



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2013 DEC 30 PM 2: 25

## AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: OMSS River Watch Payment

DATE: December 11, 2013

City Administrator

Approval

Date

12/19/13

COUNCIL DISTRICT: #3

### RECOMMENDATION

Staff recommends that the City Council adopt:

A Resolution Authorizing Acceptance of Payment from Oakland Maritime Support Services (OMSS) in the Amount of \$50,000 toward the Settlement of Northern California River Watch, Teamsters Local 70, V. Oakland Maritime Support Services, Oakland Redevelopment Agency, Et Al. (U.S. District Court, Northern District of California, Case No. 4:40-CV-3912 CW) (Office of the City Administrator)

### EXECUTIVE SUMMARY

In 2010, Northern California River Watch, Teamsters Local 70, and East Bay Alliance for a Sustainable Economy (collectively, the "Plaintiffs") filed a lawsuit against Oakland Maritime Support Services ("OMSS"). As the owner of the property where OMSS' alleged violations occurred, the Redevelopment Agency of the City of Oakland (the "Agency") was included in the lawsuit. On November 19, 2013, the City Council authorized a settlement of the litigation whereby the City would pay a total of \$300,000 to resolve all Plaintiffs' claims in exchange for Plaintiffs' dismissal of the litigation and agreement not to challenge the relocation of the OMSS facility to a site at the Oakland Army Base and/or the Port of Oakland. OMSS and the City have negotiated for OMSS to pay \$50,000 toward the settlement.

### OUTCOME

This resolution authorizes the City to accept OMSS' payment of \$50,000 and apply it toward the settlement.

Item: \_\_\_\_\_  
CED Committee  
January 14, 2014

## BACKGROUND/LEGISLATIVE HISTORY

In 2010, the Plaintiffs filed a lawsuit against OMSS, alleging that OMSS violated the Federal Water Pollution Control Act, (the "Clean Water Act") 33 U.S.C. § 1365 by unlawfully discharging storm water from the truck repair and maintenance facility (the "Facility") that OMSS previously operated within the former Oakland Army Base at 11 Burma Road. At the time of the alleged violations, the Agency owned the real property on which the Facility was located; accordingly, the Agency was named as a defendant in the litigation. The City was originally also named as a defendant. The suit against the City was dismissed, but in light of the City's status as the current owner of the real property, the City was added back as a defendant.

On November 19, 2013, the City Council, by way of Resolution No. 84699 C.M.S., authorized a settlement of the lawsuit, whereby the City would pay \$300,000 to resolve all of the Plaintiffs' claims, with \$200,000 of that sum to be allocated to fund the West Oakland Job Resource Center and \$100,000 to be allocated to resolve the Plaintiffs' statutory claim for attorneys' fees. In exchange for these payments the Plaintiffs would dismiss the action and agree not to challenge the relocation of the OMSS Facility to another site at or proximate to the Oakland Army Base or the Port of Oakland.

In light of the attorneys' fees the City incurred in the River Watch litigation and in light of the payments the City will pay pursuant to the settlement agreement, the City and OMSS have negotiated for OMSS to pay \$50,000 toward the settlement.

## ANALYSIS

The payment of \$200,000 to the West Oakland Job Resource Center ("WOJRC") is in lieu of payment of any penalties that might have been assessed if the court had decided against OMSS and the City. The WOJRC is being formed to develop and facilitate a local labor force and the payment will assist WOJRC with developing within the local labor force pre-apprentice and apprentice training for positions focused on storm water infrastructure construction; storm water management system design, construction, and maintenance; and associated climate change response management for the Oakland Army Base, the Port of Oakland, and the industrial facilities in the industrial areas adjacent and/or near to the Army Base and Port.

Unlike the contribution to the WOJRC, which will support workforce development and benefit the City, the payment of \$100,000 to the Plaintiffs for reimbursement of attorneys' fees and costs is an unalloyed cost. Consequently, the City and OMSS have agreed that OMSS will share in that cost and pay half of the Plaintiffs' statutory claim for reimbursement of fees.

**PUBLIC OUTREACH/INTEREST**

No outreach was performed. Making the negotiations with OMSS public could have compromised the City's legal positions and negotiations regarding the River Watch litigation.

**COORDINATION**

Staff coordinated with the Office of the City Attorney, the Department of Economic and Workforce Development, OMSS, and Plaintiffs. The Budget Office has reviewed this staff report.

**COST SUMMARY/IMPLICATIONS**

No costs are associated with the proposed resolution. Instead, OMSS' payment of \$50,000 will be used to reduce the cost of the River Watch settlement to the City. The payment will be deposited into OBRA Leasing & Utility Fund (5671) Oakland Army Base Organization (02444) OBRA Leasing & Utility Project (P294110).

**SUSTAINABLE OPPORTUNITIES**

***Economic:*** This action does not provide any additional economic benefits or opportunities.

***Environmental:*** This action does not provide any additional environmental benefits or opportunities.

***Social Equity:*** This action does not provide any additional social equity benefits or opportunities.

For questions regarding this report, please contact Hui Wang, Urban Economic Analyst, at (510) 238-7693.

Respectfully submitted,



---

FRED BLACKWELL  
Assistant City Administrator

Reviewed by:  
Doug Cole, Project Manager  
Office of Neighborhood Investment

Prepared by:  
Hui Wang, Urban Economic Analyst

Item: \_\_\_\_\_  
CED Committee  
January 14, 2014

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2013 DEC 30 PM 2:25

Approved as to Form and Legality

*D. Wilson*  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

---

**RESOLUTION AUTHORIZING ACCEPTANCE OF PAYMENT FROM OAKLAND MARITIME SUPPORT SERVICES (OMSS) IN THE AMOUNT OF \$50,000 TOWARD THE SETTLEMENT OF NORTHERN CALIFORNIA RIVER WATCH, TEAMSTERS LOCAL 70, V. OAKLAND MARITIME SUPPORT SERVICES, OAKLAND REDEVELOPMENT AGENCY, ET AL. (U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 4:40-CV-3912 CW) (OFFICE OF THE CITY ADMINISTRATOR)**

**WHEREAS**, in 2010, Northern California River Watch, Teamsters Local 70 and East Bay Alliance for a Sustainable Economy (collectively, "Plaintiffs") filed a lawsuit entitled Northern California River Watch v. Oakland Maritime Support Services, Oakland Redevelopment Agency and other defendants (Case No. 4:10-cv-3912 CW-JSC) (the "River Watch Litigation; 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 November 19, 2013, the City Council considered and authorized a settlement of the River Watch Litigation where by the City would pay a total of \$300,000 to resolve all Plaintiffs' claims, with \$200,000 of that sum to be allocated to fund the West Oakland Job Resources Center and \$100,000 of that sum to be allocated to resolve Plaintiffs' statutory claim for attorneys' fees in exchange for Plaintiffs' dismissal of the River Watch Litigation 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; and

**WHEREAS**, OMSS and Oakland have negotiated for OMSS' payment of \$50,000 toward the settlement agreement in light of the attorneys' fees Oakland has incurred to date in the River Watch Litigation and in light of the payments City will pay pursuant to the River Watch Litigation settlement agreement; now therefore be it

**RESOLVED**: The City Administrator is authorized and directed to accept payment of \$50,000 from OMSS in consideration of Oakland's attorneys' fees in the River Watch Litigation and the settlement of the River Watch Litigation for deposit into OBRA Leasing & Utility Fund (5671) Oakland Army Base Organization (02444) OBRA Leasing & Utility Project (P294110); and be it

**FURTHER RESOLVED**: The City Attorney and the City Administrator are authorized and directed to negotiate and execute an agreement and/or take any other such steps as may be necessary to implement this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

---

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