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OFFICE OF THE CITY CLERK
OAKLAND

2012 NOV 14 PM 4: 04

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: LSA Contract Amendment

DATE: October 22, 2012

City Administrator
Approval

Deanna Santana

Date

10/30/12

COUNCIL DISTRICT: #3

RECOMMENDATION

Staff recommends that the City Council approve:

A Resolution Authorizing the City Administrator to Execute an Amendment to the Professional Services Agreement with LSA Associates, Inc. to Increase the Contract by an Amount not to Exceed \$66,606 for a Total Contract Amount of \$426,606 for Additional Environmental Review Services for the 2012 Oakland Army Base Project

EXECUTIVE SUMMARY

In October 2010, the Redevelopment Agency contracted LSA Associates, Inc. to perform the environmental review of the development being proposed for the former Oakland Army Base (the "2012 OARB Project"). The contract was for an amount not to exceed \$360,000. Due to the Project's complexity, the environmental review required more traffic and air quality analysis than had been scoped. Staff estimated that the total of third party costs to complete the review would be approximately \$503,000.

The additional analysis was needed to ensure a complete and thorough environmental review was performed on this complex project, which involved the City, Port and private developers. Additionally, the analysis had to be completed on an aggressive schedule after the need became apparent, in order to meet an important funding milestone. The California Transportation Commission (CTC), the agency administering the Trade Corridor Improvement Fund (TCIF) program, wanted assurance by June 2012 that the Project was far enough along to warrant its retention of a \$242.1 million TCIF allocation. The primary indicator of progress would be the Project's environmental clearance. The City Council's adoption of the CEQA findings through its approval of an amended *Final Reuse Plan for Oakland Army Base* ("Final Reuse Plan") and a Lease Disposition and Development ("LDDA") with Prologis Property, LP/CCIG Oakland Global, LLC ("Developer") would provide CTC with the necessary evidence of the Project's

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environmental clearance and demonstrate the City's ability to meet the TCIF December 2013 deadline for the start of construction.

LSA agreed to work beyond its initial scope so that the IS/Addendum could be completed by May 2012, in time to provide the proper documentation for the City Council's approval of the amended *Final Reuse Plan* and LDDA in June. LSA subsequently requested an augmentation to its contract for the additional services performed. The Department of Planning and Building reviewed the request and determined that the additional work amounted to \$66,606. Staff therefore recommends amending the contract to increase the contract by \$66,606 for a total contract amount of \$426,606.

OUTCOME

Approval of the resolution enables LSA to be compensated for work that has been performed. LSA's contract already counts toward the City's contribution under the Amended and Restated Cost Sharing Agreement with the Port of Oakland and as an eligible expenditure for matching TCIF funding. The increase in contract amount will be considered part of the City's contribution and TCIF match.

BACKGROUND

In July 2010, the Redevelopment Agency entered into a First Amendment to the Exclusive Negotiating Agreement ("ENA") with the Developer that in part addressed CEQA costs. The Agency, wishing to expedite obtaining CEQA and NEPA clearance to advance infrastructure development of the OARB, amended the ENA to provide for the Agency contracting with a consultant to prepare the necessary CEQA and NEPA documentation. The City Council authorized a contract with LSA Associates, Inc. to perform the CEQA/NEPA review for an amount not to exceed \$360,000. The Agency's contribution to the contract was capped at \$240,000 with the Developer responsible for costs exceeding the City's cap. The LSA costs have exceeded the agreed-upon maximum cost of \$360,000, and the final amount of all CEQA-related third party costs, which includes additional traffic analysis and peer review, is \$476,706.

Due to the public-private nature of the Project, City staff and the Developer negotiated a CEQA Indemnity and Funding Agreement to share the CEQA costs. Under the terms of the agreement, approved by the City Council on June 19, 2012 by way of Resolution 83934 C.M.S., the City and Developer will share equally all third party costs paid by the City up to \$503,000. The Developer's obligation towards the costs of preparing the CEQA document is limited to third party costs paid by the City. The Developer's payment of its share of environmental document preparation costs is due within ten days of the City's compliance with subsections (1) through (3) of Section 2.2.1 of the LDDA. These subsections require approvals from:

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- (1) (A) the Army, pursuant to the requirements of the EDC MOA and ESCA, and (B) the Department of Toxic Substances Control, if needed, pursuant to the requirements of the Consent Agreement, both with respect to any transfer of ownership and assumption of the related contractual obligations under the EDC Property Agreements;
- (2) the Oversight Board and Department of Finance, as applicable, pursuant to the requirements of AB 26 with respect to the ultimate disposition of the Lease Property; and
- (3) the Title Company with respect to a written commitment to issue a title policy.

These approvals provide evidence that the City has clear title to the Army Base property. Staff is in the process of securing the approvals and expects to have them by March, 2013.

As the payment is a reimbursement, the City must first complete payment to LSA. The City will be responsible for CEQA-related City staff costs (currently \$133,477.44, or 28% of CEQA consultant costs), which are paid for by developers for a typical project. This, however, is not a typical project, as the property is owned by the City and the Port, and the Developer's interests represent approximately 40% of the project studied in the CEQA Addendum. The Developer will be responsible for any future environmental review required as it goes through the planning and development process, including all City staff costs, and all third party CEQA and NEPA costs.

ANALYSIS

Under the CEQA Funding and Indemnity Agreement, the Developer will share third party CEQA cost up to \$503,000. The final amount of third party CEQA costs is \$476,606, and the Developer's share would be \$238,353. LSA's contract, which is with the City, is capped at \$360,000. To compensate LSA fully and recover the cost from the Developer, the contract needs to be amended. The Developer will reimburse the City after third party costs are paid and the City receives clear title

PUBLIC OUTREACH/INTEREST

Staff has received five letters from the public regarding the CEQA document. Two of the letters related to the billboard part of the Project, one of which requested information about LSA's qualifications to prepare the IS/Addendum, while the other letter submitted a petition against the billboards.

The remaining three letters regarded the noticing and opportunity for public comment on or the appropriateness of the CEQA document. In response, staff wrote that all CEQA-related documents, including the IS/Addendum and its appendices, as well as the Standard Conditions of

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Approval/Mitigation Monitoring and Reporting Program, were available to the public along with other Agenda-Related materials on June 1st for the duly noticed June 12th meeting of the Community and Economic Development Committee of the City Council. Noticing was done through the Office of the City Clerk, the Department of Planning and Building, and online at: <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>. There were opportunities to comment on CEQA-related issues at the June 12th CED Committee meeting and the June 19th Council meeting, as well as submit written comments, prior to the public hearing on the 2012 Army Base Project being closed on June 19th.

Staff also noted that the IS/Addendum which was prepared demonstrates that no further/additional CEQA review is required, as none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present. Specifically, the IS/Addendum found:

- (1) there are no substantial changes to the OARB Project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report, the 2006 OARB Auto Mall Supplemental EIR and 2007 Addendum, the 2009 Addendum for the Central Gateway Aggregate Recycling and Fill Project, and the Port's 2006 Maritime Street Addendum (collectively called "Previous CEQA Documents");
- (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Previous CEQA Documents; and
- (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Previous CEQA Documents were adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Previous CEQA Documents; or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the Previous CEQA Documents and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the 2012 Project, the City properly relied upon the previous CEQA documents.

COORDINATION

Staff have coordinated with the Office of the City Attorney, the Department of Planning and Building, and the City Administrator's Budget Office in the preparation of this staff report.

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COST SUMMARY/IMPLICATIONS

The contract is capped at \$426,606. Funding is available in Joint Infrastructure Development Fund (5672), CIP Oakland Army Base Organization (94879), Infrastructure Master Plan Project (C415720).¹

The Developer is reimbursing the City for half of this contract amount plus half of the \$50,100 incurred for other third party CEQA consultants for a total reimbursement amount of \$238,353. The reimbursement, which is due within ten days of the City's compliance with subsections (1) through (3) Subsection 2.2.1 of the LDDA, will be deposited into the Joint Infrastructure Development Fund (5672), CIP Oakland Army Base Organization (94879), Infrastructure Master Plan Project (C415720).

The \$476,706 expended on CEQA consultants is eligible as a match for TCIF funding and counts toward the City contribution under the Amended and Restated Cost Sharing Agreement with the Port of Oakland.

SUSTAINABLE OPPORTUNITIES

Economic: Completing CEQA within the timeframe set by CTC enabled the City to retain the \$242.1 million TCIF allocation. This funding is vital for the redevelopment of the former Oakland Army Base and the creation of thousands of jobs.

Environmental: The IS/Addendum for the 2012 OARB Project provides the basis for the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCA/MMRP), which will impose measures on the Project to mitigate or avoid significant environmental effects.

Social Equity: The IS/Addendum does not address social equity issues.

CEQA

This contract amendment is not a project under CEQA.

¹ It is unclear whether or not this increase is subject to clawback by the State.

For questions regarding this report, please contact Aiiisa Shen, Planner, at 238-2166.

Respectfully submitted,



FRED BLACKWELL
Assistant City Administrator

Reviewed by:
Scott Miller, Deputy Director
Planning, Building & Neighborhood Preservation

Prepared by:
Hui Wang, UEA III
Office of Neighborhood Investment

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FILED
 OFFICE OF THE CLERK
OAKLAND CITY COUNCIL

Diana M. Alvarado
 Deputy City Attorney

2013 NOV 11 PM 1:01
 RESOLUTION No. _____

C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH LSA ASSOCIATES, INC. TO INCREASE THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$66,606 FOR A TOTAL CONTRACT AMOUNT OF \$426,606 FOR ADDITIONAL ENVIRONMENTAL REVIEW SERVICES FOR THE 2012 OAKLAND ARMY BASE PROJECT

WHEREAS, the City, through its predecessor in interest, the Redevelopment Agency of the City of Oakland (the "Agency"), entered into an Exclusive Negotiating Agreement ("ENA") dated January 22, 2010 with AMB Property, LP and California Capital Group (reorganized as Prologis Property, LP and CCIG Oakland Global, LLC) (collectively "Developer") for the potential redevelopment of a portion of the former Oakland Army Base ("OARB"), including (inter alia) the City's remediation of Hazardous Materials and development of the public infrastructure ("Public Improvements") and Developer's construction and operation of a mixed-use project, including logistics and warehousing, commercial, including billboards, maritime, rail, open space uses and other approved uses ("Private Improvements"). Together the Public Improvements and the Private Improvements constitute the "Project"; and

WHEREAS, to address the costs associated with the preparation, review and production of environmental compliance documentation (the "Environmental Document"), among other things, the ENA was amended on August 10, 2010 by a First Amendment to the ENA (the "First Amendment"); and

WHEREAS, the First Amendment provided that the Agency shall contract with LSA Associates, Inc. ("LSA") to prepare the Environmental Document. LSA's contract for the Environmental Document was not to exceed \$360,000, with a cap on the Agency's contribution toward the contract amount of \$240,000 and with Developer being responsible for all costs exceeding the Agency's cap; and

WHEREAS, the Environmental Document required additional analysis to complete; and

WHEREAS, the LSA costs to provide the additional analysis exceeded the agreed upon maximum contract cost of \$360,000 by \$66,606; and

WHEREAS, in accordance with the public-private nature of this Project and additional Environmental Document costs beyond those originally anticipated, the City Council approved, by Resolution 83934 C.M.S., an agreement between the City and Developer to share equally Environmental Document preparation and processing costs up to \$503,000; and

WHEREAS, on March 3, 2011, the Agency and the City entered into a Funding Agreement approved by City Council Resolution No. 83256 C.M.S. and Agency Resolution No. 2011-0027

C.M.S., whereby the Agency assigned to the City, and the City accepted, all responsibilities in relation to the administration of any programs funded under the Funding Agreement, and all contracts entered into by the Agency, including professional services agreements funded under the Funding Agreement; and

WHEREAS, on January 31, 2012, pursuant to the Funding Agreement, the Agency transferred its assets and obligations, including the contract with LSA, to the City; and

WHEREAS, the City and LSA desire to amend LSA's contract to reflect LSA's performance of a broadened scope of services and to increase the compensation to be paid to LSA by an amount not to exceed \$66,606 for a total contract amount of \$426,606; now, therefore be it

RESOLVED: That the City Administrator is hereby authorized to execute an amendment to LSA's contract increasing the amount by not to exceed \$66,606, for a total contract amount of \$426,606; and be it

FURTHER RESOLVED: That funding for the amendment shall come from the Joint Infrastructure Development Fund (5672), CIP Oakland Army Base Organization (94879), Infrastructure Master Plan Project (C415720); and be it

FURTHER RESOLVED: That the City Administrator and his or her designee is authorized to take whatever action is necessary to implement the amendment to LSA's contract consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That this action is exempt from the requirements of the California Environmental Quality Act (CEQA) for the reasons stated in the City Council Agenda Report.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California