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OFFICE OF THE CITY CLERK
OAKLAND

2013 JUL 11 PM 4:01

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Kelley Kahn

SUBJECT: Jack London Improvement District Public Trust Agreement DATE: July 8, 2013

City Administrator

Date

Approval

7/10/13

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff recommends that the City Council approve:

Resolution Authorizing The City Administrator To Negotiate And Execute An Agreement With The Port Of Oakland and State Lands Commission Ensuring That Assessments Paid By The Port For The Proposed Jack London Improvement District Are Used Consistent With The Trust For Commerce, Navigation, And Fisheries

REASON FOR URGENCY

Background

The purpose of this report is to recommend that City Council authorize the City Administrator to enter into the Jack London Improvement Public Trust Agreement between the City, the Port of Oakland and the State Lands Commission. The purpose of the agreement is to provide necessary assurances to the Port of Oakland and State Lands Commission that the Port's assessment fees will be used for Public Trust consistent purposes, if the Jack London Improvement District (JLID) is established. Staff is requesting that this resolution be approved prior to the public hearing related to the proposed establishment of the Jack London Improvement District to allow the Port to vote in support of the formation of the JLID during the public hearing.

The proposed Jack London Improvement District includes property owned by the Port of Oakland. All lands and assets in Port control are held in the Public Trust. As such the Port is required to protect and preserve its uses and assets consistent with the Public Trust for maritime, commerce, navigation and fisheries. The State Lands Commission, the State agency that oversees Tidelands Trust properties, in consultation with the State Attorney General Office, has opined that the Port's participation in the proposed JLID may cause a conflict with the Public Trust restrictions unless the Port of Oakland and SLC obtain assurances that the trust revenues used for the assessment payments would be restricted to trust purposes.

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To address these concerns, the Jack London Improvement District Steering Committee requested assistance from the City to meet with the Port of Oakland to identify a solution that might be agreeable to the State Lands Commission and allow the Port to vote in support of the JLID. An affirmative vote by the Port significantly increases the probability that the JLID will be approved and formed.

On July 11th, the Port Board of Commissioners will consider the approval of the Jack London Improvement District Public Trust Agreement proposed between the Port of Oakland, City of Oakland and the State Lands Commission. The Agreement, drafted with the assistance of the Jack London Improvement District Steering Committee and State Lands Commission staff, directs that the Port's assessment fees would need to be exclusively used for Trust consistent activities.

On July 16th, if a majority protest is evidenced by the submitted ballots (i.e., 50%+% of a weighted majority is opposed to district formation), then the district will not be formed. If no majority protest results from the ballot tabulation, the City Council will adopt the resolution to establish the JLID special assessment district (please see July 16th City Council Agenda, Item 9.1). If the district is established, the Agreement between the City and the Port will require that the City cause the newly established JLID Management Entity to become a signatory to the Agreement.

The new JLID Management Entity will be responsible for ensuring that the Port assessment funds are used for Trust-consistent uses, all of which are consistent with the JLID District Management Plan, a requirement of the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999).

Urgency Finding

An Urgency Finding is required to place the resolution on the July 16th City Council agenda to authorize the City Administrator to sign the Agreement prior to the close of the JLID public hearing because:

- It was not reasonably possible to have a 10-day notice since the other party to the Agreement is the Port of Oakland Board of Commission, which will consider the Agreement on July 11th and changes could be made by the Commission that require review by the City Attorney's Office and staff.
- State Lands Commission may be a signatory to the Agreement and their review is required.
- If the JLID Public Trust Agreement is not authorized by the City Council, the Port of Oakland is likely to vote NO and the JLID establishment is likely to fail -- thus the BID formation effort will fail.
- With the Port's concerns addressed by the Agreement, the Port will vote YES adding to the probability that the JLID will be approved. Approval of the JLID

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will allow enhanced, special services to be provided to the Jack London neighborhood, serving approximately 1,300 commercial and residential property owners within the Jack London targeted district.

If established, the Jack London Improvement District will generate special assessment funds of approximately \$767,425 per year for a period of ten years (or up to approximately \$9.65 million over the life of the district, if an optional 5% annual increase to the assessment is exercised).

ANALYSIS

The proposed district includes property owned by the Port of Oakland. Given that the Port is a State Lands Trustee responsible for the use of all funds consistent with Tidelands Trust purposes and the State Lands Commission has opined that unless the Commission is assured that the Port assessment funds will be used for trust consistent purposes, that the Port will be required to vote NO on their ballot.

Since the Port of Oakland properties constitute approximately 14% of the total weighted majority, a NO vote will likely prevent the establishment of the Jack London Improvement District, given the weight of the Port's vote. As such, the district formation will fail and the efforts and resources expended by the community to date to support the formation process (approximately \$70,000) will be lost. The entire formation process would need to re-start and if the subsequent formation process was successful, district services would not begin until January 2015. Also, if the proposed Agreement is not entered into with the Port of Oakland, it is likely that any district formations would not include the Port's properties; thus the proposed operating budget of approximately \$767,000 will be reduced by the Port's expected assessment of approximately \$108,000.

On July 11, 2013, the Port Commission will consider an Agreement between the City and Port that will direct the use of the Port's assessment funds with approved Tideland Trust activities. City staff has participated in the negotiations with the Port of Oakland and the JLID Steering Committee to develop an Agreement that will ensure that the Trust requirements are followed.

Jack London Improvement District Public Trust Agreement

The proposed terms of the above Agreement include, but are not limited to:

- A requirement that the City direct the new JLID Management Entity to become a signatory to the Agreement and be bound by its terms through the City's Disbursement Agreement. The Disbursement Agreement is a required agreement between the City and the new district management entity, signed prior to the receipt of the first year assessment disbursement. The JLID Entity will be responsible for ensuring that the Port assessment funds are used for Trust-consistent uses, which are consistent with the JLID District

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Management Plan, a requirement of the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999).

- The JLID Entity shall maintain the Port share of assessment funds in an account separate from all other funds of the JLID and shall separately account for all expenditures of the Port share. The JLID Entity shall provide an audited accounting of Port share expenditures to the Port or the SLC upon request.
- Each year, in conjunction with the preparation of its proposed budget for the JLID, the JLID Entity shall prepare and submit to the Port a proposed expenditure plan detailing how the JLID Entity intends to provide services and make expenditures consistent with and benefiting the Trust for the coming year. The Port will review and confirm that these funds uses are consistent with the Trust and will be responsible for making its annual assessment payment.
- With respect to JLID expenditures, the following have been agreed to by the Port and the State Lands Commission as Trust consistent activities:
 - Litter removal, graffiti removal, sidewalk plantings, and other beautification efforts on streets and sidewalks outside, but immediately abutting and, in some cases, leading to Jack London Square;
 - Increased security and litter removal throughout the JLID as needed to offset the direct and demonstrated impacts of special events at Jack London Square;
 - Way finding signage within the JLID that directs visitors and tourists to Jack London Square and the waterfront, or to parking for Jack London Square or to events in the Square.

PUBLIC OUTREACH/INTEREST

No additional public outreach was required for this proposed action. The public outreach conducted around the proposed creation of the JLID is described in a separate agenda report in support of that action.

COORDINATION

This report has been reviewed by the Office of the City Attorney and by the Budget Office.

COST SUMMARY/IMPLICATIONS

There are no additional cost impacts from this proposed agreement; cost implications from the proposed creation of the JLID are described in a separate agenda report in support of that action.

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SUSTAINABLE OPPORTUNITIES

There are no sustainable opportunities which have been identified as part of this proposed action.

For questions regarding this report, please contact Aliza Gallo, Economic Development Manager, at 510-238-7405.

Respectfully submitted,



KELLEY KAHN, Director
Department of Economic and Workforce
Development

Prepared by:
Aliza Gallo, Economic Development Manager
Department of Economic and Workforce Development

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

2013 JUL 11 PM 4:01
INTRODUCED BY COUNCIL MEMBER _____


CITY ATTORNEY

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AGREEMENT WITH THE PORT OF OAKLAND AND STATE LANDS COMMISSION ENSURING THAT ASSESSMENTS PAID BY THE PORT FOR THE PROPOSED JACK LONDON IMPROVEMENT DISTRICT ARE USED CONSISTENT WITH THE TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES

WHEREAS, The City Council intends to take action on July 16, 2013, to form the Jack London [Business] Improvement [Management] District (JLID) if the scheduled protest vote fails to get a weighted majority. If the formation of the JLID is approved, all property owners in the district, including the Port of Oakland, will be assessed an annual special assessment to fund JLID programs in accordance with the Management District Plan for the Jack London [Business] Improvement [Management] District (JLID) 2013 ("Management Plan") dated March 27, 2013, and

WHEREAS, As a trustee of the public trust for commerce, navigation, and fisheries ("Trust") lands, the Port is required to use the revenues generated from those lands for purposes consistent with the Trust. The Port and State Lands Commission have raised a concern that the JLID assessment, if approved, could result in Trust funds being expended for non-trust purposes. A concern has also been raised about the fact that the decisions with respect to how to use the Port's share of the assessment would be made by a nontrustee of the Trust; and

WHEREAS, The City desires to assure the Port and SLC that the Port, like all property owners within the JLID, will benefit in proportion to its fair share contribution, consistent with all applicable laws governing special assessment districts, and that such benefit will render the assessments on Port lands a permissible expenditure of Trust funds and that Trust revenues will not be expended unless and until such revenues can and will be committed to Trust-consistent uses.

Now, therefore, be it

RESOLVED, that the City Council hereby authorizes the City Administrator, or her designee, to enter into an agreement with the Port of Oakland and SLC ensuring that assessments paid by the Port for the proposed Jack London Improvement District are used consistent with the trust for commerce, navigation, and fisheries; and be it

FURTHER RESOLVED, That the City Administrator or her designee is hereby authorized to complete all required negotiations required to accept, modify, extend and/or amend the agreement except as to any increase in payments by the City, and be it

FURTHER RESOLVED, That the City Attorney shall review and approve said agreement as to form and legality and copies of said agreements shall be filed with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2013

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF,
and
PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-
ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California