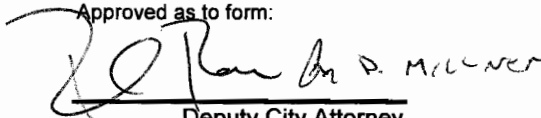


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2013 JUN 12 PM 4:00

Approved as to form:

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 84489 C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE FOLLOWING AGREEMENTS IN ORDER TO MODIFY THE MANNER IN WHICH THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) AND THE REGIONAL WATER QUALITY CONTROL BOARD ARE PAID FOR ENVIRONMENTAL OVERSIGHT COSTS AT THE FORMER OAKLAND ARMY BASE (OARB): (1) AN AMENDMENT TO THE 2003 CONSENT AGREEMENT WITH DTSC; (2) AN AMENDMENT TO THE 2002 ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT WITH THE UNITED STATES ARMY (ARMY); AND (3) AN ASSUMPTION AGREEMENT WITH THE ARMY APPROVING THE TRANSFER OF THE OARB PROPERTY FROM THE OAKLAND REDEVELOPMENT AGENCY TO THE CITY

WHEREAS, the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Board (RWQCB) are the public agencies responsible for overseeing the environmental remediation work at the former Oakland Army Base; and

WHEREAS, in 2002, before the Army transferred the former Oakland Army Base to the Oakland Base Reuse Authority (OBRA), DTSC and the City (including OBRA and the Port of Oakland) entered into a Consent Agreement providing that the City and the Army are jointly responsible for DTSC's and RWQCB's oversight costs; and

WHEREAS, the Consent Agreement covers the environmental remediation for the entire former Army Base, now owned by the City and the Port of Oakland, though the Port is not currently a party to the Consent Agreement; and

WHEREAS, in 2002, the Army, OBRA and the Oakland Redevelopment Agency (ORA) entered into the Environmental Services Cooperative Agreement (ESCA) in which the Army agreed to: (1) grant OBRA/ORA \$13 million to cover the Army Base remediation costs; and (2) in addition to the grant funds, pay DTSC and RWQCB for regulatory oversight costs; and

WHEREAS, from 2003-08, the Army reimbursed DTSC's and RWQCB's oversight fees, but in 2008, it notified the City, DTSC and RWQCB that it would no longer be able to pay for these costs directly; and

WHEREAS, from 2008 through today, the Army owes DTSC and RWQCB approximately \$880,000 for their oversight costs, and the agencies project that they will incur an additional \$520,000 in costs to conduct the oversight of the remedial work to be completed at the Army Base by August 2013; and

WHEREAS, in order to facilitate the payment of the environmental oversight costs at the Army Base, the ESCA and the Consent Agreement must be amended; and

WHEREAS, the Army has asked that the City execute an Assumption Agreement memorializing the transfer of the City's portions of the Army Base property to the City; and

WHEREAS, staff recommends that the City Administrator be authorized to negotiate and execute an amendment to the 2003 Consent Agreement with DTSC to provide that the City, and not the Army, will pay for DTSC and RWQCB's oversight costs directly, and adding the Port as a party, thus formalizing the Port's responsibility for the remedial work on its portion of the Army Base; and

WHEREAS, staff recommends that the City Administrator be authorized to negotiate and execute an amendment to the 2002 Environmental Services Cooperative Agreement with the Army to provide that (a) the City, and not the Army, will pay for DTSC and RWQCB's oversight costs directly; (b) the original \$13 million grant award from the Army to the City for environmental remediation will be increased by an appropriate amount to cover the regulatory oversight fees from July 2008 through January 2014; and (c) the term of the ESCA will be extended from August 2013 to January 2014 for the sole purpose of ensuring that the oversight fees will be paid; and

WHEREAS, staff recommends that the City Administrator be authorized to negotiate and execute an Assumption Agreement with the Army affirming the transfer of the Army Base property from ORA to the City; now, therefore be it

RESOLVED: The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City to negotiate and execute the following documents:

- (1) An amendment to the 2003 Consent Agreement with DTSC to provide that the City, and not the Army, will pay for DTSC and RWQCB's oversight costs directly, and adding the Port as a party;
- (2) An amendment to the 2002 Environmental Services Cooperative Agreement with the Army to provide that (a) the City, and not the Army, will pay for DTSC and RWQCB's oversight costs directly; (b) the original \$13 million grant award from the Army to the City for environmental remediation will be increased by an appropriate amount to cover the regulatory oversight fees from July 2008 through January 2014; and (c) the term of the ESCA will be extended from August 2013 to January 2014 for the sole purpose of ensuring that the oversight fees will be paid; and

(3) An Assumption Agreement with the Army affirming the transfer of the Army Base property from the Oakland Redevelopment Agency to the City; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to appropriate an amount not to exceed \$1,680,000 from the Environmental Remediation Fund (5673), and accept reimbursement from the Army into the Environmental Remediation Fund (5673), and to establish a new project (TBD) to track the additional expenditures; and be it

FURTHER RESOLVED: That the City Administrator or her designee is hereby authorized to negotiate and execute all agreements and to take whatever other action is necessary with respect to the transaction(s), consistent with this Ordinance and its basic purposes; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve all documents and agreements related to the approvals above as to form and legality, and a copy shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 2 2013

PASSED BY THE FOLLOWING VOTE:

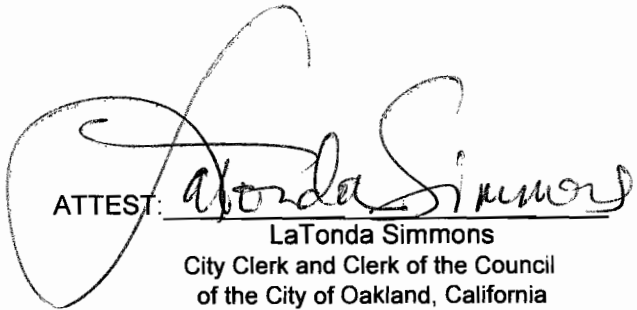
AYES - BROOKS, GALLO, ~~GIBSON, MCELHANEY~~, KALB, KAPLAN, REID, SCHAAF AND PRESIDENT KERNIGHAN - 7

NOES - 0

ABSENT - Gibson McElhaneey - 1

ABSTENTION - 0

ATTEST:


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