

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2012 MAY 31 PM 1:44

# OAKLAND CITY COUNCIL

RESOLUTION No. 83914 C.M.S.

City Attorney

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF OAKLAND, THE ALAMEDA COUNTY TRANSPORTATION COMMISSION (ACTC), AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART), REGARDING THE ADMINISTRATION, DESIGN, CONSTRUCTION, MAINTENANCE AND LIABILITY TERMS FOR THE DELIVERY OF THE EAST BAY REGIONAL PARKS DISTRICT'S REGIONAL TRAIL SEGMENT 7A (75TH AVENUE TO 85TH AVENUE UNDER THE BART TRACKS) OF URBAN ECOLOGY'S 2008 EAST BAY GREENWAY PLAN, AS IT FURTHERS THE CITY'S INTERESTS IN PROVIDING SAFE, ACCESSIBLE, AND MULTIPLE MODES OF ACCESS BETWEEN EAST OAKLAND NEIGHBORHOODS AND THE COLISEUM BART STATION**

**WHEREAS**, The East Bay Greenway was originally proposed by Urban Ecology, a nonprofit community group that commissioned the regional trail study in conjunction with the Alameda County Transportation Commission in 2008; and

**WHEREAS**, Urban Ecology produced a Concept Plan for the entire 12-mile long regional path, consisting of Class I, II and III bicycle/pedestrian pathway segments, that will travel through Oakland, San Leandro, unincorporated Alameda County and Hayward; and

**WHEREAS**, with the support of Assembly Member Barbara Lee, the East Bay Regional Park District applied for a 2010 TIGER II federal stimulus grant for the construction of portions of the East Bay Greenway Concept Plan and other regional trails, and on April 4, 2011, signed a letter accepting the TIGER II grant for \$1.16 million for planning, design, and construction of Segment 7A of Urban Ecology's East Bay Greenway Concept Plan; and

**WHEREAS**, after acceptance of the TIGER II grant, EBRPD then began to work with ACTC to accept and administer the design and construction of the East Bay Greenway; and

**WHEREAS**, although ACTC is accepting the grant and responsibility for design and construction, the City and BART own in fee or through easements the land upon which this trail will be constructed, and

**WHEREAS**, the 1966 and 1970 BART/City agreements that were created to address maintenance of the landscape under the BART tracks do not address this new trail area; and

**WHEREAS**, the City has no funds for maintenance, and cannot accept any additional maintenance or liability for a new trail area that is not in our existing agreements with BART; and

**WHEREAS**, the City is entering into the attached Memorandum of Understanding (MOU) to set forth the understandings and agreements in connection with the maintenance and liability agreement for Segment 7A, under the premise that ACTC has agreed to retain contractors to construct and maintain Segment 7A, with the intent that these contractors and maintenance crews indemnify the City, ACTC, and BART from any liabilities or claims arising from their work on the Segment 7A path for a period of at least 20 years; and

**WHEREAS**, the new agreement for maintenance and liability must be approved by the City, BART, and ACTC, prior to June 30, 2012; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) have been satisfied through the actions Caltrans and ACTC, lead agencies for the East Bay Greenway; now, therefore be it

**RESOLVED**, that based on the determinations contained in the City Administrator's report Accompanying this resolution the city council of the City of Oakland finds as follows: that the Memorandum of Understanding between the City of Oakland, the Alameda County Transportation Commission, and the San Francisco Bay Area Rapid Transit District, regarding the administration, design, construction, maintenance and liability terms for the delivery of the East Bay Regional Parks District's regional trail segment 7a (75<sup>th</sup> avenue to 85<sup>th</sup> avenue under the BART tracks) of Urban Ecology's 2008 East Bay Greenway plan furthers the city's interests in providing safe, accessible, and multiple modes of access between East Oakland neighborhoods and the Coliseum BART station; and be it

**FURTHER RESOLVED**, that the Memorandum of Understanding supports the City's interests in making this improvement while ensuring that the City does not assume additional responsibilities for maintenance or liability; and be it

**FURTHER RESOLVED**, that the City Administrator, or her designee, is authorized on behalf of the City of Oakland to execute and submit all documents, Memoranda of Understanding, payment requests, and related actions to complete the project as needed; and be it

**FURTHER RESOLVED**, that should future Segments of the East Bay Greenway in Oakland become eligible for funding, design, and construction, the City Administrator, or her designee, is hereby authorized to negotiate similar terms for trail areas for the purposes described above.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 19 2012

**PASSED BY THE FOLLOWING VOTE:**

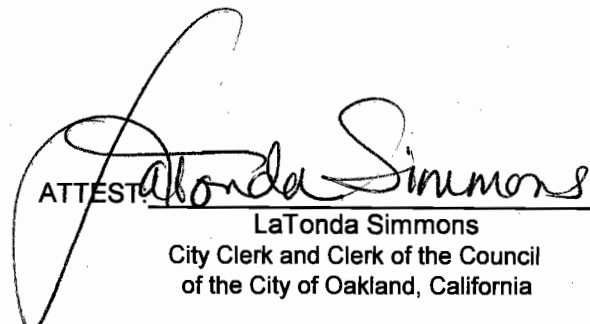
AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST

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