

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

REVISED

Approved as to form and legality

  
Deputy City Attorney

2014 DEC -4 PM 2:05 **OAKLAND CITY COUNCIL**

- - 13286 -

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE MEMORANDUM OF AGREEMENT WITH EAST BAY MUNICIPAL UTILITY DISTRICT AND CCIG OAKLAND GLOBAL, LLC, SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED TERM SHEET, RELATING TO PROPERTY RIGHTS, TIMING AND CONSTRUCTION OF ENGINEERS ROAD IN THE FORMER OAKLAND ARMY BASE**

**WHEREAS**, the City owns approximately 160 acres of land located at the former Oakland Army Base, including land commonly known as the North Gateway Area; and

**WHEREAS**, the City wishes to realign and relocate existing Wake Avenue in the North Gateway Area to facilitate the relocation of California Waste Solutions and CASS, Inc., both now located in West Oakland (the "West Oakland Recyclers"), by constructing two development pads in the North Gateway Area; and

**WHEREAS**, the East Bay Municipal Utility District (EBMUD) expressed concerns with the City's planned development; and

**WHEREAS**, on June 19, 2012, the City and EBMUD entered into a memorandum of agreement (EBMUD MOA) to address the concerns of EBMUD, as authorized by Resolution No. 83931 C.M.S.; and

**WHEREAS**, the EBMUD MOA allows the City to realign and relocate existing Wake Avenue if the City complies with specified conditions; one condition requires the City to work in good faith to relocate an easement area, in favor of BNSF railroad, twenty feet to allow the construction and improvement of existing Engineers Road into a standard two lane city street; and

**WHEREAS**, after approximately two years of discussions, BNSF railroad notified the City that it was not amenable to relocating or relinquishing its easement area; and

**WHEREAS**, in order for the City to realign and relocate existing Wake Avenue to facilitate the relocation of the West Oakland Recyclers to the North Gateway Area, the City must address the previously raised concerns of EBMUD; and

**WHEREAS**, the City and EBMUD are negotiating new terms and conditions to allow the realignment and relocation of Wake Avenue; now, therefore

## **THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present. Thus, prior to approving the amendment to the EBMUD MOA, the City Council finds and determines that it can continue to rely on the previously adopted 2012 OARB Initial Study/Addendum for the reasons stated in June 12, 2012, May 28, 2013, and December 2, 2014 City Council Agenda Reports and related attachments/exhibits. The (Final and Corrected) Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, dated October 15, 2012, is also hereby reaffirmed/readopted, including the clarifying corrections discussed at the June 4, 2013 City Council hearing (Mitigation Measure 4.4-3b, West Gateway Rail and Maritime Emissions Reductions Program) and in the Agenda Report for the July 2, 2013 City Council meeting (Mitigation Measure 4.3-10, Parking Demand Study), and the revisions discussed at the July 2, 2013 City Council meeting (Mitigation Measure PO-1, Stakeholder Review of Air Quality and Trucking Plans).

**Section 2.** The City Council finds and determines that this action complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**Section 3.** The recitals contained in this Ordinance: (1) are incorporated in this Ordinance by reference including, without limitation, the definitions referenced therein; and (2) are true and correct, and are an integral part of the City Council's decision.

**Section 4.** The City Administrator or his or her designee is hereby authorized to negotiate and execute an amendment to the EBMUD MOA substantially in conformance with the term sheet attached hereto ("Term Sheet"), without returning to the City Council, providing for: (1) City, at its cost, to pay for: (a) redesign, re-engineering, and construction of Engineers Road outside of the BNSF easement area; (b) demolition of two buildings on EBMUD property within the new Engineers Road right-of-way; and (c) construction of an additional portion of Engineers Road west of new, realigned Wake Avenue; and/or (2) City's acquisition of, or reimbursement for, right-of-way or fee title to EBMUD property required to build Engineers Road outside of the BNSF easement area.

**Section 5.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to negotiate, execute, accept or cause to be recorded any document conveying or transferring an interest in real property including, without limitation, a deed, quitclaim deed, acceptance of a deed, easement, license or any other form of conveyance that is required to be accomplished under the amendment to the EBMUD MOA as described in this Ordinance.

**Section 6.** The City Administrator or his or her designee is hereby authorized to apply for and accept third party funds, grant or otherwise, and to appropriate and allocate said funds to Joint Infrastructure Development Fund (5672) CIP Oakland Army Base Org (94879) into a Project to be established.

**Section 7.** The City Administrator or his or her designee is hereby authorized to appropriate and allocate \$2.2 million in funding from the following sources into Joint

Infrastructure Development Fund (5672) CIP Oakland Army Base Org (94879) into a Project to be established, and to expend said funds on the contemplated actions, purposes and intent of this Ordinance:

Fund	Org	Project	Up to Amount
5673	0000	0000000	\$2,119,996.31
5672	94879	C415720	\$160,510.30
5671	85244	C466910	\$21,213.90

**Section 8.** The City Administrator or his or her designee is hereby authorized, without returning to City Council, to take any and all steps necessary to implement and/or effectuate this Ordinance, which are consistent with the basic purpose and intent of this Ordinance; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; such steps may include, without limitation, negotiation and execution of such other additions, amendments or other modifications to the Term Sheet (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) or of other documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction(s) which the amendment contemplates.

**DEC 16 2014**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

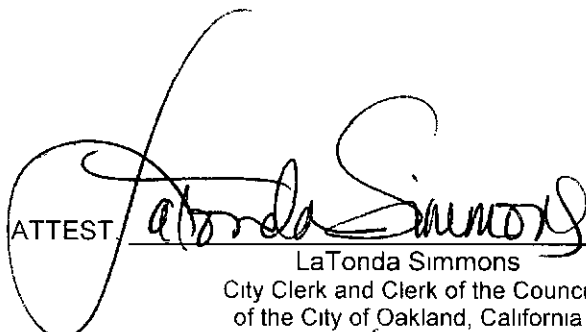
**PASSED BY THE FOLLOWING VOTE:**

AYES- ~~BROOKS~~, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- 0

ABSTENTION- BROOKS - 1

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

Introduction Date  
**DEC 09 2014**

DATE OF ATTESTATION 12/16/14

## NOTICE AND DIGEST

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE, WITHOUT RETURNING TO THE CITY COUNCIL, AN AMENDMENT TO THE MEMORANDUM OF AGREEMENT WITH THE EAST BAY MUNICIPAL UTILITY DISTRICT AND CCIG OAKLAND GLOBAL, LLC, SUBSTANTIALLY IN CONFORMANCE WITH THE ATTACHED TERM SHEET, RELATING TO ACQUIRING CERTAIN PROPERTY RIGHTS, TIMING AND CONSTRUCTION OF ENGINEERS ROAD IN THE FORMER OAKLAND ARMY BASE**

This ordinance authorizes the City Administrator to negotiate and execute an amendment to the Memorandum of Agreement (“MOA”) with the East Bay Municipal Utility District (“EBMUD”) and CCIG Oakland Global, LLC, regarding the acquisition of certain property rights, the timing and the construction of Engineers Road at the former Oakland Army Base.