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OAKLAND
2016 FEB -5 AM 9:03

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Claudia Cappio
Assistant City Administrator

SUBJECT: Status Report on Coal

DATE: February 3, 2016

City Administrator Approval

Date:

2/4/16

RECOMMENDATION

To accept a status report as a follow up to the September 21, 2015 informational public hearing on coal's potential health and/or safety impacts, and

to Adopt A Resolution (A) Waiving Advertising, Competitive Bidding, and Request for Proposals/Qualifications (RFP/Q) Competitive Selection Requirements and (B) Authorizing the City Administrator or Her Designee to Enter into a Professional Services Contract with Environmental Science Associates in the Amount of \$208,000 for the Analysis of Potential Health and Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal at the Oakland Army Base West Gateway Site and Further Authorizing the City Administrator to Approve an Additional \$ 45,000 For Other Work as Required Without Returning to City Council.

EXECUTIVE SUMMARY

On September 21, 2016, the City Council held an informational public hearing about the potential health and/or safety impacts of the transport, transloading, handling and export of coal products through or within the City of Oakland. Comments and information were also gathered about the adequacy of existing regulations and the City's ability to regulate the transportation and handling of coal products. The City Council requested that staff review and evaluate all the information and public testimony and assess what types of expertise and assistance may be necessary to develop potential follow up actions for the City Council. Staff has completed their assessment and developed a work program with Environmental Science Associates (ESA). Staff recommends that City Council adopt the attached resolution, authorizing the City Administrator to enter into a professional services contract with ESA. Due to the specialized expertise involved in this work, it is further recommended that the Council waive the advertising, competitive bidding and RFP/Q process for this work.

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BACKGROUND/LEGISLATIVE HISTORY

Previous City Council Actions

Two previous City Council actions are most relevant to the current set of concerns about the transportation, transloading, handling and export of coal at the Oakland Army Base. In June, 2014, the Council adopted Resolution No. 85054, A Resolution Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City of Oakland.

In 2013, the City Council adopted a Development Agreement (DA) for the Bulk Commodities Terminal at the Army Base West Gateway Parcel. This agreement vested rights to the developer (CCIG) to operate the facility under the current set of laws at the time of adoption, with limited exceptions. No specific restriction or prohibition on coal was made part of that agreement. There is a narrow exception related to health and/or safety (Section 3.4.2 of the DA). Specifically, the DA creates a two part test to determine if the adoption of a new health and/or safety regulation is permissible. First, the regulation must be permissible under federal and state constitutions, statutes and laws. Second the City must determine, "based on substantial evidence and after a public hearing that a failure to [adopt the ordinance] would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety." Therefore, supplemental analysis and review must be undertaken to ascertain whether there is substantial evidence to base any new rule change governing the bulk commodities terminal.

Scope and Breadth of Review of Commodities and Proposed Bulk Commodities Terminal

Part of staff's review included an assessment of the "basis of design" documents and materials provided by CCIG, the terminal developer. In that review staff identified an initial list of commodities that would be transported and handled through the terminal. These materials not only included coal, but also fuel oils and gasoline (please refer to **Attachment A**.) The developer also indicated that there would likely be four initial commodities: borax, soda ash, muriate of potash and salt. Characterization of this list of materials has been incorporated into the proposed analysis by ESA. The results of this review will provide key information as part of the Building and Fire Department plan check process and the hazardous materials response and management plans.

Requirements for Waiver of Advertising, Competitive Bidding and Request for Proposal Competitive Selection

The City's Purchasing Ordinance requires staff to conduct advertising and competitive processes to purchase products, supplies, equipment and services (Oakland Municipal Code (OMC) Title 2, Chapter 2.04, Sections 2.04.050 and 2.04.051.) The City Council may waive

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those processes upon a finding and determination that it is in the best interests of the City to do so.

ANALYSIS AND POLICY ALTERNATIVES

City staff completed a review of the public testimony and other reports and information that was submitted during the September, 2015 informational public hearing and afterwards. We contacted a number of air quality and other experts who were familiar with the types of review and analysis that would likely prove most useful in this process. The recommended work includes a baseline conditions analysis, commodities characterizations, and identification of health and/or safety thresholds. In addition, the proposal calls for a screening analysis of Greenhouse Gas (GHG) emissions and climate effects. It became evident that an environmental consulting firm with broad, interdisciplinary capacity would offer the type of specialized expertise that could be called upon when necessary during the study period.

A scope of work was requested from Environmental Science Associates (ESA). After review and discussion, the following major work tasks, schedule and budget have been proposed:

Work Tasks:

- 1) Complete detailed scope of work and send out for public review. Revise scope if necessary.
- 2) Characterize context for study and refine project study area.
- 3) Review public input to date on the coal and other issues of concern.
- 4) Confirm project description for bulk commodities terminal.
- 5) Develop and confirm baseline conditions and environmental setting.
- 6) Perform commodities characterization
- 7) Develop thresholds
- 8) ~~Perform screening analysis and Greenhouse Gas emissions and climate effects~~
- 9) Publish report of findings
- 10) Participate in public meetings and review; respond to comments.

Budget: \$ 208,000 (+/-)

Schedule: 6 – 8 months with a draft report submitted by June, 2016

As work progresses, the consultants could be directed to provide a more detailed analysis on a health and/or safety aspect or risk associated with coal or the other commodity materials that have been identified. Therefore, a \$ 45,000 contingency has been included without the need to return to the City Council. Once this work has been completed, the City may also direct the consultant to provide a more quantitative analysis if deemed necessary. This work would be separately scoped and budgeted and is not included in this contract.

FISCAL IMPACT

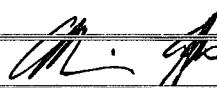
This work was not authorized under the City's 2015-17 Budget. Staff recommends that funding for this contract be taken from the Undesignated General Purpose Fund Balance.

ACTION REQUESTED OF THE CITY COUNCIL

To Adopt A Resolution (A) Waiving Advertising, Competitive Bidding, and Request for Proposals/Qualifications (RFP/Q) Competitive Selection Requirements and (B) Authorizing the City Administrator or Her Designee to Enter into a Professional Services Contract with Environmental Science Associates in the Amount of \$208,000 for the Analysis of Potential Health and Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal at the Oakland Army Base West Gateway Site and Further Authorizing the City Administrator to Approve an Additional \$ 45,000 For Other Work as Required Without Returning to City Council.

For questions regarding this report, please contact Claudia Cappio, Assistant City Administrator, at 238-6654.

Respectfully submitted,



Claudia Cappio, Assistant City Administrator

Attachments: A – list of potential commodity materials included in the Basis of Design Document for the Bulk Commodities Terminal

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OAKLAND CITY COUNCIL

Approved as to Form and Legality

DRAFT

City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION (A) WAIVING ADVERTISING, COMPETITIVE BIDDING, AND REQUEST FOR PROPOSALS/QUALIFICATION (“RFP/Q”) COMPETITIVE SELECTION REQUIREMENTS AND (B) AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH ENVIRONMENTAL SCIENCE ASSOCIATES IN THE AMOUNT OF \$ 208,000 FOR THE ANALYSIS OF POTENTIAL HEALTH AND SAFETY EFFECTS OF CERTAIN COMMODITIES PROPOSED AT THE OAKLAND BULK AND OVERSIZED TERMINAL AT THE OAKLAND ARMY BASE WEST GATEWAY SITE AND FURTHER AUTHORIZING THE CITY ADMINISTRATOR TO APPROVE AN ADDITIONAL \$ 45,000 FOR OTHER WORK AS REQUIRED WITHOUT RETURNING TO CITY COUNCIL FROM UNDESIGNATED GENERAL PURPOSE FUND BALANCE

WHEREAS, the Oakland Army Base Gateway Redevelopment Project West Gateway Parcel is approved for construction of a bulk and oversized commodity terminal that may include the shipment, transloading, transportation and handling and export of a variety of materials; and

WHEREAS, the approval of the Oakland Army Base Gateway Redevelopment Project included the approval of a Development Agreement, which vested the rights to develop, among other projects, the bulk and oversized commodity terminal on the West Gateway Parcel, subject to a narrow exception for certain later-enacted health and/or safety regulations; and

WHEREAS, the Development Agreement authorizes the City Council to adopt regulations that would bind the bulk and oversized commodity terminal if the regulations are related to health and safety, if the regulation is permissible by state and/or federal law and if the City Council determines, based upon substantial evidence and after a public hearing that a failure to adopt the regulations would place existing or future occupants or uses of the project, adjacent neighbors or any portions thereof, in a condition substantially dangerous to their health and safety; and

WHEREAS, prior to April, 2015, the potential materials proposed to be transported and handled at the bulk and oversized commodity terminal had not been specifically identified; and

WHEREAS, the proposed initial list of bulk commodity materials submitted to the City of Oakland in September, 2015 includes bituminous coal, fuel oils and gasoline, along with borax, muriate of potash, soda ash, sodium sulfate and bicarbonate of soda; and

WHEREAS, in June 17, 2014, the City Council adopted Resolution No. 850454 C.M.S., Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City of Oakland; and

WHEREAS, substantial public concern has been raised by community stakeholders about the transport, handling and management of certain identified bulk commodity items, specifically coal, crude oil, and petroleum coke at the Oakland Army Base West Gateway Parcel and the City Council took action to hold an informational public hearing on September 21, 2015 to receive oral and written testimony to help inform future potential Council actions related to health and/or safety regulations under the Development Agreement; and

WHEREAS, as a follow up to the September 21, 2015 informational public hearing, the City Council requested staff to complete an evaluation of all the submitted information and public testimony and further directed that staff develop and evaluate potential actions that the City could employ to address the health and/or safety impacts of the transloading, transportation and handling and export of coal at the proposed bulk and oversized commodity terminal; and

WHEREAS, the Oakland Municipal Code (“OMC”) Section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of supplies, equipment, products and services and the award to the lowest responsible, responsive bidder if the award is made; and

WHEREAS, OMC Section 2.04.050 I.5 provides an exception to the advertising and competitive bidding requirement of the OMC upon a finding and determination by the City Council that it is in the best interests of the City to do so; and

WHEREAS, OMC Section 2.04.051 requires a competitive request for proposals or request for qualification selection process for award of contracts that exceed \$ 25,000 for professional services contracts and which are exempt from bidding under Section 2.04.0501.1; and

WHEREAS, OMC Sections 2.02.050.I and 2.04.051 B permits the City Council to waive the ~~advertising, competitive bidding and the RFP/RFQ solicitation processes upon a finding and~~ determination that it is in the best interests of the City to do so; and

WHEREAS, staff recommends that it is in the best interests of the City to waive the advertising competitive bidding and the RFP/RFQ competitive selection requirements because of the specialized expertise that is required to complete the evaluation of written and oral public testimony and other information as well as to assess, analyze and recommend potential actions to the City Council to address any identified health and/or safety impacts; and

WHEREAS, Environmental Science Associates (ESA) has been identified as a firm that can provide this specialized and additional expertise and has the capacity to perform a broad array of qualitative and quantitative analyses that call for a multi-discipline approach to address the issues that have been identified and further, ESA has submitted a draft statement of work for the assessment, an estimated budget in the amount of \$208,000 and schedule, the qualifications of the experts who would perform the work and an overall public process; and

WHEREAS, the proposed draft statement of work includes but is not limited to a characterization and evaluation of the commodities that have been identified, an assessment of the thresholds and measures that should be used to evaluate the potential health given the specialized nature of the analysis that is required to determine potential health and/or safety impacts and the broad, multi-disciplined expertise that is required; and

WHEREAS, the \$208,000 expenditure that is required for this work was not previously authorized in the FY 2015-2017 budget and staff recommends that the costs be drawn from undesignated General Funds; now therefore be it

RESOLVED: that the City Administrator is authorized to execute a Professional Services Agreement with Environmental Science Associates in the amount of \$208,000 from undesignated General Purpose Fund balance for the analysis of potential health and safety effects of certain commodities proposed at the Oakland Army Base West Gateway site bulk and oversized terminal at bulk and oversized terminal and further authorizing the City Administrator to approve an additional \$45,000 without returning to City Council; and

FURTHER RESOLVED: that the City Council finds and determines, under OMC Section 2.04.050 I.5 and 2.04.051. B, that it is in the best interests of the City of Oakland to waive the competitive bidding, advertising and the RFP/RFQ requirements for the reasons set forth above and in the staff report accompanying this item, because of the specialized expertise that is required for this work and the broad interdisciplinary approach that ESA has demonstrated to perform the work proposed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

~~NOES~~

~~ABSENT -~~

ABSTENTION -

ATTEST: _____

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

DRAFT DOCUMENT – IN PROCESS -- 2/4/16**Outline of Draft Approach and Preliminary Scope of Work****City of Oakland Health and/ or Safety Effects Review of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal**

This outline is intended as the basis of the development of a more detailed scope of work to accompany the Professional Services Contract with the City of Oakland. The primary purpose of the draft proposal is to assist the City in determining whether existing regulations are adequate to protect the public's health and/or safety from the Project's proposed commodities (coal, fuel oils, gasoline, borax, muriate of potash, soda ash, sodium sulfate, and bicarbonate of soda) and operations pursuant to and consistent with the requirements of the 2013 Development Agreement sections 3.4.2 and 3.4.4.

The work will be performed over a 7-8 month period with a report submitted to the City by June, 2016 and response to comments in September, 2016. The cost for the major work tasks outlined below is approximately \$ 208,000. After Phase 1, as directed by the City, the consultant could provide a scope and budget for more detailed quantitative analysis of the health and/or safety risks associated with the coal and commodity transport proposal.

Major Work Tasks:

- *Task 1.0: Public review/comment on Scope; Revise scope, if necessary*
- *Task 1.1: Characterize Context and Refine Project Study Area*
- ~~*Task 1.2: Review Public Input to Date on Army Base Redevelopment Project*~~
- ~~*Task 1.3: Confirm Project Description*~~
- *Task 1.4: Baseline Conditions and Environmental Setting*
- *Task 1.5: Commodities Characterization*
- *Task 1.6: Thresholds*
- *Task 1.7: Screening Analysis and Greenhouse Gas Emissions and Climate Effects*
- *Task 1.8: Qualitative Effects Report*
- *Task 1.9: Public Meetings and Review/Respond to Public Comments*

More Detailed Work Tasks that are contemplated as part of major work categories:**TASK 1.0: Public review/comment on Scope**

- Evaluate Public Review/Comments On Draft Scope Of Work; Revise As Directed By City

Task 1.1: Characterize Context and Define Project Study Area

- Refine the West Oakland Study Area.
- Delineate activities to be considered within the Effects Review.

Task 1.2: Review Public Input to Date on Army Base Redevelopment Project

- Thoroughly review the existing documents in the City's project record.

Task 1.3: Confirm Project Description, including design, facilities, infrastructure and operations

Task 1.4: Baseline Conditions, Regulatory Environment and Environmental Setting

- Describe baseline environmental conditions and the regulatory environment.
- Identify coal dust mitigation requirements of relevant entities.

Task 1.5: Commodities Characterization

- Describe and compare coal and U.S. coal types generally.
- Describe coal dust as a form of particulate matter and how it is generated during rail transport, storage and transloading.
- Summarize the factors affecting the total amount of fugitive coal dust generated.
- Identify mitigation measures proposed in prior similar projects and their effectiveness.
- Perform the same evaluation for fuel oils, gasoline, borax, muriate of potash, soda ash, sodium sulfate, and bicarbonate of soda commodities.

~~Task 1.6: Thresholds~~

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- ~~• Identify possible thresholds that may be considered by the City to use to assess the project.~~
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Task 1.7: Screening Analysis and Greenhouse Gas Emissions and Climate Effects

- **Subtask 1.7.1. Health.**
 - Consider the chemical characteristics and volume of fugitive coal dust and other identified commodities where dust is a factor.
 - Consider the incremental locomotive emissions in project area resulting from the transport.
 - Review and consideration of existing documentation regarding the effects of burning coal overseas and storing coal at the OBOT on air pollution and global warming/sea level rise for West Oakland.
- **Subtask 1.7.2. Safety.**
 - Perform a primarily qualitative screening level analysis, involving quantifying emissions
 - Distinguish among the characteristics of coal contributing to or minimizing safety risks.

- Identify potential mitigation measures

Task 1.8 Qualitative Effects Report

Task 1.9: Public Meetings and Review/Respond to Public Comments