Agreements: 1) Utilities Services Agreement In An Amount Estimated At \$450,000 Annually (Which Includes Costs For The Resource Management Agreement And The Interconnection Agreement), 2) Resource Management Agreement In An Amount Estimated At \$50,000 Annually, And 3) Interconnection Agreement In An Amount Estimated At \$150,000 Annually.

2) A City Resolution Authorizing the City Administrator to Enter Into an Agreement With The Port of Oakland to Give the City Of Oakland the Option to Assume the Oakland Redevelopment Agency's rights and Obligations Under The Following Agreements: 1) Utilities Services Agreement In An Amount Estimated At \$450,000 Annually (Which Includes Costs For The Resource Management Agreement And The Interconnection Agreement), 2) Resource Management Agreement In An Amount Estimated At \$50,000 Annually, And 3) Interconnection Agreement In An Amount Estimated At \$150,000 Annually.

SUMMARY

Staff is requesting approval from the City Council (the "City") and Redevelopment Agency (the "Agency") to amend and execute three existing Army Base utility service agreements: Utility Program Management Agreement (UPMA), Resource Service Management Agreement (RSMA) and Interconnection and Service Agreement (IA). These agreements allow the Agency and Port to cooperate and pay for the continued operation, maintenance and repair of the existing integrated Army Base utility system that (1) provides Utility Services to the parties, tenants and other utility users at the Army Base, and (2) facilitates the redevelopment of the Army Base area.

FISCAL IMPACT

The funding for the estimated \$450,000 annually for the Utility Program Management Agreement (UPMA), Resource Service Management Agreement (RSMA) and Interconnection

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and Service Agreement (IA) is available from the OBRA Leasing & Utility Fund (9575) Organization (88679), Project (S294210).

BACKGROUND

Since August 2006, the Port of Oakland, in cooperation and coordination with the Agency, has been the lead agency for operating and maintaining the existing Utility Systems for the entire former Army Base including the Gateway Development Area. The Port, through the existing utilities services agreements, provides electricity, water, sewer and gas utility management services to the Agency under three existing utility service agreements. Staff contemplates this arrangement will continue until infrastructure and vertical development at the Army Base is undertaken and/or completed. The three existing utilities service agreements are:

1. Utility Program Management Agreement (UPMA) This agreement provides provisions governing the cooperative relationship between the parties. The Agreement also provides for the setting of utility rates to be charged by the Agency and Port to recover cost including but not limited to commodities, administration services, engineering, maintenance and security, from tenants still on the Army Base property.
2. Resource Service Management Agreement (RSMA) This agreement states the terms under which the Port shall manage the electrical loads of Army Base area by managing the Base Resource Contract from Western Area Power Authority (WAPA) and by purchasing supplemental power to meet load requirements. This agreement expires August 2011.
3. Interconnection and Service Agreement Between the Port of Oakland and the Oakland Base Reuse Authority (IA) This agreement was executed in July 2000 with OBRA. As part of the actions taken in June 2006, this agreement was assigned and transferred from OBRA to the Agency and at the same time it was extended. This agreement states the terms under which the Port shall connect the Army Base's electrical distribution system to the Port's Davis Substation including the cost and maintenance of the substation.

These agreements together allow the Agency and the Port to cooperate and pay for the continued operation, maintenance and repair of the existing integrated utility system that (1) provides Utility Services to the parties, tenants and other utility users at the Army Base, and (2) facilitates the redevelopment of the Army Base property. The City resolution allows the City to take over the agreements in the event the State abolishes redevelopment.

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KEY ISSUES AND IMPACTS

The Army Base utility systems are integrated and would be costly to separate. Prior to redevelopment, both the Agency and the Port have the obligation to maintain and operate the systems to provide utility services to their respective tenants and in compliance with the minimum regulatory code requirements for safety, fire protection and other purposes. To minimize Utility Systems costs, both parties agree that the Utility Systems shall remain integrated with existing interconnections.

To the maximum extent possible, the Agency and the Port will maintain and operate the Utility Systems at a minimum cost sufficient to maintain the Utility Systems in their present condition and to comply with regulations. At such time that any property is ground leased or otherwise transferred for new development, the Utility Systems for such property shall be separated from the existing system, and the operation, maintenance and repair of utility service for such separated property or parcel shall become the responsibility of the future owners or lessees of various developments and shall no longer be subject to the provisions of the agreement. Both parties agree to share the profit and loss under the utility program and believe that this is a cost-effective and efficient program to maintain the Utility Services to the Army Base area.

The Agency had originally anticipated that it would have developed the Agency's portion of the Army Base area by 2011 and had previously limited the term of the agreements. In order for the Port to continue providing utility management services to the Agency and the Agency to receive the services from the Port, the Port and Agency must amend, extend and execute the existing three agreements. In reviewing these agreements, staff recommends making the following changes to the respective agreements:

Utility Program Management Agreement (UPMA)

1. Terminate the existing Amended and Restated Utility Program Management Agreement on June 30, 2011 instead of August 7, 2011.
2. Give the City of Oakland an option to assume the Agency's rights and obligations under the agreement in the event Redevelopment Agencies are abolished.
3. The new Utility Program Management Agreement will be effective July 1, 2011 through June 30, 2016.
4. During the first 3 years, either Party may terminate this agreement with 12 month notice. After the first 3 years, only a 90-day notice is required to terminate.
5. Decrease the Administration Fee from \$46,000 to \$36,000 which reflects the actual cost to administer the utility management program as determined by past years.

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6. Addition of two roles and responsibility:
 - a. Port shall be responsible for daily operation of the utility systems
 - b. Agency shall be responsible for developing and implementing utility management programs for the Agency's portion of the utility systems in compliance with all regulatory requirements.

Amendment to Resource Service Management Agreement

1. Give the City of Oakland an option to assume the Agency's rights and obligations under the UPMA in the event Redevelopment Agencies are abolished.
2. Change the Effective Date and Termination Date to be consistent with UPMA.
3. Agreement shall be coterminous with the UPMA and IA.
4. Revised the terms of disposition of the Agency's share of Base Resource Contract from WAPA.

Interconnection Agreement

1. Give the City of Oakland an option to assume the Agency's rights and obligations under the IA in the event Redevelopment Agencies are abolished.
2. Change the Effective Date and Termination Date to be consistent with UPMA.
3. Agreement shall be coterminous with the UPMA and IA.

Given the current State of California budget proposals concerning Redevelopment Agencies and the uncertainty this creates, the programmatic importance of continued, un-interrupted utility service at the Army Base, and the process for amending the agreements, staff is requesting authorization to include the City of Oakland as a party to the existing utility agreements in the event Redevelopment Agencies are eliminated.

The Interim Leasing Program, specifically the Utility Systems component, was developed with the understanding that not all costs associated with: (i) operation, maintenance and repair, (ii) fixed costs such as water lines and the fire hydrant systems, and (iii) common area costs such as streetlights, would be recovered from tenant payments, especially since the number of tenants on the Gateway Development Area and Port Development Area was, and is, not sufficient in numbers or usage to absorb all of the associated Utility Systems costs. The Agency and Port have shared equally the Utility System cost not paid by tenants and the common area usage. The additional program cost to the Agency has varied from a low of \$56,000 annually to a high in FY10 of \$324,000 annually. The Agency and Port expect the costs to continue to increase over

time as the systems continue to age and the number of tenants most likely continues to diminish. The Agency and Port may also need to pay certain costs to make certain discretionary capital improvements in their respective areas.

If these agreements are not extended, the Agency's tenants would no longer be able to receive electricity, water or natural gas services without major utility infrastructure investment because the source of these utilities are located on the Port Development Area. On the other hand, the Port would not be able to discharge the sanitary sewer from some of the Port area because the sewer line runs through the Gateway Development Area to the East Bay Municipal Utility District treatment plant.

PROJECT DESCRIPTION

The Agency's Army Base Interim Leasing Program is now in its 5th year. The Interim Leasing Program generates approximately \$2 million annually in lease and utility payment revenue and provides asset and property management services for 33 tenants, not including Oakland Maritime Support Services' truck parking subtenants, and 36 utility customers on the Agency's approximately 165-acres of former Army Base property.

SUSTAINABLE OPPORTUNITIES

Economic: This report and its requested actions do not provide any specific sustainable economic opportunities. The Interim Leasing Program promotes and includes sustainable opportunities as part of its ongoing programming and contracting activities.

Environmental: This report and its requested actions do not provide any specific sustainable environmental opportunities.

Social Equity: This report and its requested actions do not provide any specific sustainable social equity opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no impact on access for senior citizens or the disabled from this proposed action.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the Agency adopt the Resolution authorizing the Agency Administrator to amend and execute the three existing Army Base utility service agreements: Utility Program Management Agreement (UPMA), Resource Service Management Agreement (RSMA) and Interconnection and Service Agreement between the Port of Oakland and the Oakland Base Reuse Authority (IA). Approving the Agency Resolution will allow the Interim Leasing Program to continue its operations and continue generating revenue to cover the operations. If the Interim Leasing Program was discontinued, and the Agency tenant's vacated the property, the Agency would still have a requirement to provide some level of utilities to the property to meet minimum regulatory code requirements for safety, fire protection and other purposes. Authorizing the option for the City to assume the Agreements will better permit continuation of utility services at the Oakland Army Base should the State abolish redevelopment agencies.

ALTERNATIVE RECOMMENDATION

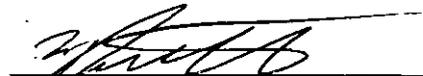
The alternative to amending and executing the three existing Army Base utility service agreements is to obtain utility service from utility service providers in the area. While this is a potential alternative, it is not a practical alternative. PG&E, EBMUD and other utility service providers have expressed their unwillingness to assume the liability and costs associated with the current Army Base utility systems. Therefore, in order to transition to utility services providers, the utility systems would need to be upgraded at significant costs. Again this is a possible alternative, but not a practical alternative.

ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

The Agency is requested to adopt the Resolution authorizing the Agency Administrator to amend and execute, with the Port of Oakland, for continued operation, maintenance and repair of the existing integrated utility systems at the former Oakland Army Base, the following agreements: 1) Utilities Services Agreement in an amount estimated at \$450,000 annually (which includes costs for the Resource Management Agreement and the Interconnection Agreement), 2) Resource Management Agreement in an amount estimated at \$50,000 annually, and 3) Interconnection Agreement in an amount estimated at \$150,000 annually.

The City Council is requested to adopt the City Resolution authorizing the City Administrator to enter in to an agreement to provide the City with an option to assume the following Agency agreements with the Port 1) the Utilities Services Agreement, 2) the Resource Management Agreement, and 3) the Interconnection Agreement.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Community and Economic Development Agency

Reviewed by: Frank Fanelli, Manager
Real Estate Services Division

Prepared by: John Monetta
Program Analyst III

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



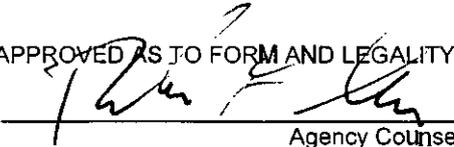
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APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AGENCY RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO AMEND AND EXECUTE, WITH THE PORT OF OAKLAND, FOR CONTINUED OPERATION, MAINTENANCE AND REPAIR OF THE EXISTING INTEGRATED UTILITY SYSTEMS AT THE FORMER ARMY BASE THE FOLLOWING AGREEMENTS: 1) UTILITIES SERVICES AGREEMENT IN AN AMOUNT ESTIMATED AT \$450,000 ANNUALLY (WHICH INCLUDES COSTS FOR THE RESOURCE MANAGEMENT AGREEMENT AND THE INTERCONNECTION AGREEMENT), 2) RESOURCE MANAGEMENT AGREEMENT IN AN AMOUNT ESTIMATED AT \$50,000 ANNUALLY, AND 3) INTERCONNECTION AGREEMENT IN AN AMOUNT ESTIMATED AT \$150,000 ANNUALLY

WHEREAS, the Oakland Base Reuse Authority ("OBRA") and the Port of Oakland ("Port") entered into an Interconnection and Service Agreement on July 5, 2000 to facilitate OBRA's acquisition and provision of electrical power to the Army Base; and

WHEREAS, the OBRA and the Port entered into a Utilities Operations Agreement for the maintenance, operation and repair of the utility systems at the Army Base on July 26, 2000; and

WHEREAS, OBRA, the Redevelopment Agency of the City of Oakland (the "Agency") and the Port entered into a Resource Management Services Agreement to which the Port agreed to provide electricity to the Army Base, the Parties agreed on the rights to and allocation of a 20-year Base Resource Contract with Western Area Power Administration ("WAPA") and the Port agreed to provide the Agency with a percentage of the WAPA Base Resource power, on January 1, 2005; and

WHEREAS, On June 27, 2006, pursuant to Agency Resolution 2006-0049 and City Resolution 80001, the Agency accepted any and all of OBRA's rights and obligations and OBRA was dissolved;

WHEREAS, the Agency and the Port entered into a Utilities Program Management Agreement for the maintenance, operation and repair of the utility systems at the Army Base on August 7, 2006;

WHEREAS, the Agency and the Port entered into an Amended and Restated Utilities Program Management Agreement for the maintenance, operation and repair of the utility systems at the Army Base on February 26, 2008; and

WHEREAS, the Parties desire to amend and extend the Utilities Program Management Agreement, Resource Management Services Agreement and Interconnection and Service Agreement at an estimated annual costs of \$450,000; and

WHEREAS, the funding for these agreements is available from the OBRA Leasing & Utility Fund (9575); and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore, be it

RESOLVED: That the Agency hereby authorizes the Agency Administrator to amend and execute the Utilities Program Management Agreement in an amount estimated at \$450,000 annually, and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator to amend and execute the Resource Management Services Agreement in an amount estimated at \$50,000 annually, and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator to amend and execute the Interconnection and Service Agreement in an amount estimated at \$150,000 annually, and be it

FURTHER RESOLVED: That funds will be allocated from OBRA Leasing & Utility Fund (9575), Organization (88679) Project (S294210); and be it

FURTHER RESOLVED: That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA under Section 15061(b)(3) (activity covered by the general rule, no significant effect on the environment) and Section 15183 (projects consistent with the General Plan), of the CEQA Guidelines, and directs the Agency Administrator to file a Notice of Exemption and an Environmental Declaration (under California Fish and Game Code section 711.4) with the County of Alameda; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee is hereby authorized to negotiate and execute all agreements and to take whatever other action is necessary with respect to the Utility Agreements, consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That Agency Counsel shall review and approve all documents and agreements related to this acquisition as to form and legality, and a copy shall be placed on file with the City Clerk.

IN OAKLAND, CALIFORNIA, _____, 20__

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

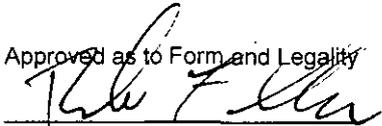
ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

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Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

CITY RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH THE PORT OF OAKLAND TO GIVE THE CITY OF OAKLAND THE OPTION TO ASSUME THE OAKLAND REDEVELOPMENT AGENCY'S RIGHTS AND OBLIGATIONS UNDER THE FOLLOWING AGREEMENTS: 1) UTILITIES SERVICES AGREEMENT IN AN AMOUNT ESTIMATED AT \$450,000 ANNUALLY (WHICH INCLUDES COSTS FOR THE RESOURCE MANAGEMENT AGREEMENT AND THE INTERCONNECTION AGREEMENT), 2) RESOURCE MANAGEMENT AGREEMENT IN AN AMOUNT ESTIMATED AT \$50,000 ANNUALLY, AND 3) INTERCONNECTION AGREEMENT IN AN AMOUNT ESTIMATED AT \$150,000 ANNUALLY

WHEREAS, the Oakland Base Reuse Authority ("OBRA") and the Port of Oakland ("Port") entered into an Interconnection and Service Agreement on July 5, 2000 to facilitate OBRA's acquisition and provision of electrical power to the Oakland Army Base; and

WHEREAS, the OBRA and the Port entered into a Utilities Operations Agreement for the maintenance, operation and repair of the utility systems at the Oakland Army Base on July 26, 2000; and

WHEREAS, OBRA, the Redevelopment Agency of the City of Oakland (the "Agency") and the Port entered into a Resource Management Services Agreement to which the Port agreed to provide electricity to the Army Base, the Parties agreed on the rights to and allocation of a 20-year Base Resource Contract with Western Area Power Administration ("WAPA") and the Port agreed to provide the Agency with a percentage of the WAPA Base Resource power, on January 1, 2005; and

WHEREAS, On June 27, 2006, pursuant to Agency Resolution 2006-0049 and City Resolution 80001, the Agency accepted any and all of OBRA's rights and obligations and OBRA was dissolved;

WHEREAS, the Agency and the Port entered into a Utilities Program Management Agreement for the maintenance, operation and repair of the utility systems at the Army Base on August 7, 2006;

WHEREAS, the Agency and the Port entered into an Amended and Restated Utilities Program Management Agreement for the maintenance, operation and repair of the utility systems at the Army Base on February 26, 2008; and

WHEREAS, the Parties desire to amend and extend the Utilities Program Management Agreement, Resource Management Services Agreement and Interconnection and Service Agreement at an estimated annual costs of \$450,000; and

WHEREAS, the funding for these agreements is currently restricted to the Army Base project and is available from the OBRA Leasing & Utility Fund (9575); and

WHEREAS, the State of California is considering legislation that, if adopted, would abolish redevelopment agencies in California and their transfer assets to other entities; and

WHEREAS, the operation and development of the Oakland Army Base is critical to the economic health of Oakland and the Bay Area and interruption of utility services due to a termination of the Agency could jeopardize this operation and development; and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore, be it

RESOLVED: That the City hereby authorizes the City Administrator to have the City take an option to assume Agency's rights and obligations under the Utilities Program Management Agreement, should the Agency be unable to perform under the agreement, and be it

FURTHER RESOLVED: That the City hereby authorizes the City Administrator to have the City take an option to assume Agency's rights and obligations under the Resource Management Services Agreement, should the Agency be unable to perform under the agreement, and be it

FURTHER RESOLVED: That the City hereby authorizes the City Administrator to have the City take an option to assume Agency's rights and obligations under the Interconnection and Service Agreement, should the Agency be unable to perform under the agreement, and be it

FURTHER RESOLVED: That the City has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA under Section 15061(b)(3) (activity covered by the general rule, no significant effect on the environment) and Section 15183 (projects consistent with the General Plan), of the CEQA Guidelines, and directs the City Administrator to file a Notice of Exemption and an Environmental Declaration (under California Fish and Game Code section 711.4) with the County of Alameda; and be it

FURTHER RESOLVED: That the City Administrator or his designee is hereby authorized to negotiate and execute all agreements and to take whatever other action is necessary with respect to the Utility Agreements, consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That City Counsel shall review and approve all documents and agreements related to this acquisition as to form and legality, and a copy shall be placed on file with the City Clerk.

IN CITY, OAKLAND, CALIFORNIA, _____, 20__

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California