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07 DEC 19 PM 2:48

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Office of the City Attorney
John A. Russo
City Attorney

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January 15, 2008

HONORABLE CITY COUNCIL
Oakland, California

Subject: Millsmont Homeowners Assn. v. City of Oakland and DeSilva Gates Construction, L.P.
United States District Court Case No. C 06-03955 MMC
City Attorney File No. X02821 (CEDA)

President De La Fuente and Members of the City Council:

Pursuant to §401 of the Charter, and the action of the Council at its December 18, 2007, closed session, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action in the total sum of Twenty-Five Thousand Dollars (\$ 25,000.00), made payable to the Millsmont Homeowners Association (MHA) and its attorney, Natural Heritage Institute, for attorney's fees and; assent to a Consent Decree under which DeSilva Gates Construction, L.P. will fund a feasibility study for restoration of Chimes Creek and the City and MHA will thereafter cooperatively seek funding for the creek restoration project.

This settlement is recommended as a compromise of this matter and to avoid an adverse jury verdict and possible exposure to civil penalties and larger attorney's fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. Russo".

JOHN A. RUSSO
City Attorney

Attorney Assigned:
William E. Simmons

OAKLAND CITY COUNCIL

07 DEC 19 07:40
OAKLAND

RESOLUTION NO. _____ C.M.S.



IVF

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO SETTLE THE CASE OF MILLSMONT HOMEOWNERS ASSN. V. CITY OF OAKLAND AND DESILVA GATES CONSTRUCTION, L.P., U.S. DISTRICT COURT ACTION NO. C 06-03955 MMC, OUR FILE NO. X02821, IN THE AMOUNT OF \$25,000.00. THIS CASE INVOLVES ALLEGED STORM WATER AND SANITARY SEWER DISCHARGES (CEDA-PUBLIC WORKS)

RESOLVED: That the City Attorney is authorized and directed to settle the case of Millsmont Homeowners Assn. v. City of Oakland and DeSilva Gates Construction, L.P., U.S. Northern District Court Action No. C 06-03955 MMC, Our File No. X02821 (CEDA-PUBLIC WORKS), for the sum of Twenty Five Thousand Dollars (\$25,000), made payable to the Millsmont Homeowners Association (MHA) and its attorney, Natural Heritage Institute, and assent to a Consent Decree under which DeSilva Gates Construction, L.P. will fund a feasibility study for restoration of Chimes Creek and the City and MHA will thereafter cooperatively seek funding for a creek restoration project.

FURTHER RESOLVED: That the City Attorney is authorized and directed to take whatever steps necessary to effect the settlement; and be it

FURTHER RESOLVED: That the sum of Twenty Five Thousand Dollars (\$25,000), be paid to Millsmont Homeowners Association (MHA) and its attorney, Natural Heritage Institute,

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, DE LA FUENTE, NADEL, REID, QUAN, BROOKS and KERNIHGAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California