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CITY OF OAKLAND



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November 19, 2013

HONORABLE CITY COUNCIL
Oakland, California

**Subject: Resolution Approving Settlement of Northern California River Watch, et al. v. Oakland Maritime Support Services, Inc., et al. U.S. District Court Case No. 4:40-CV-3912-CW
OFFICE OF THE CITY ADMINISTRATOR**

Dear President Kernighan and Members of the City Council:

At its October 15, 2013 closed session, the City Council considered a proposed settlement of a lawsuit that plaintiffs Northern California River Watch and two labor-related organizations filed against Oakland Maritime Support Services ("OMSS"), the City of Oakland and the Redevelopment Agency of the City of Oakland.

The lawsuit alleged that OMSS violated the Federal Water Pollution Control Act, (the "Clean Water Act") 33 U.S.C. § 1365 by unlawfully discharged storm water from the truck repair and maintenance facility (the "Facility") that OMSS previously operated at 11 Burma Road in Oakland. At the time of the alleged violations, the Facility was located on real property the Redevelopment Agency of the City of Oakland owned; accordingly, the Redevelopment Agency was named as a defendant in the litigation. The City of Oakland also originally was named as a defendant in the action, and the City now owns the real property upon which the Facility was located.

The proposed settlement would provide for payment of \$300,000.00 to resolve all of the plaintiffs' claims, with \$200,000.00 of that sum to be allocated to fund the West Oakland Job Resources Center and \$100,000.00 to be allocated to resolve plaintiffs' statutory claim for attorneys' fees. In exchange for these payments plaintiffs will dismiss the action and agree not to challenge certain future actions related to relocation of the OMSS facility to a site proximate to the Oakland Army Base and/or the Port of Oakland.

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The City Council authorized settlement on the foregoing terms in closed session (moved by Councilmember Gibson McElhaney and seconded by Councilmember Kalb – 5 ayes, 3 absent.) The resolution authorizes and directs the City Attorney to execute a settlement agreement consistent with the terms of the settlement proposal to resolve the action. We request that the City Council adopt the resolution.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Attorney(s) Assigned:

Heather Lee

Robert Doty, Cox Castle and Nicholson, LLP – Outside Counsel

Attachments:

Proposed Resolution

1256871

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Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

DMM/HL

RESOLUTION APPROVING SETTLEMENT OF NORTHERN CALIFORNIA RIVER WATCH, ET AL. V. OAKLAND MARITIME SUPPORT SERVICES, INC., (OMSS) ET AL. (U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 4:40-CV-3912 CW) BY PAYING A TOTAL OF \$300,000.00, WITH \$200,000.00 OF THAT SUM TO BE ALLOCATED TO THE WEST OAKLAND JOB RESOURCES CENTER AND \$100,000.00 TO BE ALLOCATED TO RESOLVE PLAINTIFFS' STATUTORY CLAIM FOR ATTORNEYS' FEES IN EXCHANGE FOR PLAINTIFFS' DISMISSAL OF THE LITIGATION AND AGREEMENT NOT TO CHALLENGE CERTAIN ACTIONS RELATED TO RELOCATION OF THE OMSS FACILITY (OFFICE OF THE CITY ADMINISTRATOR – CLEAN WATER ACT)

WHEREAS, Oakland Maritime Support Services, Inc. ("OMSS") is a corporation under the laws of the State of California that operated a transportation support services facility located at 11 Burma Road in Oakland, (the "Facility"), a portion of which is subject to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS0000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (the "General Permit"); and

WHEREAS, the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") was a public body, created pursuant to the California Community Redevelopment law and the owner the real property on which the Facility was located at the time the alleged violations that are the subject of Plaintiffs' complaint allegedly occurred; and

WHEREAS, the City of Oakland (the "City") originally was named as a defendant in this action and is now the owner of the real property on which the Facility was located; and

WHEREAS, on October 15, 2013 the City Council considered and authorized a settlement of the Action in which the City would pay a total of \$300,000.00 to resolve all Plaintiffs' claims, with \$200,000.00 of that sum to be allocated to fund the West Oakland Job Resources Center and \$100,000.00 of that sum to be allocated to resolve Plaintiffs'

statutory claim for attorneys' fees in exchange for Plaintiffs' dismissal of the Action and agreement not to challenge certain future actions related to relocation of the OMSS facility to a site proximate to the Oakland Army Base and/or the Port of Oakland; now therefore be it resolved

RESOLVED: That The City Attorney is authorized and directed to settle the matter of *Northern California River Watch, et al. v. Oakland Maritime Support Services, Inc., et al.* (U.S. District Court, Northern District of California, Case No. 4:40-CV-3912-CW) and to pay out the sum of \$300,000.00, with \$200,000.00 of that sum to be allocated to fund the West Oakland Job Resources Center and \$100,000.00 of that sum to be allocated to resolve Plaintiffs' statutory claim for attorneys' fees; in exchange for Plaintiffs' dismissal of the Action and agreement not to challenge certain future actions related to relocation of the OMSS facility to a site proximate to the Oakland Army Base and/or the Port of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTIONS -

ATTEST: _____

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