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OFFICE OF THE CITY CLERK
OAKLAND
2009 JAN 29 PM 4:29

Approved as to form and legality:

By: *C. Melman*
ORA Agency Counsel

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

Resolution No. 2009 - 0012 C.M.S.

RESOLUTION AMENDING THE EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) WITH OAKLAND MARITIME SUPPORT SERVICES FOR THE DEVELOPMENT OF APPROXIMATELY 15 ACRES WITHIN THE FORMER OAKLAND ARMY BASE (“ARMY BASE”) TO EXTEND THE ENA TERM FROM FEBRUARY 28, 2009 TO THE EARLIER OF FEBRUARY 28, 2011 OR THE RESOLUTION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT LITIGATION FILED BY THE EAST BAY MUNICIPAL UTILITY DISTRICT AGAINST THE CITY AND REDEVELOPMENT AGENCY REGARDING THE ARMY BASE

WHEREAS, the Redevelopment Agency of the City of Oakland (the “Agency”) owns approximately 165 acres of real property located in the “Gateway Development Area” (“GDA”) within the former Oakland Army Base; and

WHEREAS, the Oakland Army Base Redevelopment Plan Environment Impact Report (“EIR”) requires the Agency and the Port of Oakland to jointly implement mitigation measures to reduce the impacts of trucking on West Oakland; and

WHEREAS, the Bay Conservation and Development Commission (“BCDC”) requires, as part of the 2006 land conveyance from the Oakland Army Reuse Authority to the Agency and the Port of Oakland, 15-acre set-asides by both entities for Ancillary Maritime Support Services (AMS); and

WHEREAS, on June 22, 2007, staff issued a Request for Proposals (“RFP”) for the development of an AMS facility within a 15-acre portion of the East Gateway Development Area specifically focused on trucking and truck-related activities, such as parking, trans-load facilities, offices and services targeting the local trucking sector; and

WHEREAS, staff received seven proposals and subsequently conducted a thorough review and interview process that included five finalists; and

WHEREAS, the proposal from Oakland Maritime Support Services (“OMSS”) was for the development of a 15-acre multi-use project that includes truck parking, a trans-load facility,

offices for trucking companies or related businesses, retail, fuel, and other services catering to trucking employees and businesses; and

WHEREAS, staff determined through the review and interview process that among the five finalists, OMSS's proposal was the most responsive to the RFP; and

WHEREAS, on November 6, 2007, the Agency approved Resolution Number 2007-0076, authorizing an Exclusive Negotiating Agreement with OMSS for a term of 180 days to negotiate the financial terms, utilities, preservation or deconstruction of existing warehouses in the East Gateway, and other site preparation issues in the development of the proposed project; and

WHEREAS, the six-month ENA term expired August 11, 2008; and

WHEREAS, on October 28, 2008, the Agency approved Resolution Number 2008-0095, extending the term of the existing ENA from August 11, 2008 to February 28, 2009, to allow the staff time to complete negotiations with OMSS and the following administrative actions:

- Planning Commission approval of
 - OMSS's historic preservation analysis
 - Findings for Policy 3.5 of the General Plan's Historic Preservation Element
 - Tentative Parcel Map
- City Council approval of a Deconstruction Fair Share Cost Agreement with the Port of Oakland;

and

WHEREAS, the Agency and OMSS have completed negotiations, but completion of the administrative actions has been delayed in part due to concerns regarding a lawsuit brought by East Bay Municipal District ("EBMUD") against the City of Oakland regarding the City's certification of a Supplemental Environmental Impact Report ("SEIR") and adoption of an Addendum for the former Oakland Army Base, specifically with respect to a proposed Auto Mall (the "CEQA Litigation"); and

WHEREAS, the Superior Court of the State of California (the "Court") issued a Tentative Statement of Decision ordering the City to (1) set aside its certification of the SEIR and its adoption of the Addendum; (2) prepare a new SEIR; (3) suspend all activity that could result in any physical change or alteration of the physical environment until the City is in compliance with California Environmental Quality Act ("CEQA"); and (4) file a return in the Court specifying what the City has done to comply with the writ; and

WHEREAS, the City disagrees with the Court's decision and is requesting, among other items, clarification whether the Court would require the City to prepare a new SEIR or Addendum for other project or project areas on the Army Base, e.g., the OMSS project or OMSS project area; and

WHEREAS, the ENA with OMSS will expire before a new SEIR or Addendum can be prepared and the administrative actions can be completed; now therefore be it

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator to execute an amendment to the ENA in a substantially similar form to the amendment attached hereto (Exhibit A) and that will extend the term of the ENA from February 28, 2009 to the earlier of: (1) February 28, 2011; or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the proposed OMSS project to proceed in compliance with CEQA; and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator or his designee to take all actions necessary to carry out this resolution and its basic purposes; and be it

FURTHER RESOLVED: That all documents shall be reviewed and approved by the Office of the City Attorney as to form and legality prior to execution.

IN AGENCY, OAKLAND, CALIFORNIA, FEB 17 2009, 2009

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER – 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST:



LATONDA SIMMONS
Secretary of the Redevelopment Agency
Of the City of Oakland, California

EXHIBIT A

SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT Oakland Maritime Support Services

This Second Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services ("Second Amendment") is made and entered into this 28th day of February 2009 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND MARITIME SUPPORT SERVICES, INC., a California corporation ("Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. _____ C.M.S, adopted on _____, 2009.

RECITALS

A. In November 2007, the Parties entered into an Exclusive Negotiating Agreement (Agreement) to explore the possibility of developing 15 acres in the East Gateway area within the former Oakland Army Base for a multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, food and other services catering to trucking employees and businesses (the "Project"); and

B. Under the Agreement, the period for negotiations between the Parties was 180 calendar days, which period expired on August 11, 2008; and

C. The Parties extended the period for negotiations from August 11, 2008 to February 28, 2009 through a First Amendment to the Agreement; and

D. Conclusion of negotiations may be dependent in part on the resolution of litigation filed on May 17, 2007 by the East Bay Municipal District (EBMUD) against the City of Oakland and the Agency regarding the Supplemental Environmental Impact Report the City certified on December 5, 2006, and Addendum related thereto for the former Oakland Army Base under the California Environmental Quality Act (the "CEQA Litigation"); and

E. The Parties wish to amend the Agreement to extend the period for negotiations from February 28, 2009 to the earlier of: (1) February 28, 2011 or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the Project to proceed in compliance with CEQA. ;

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Section 1.4 is hereby deleted in its entirety and replaced with the following:

Section 1.4 Length of Negotiation Period. Unless extended by written mutual agreement after formal approval of the Agency's Governing Body, the period for negotiations between the Parties under this Agreement shall, commence on the date of this Agreement and end on the earlier of: (1) February 28, 2011; or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the Project to proceed in compliance with CEQA (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

2. The Parties hereby agree that all other terms, conditions, and provisions of the Agreement, as amended by the First Amendment, remain unchanged and in full force.

3. The persons signing this Second Amendment on behalf of Developer affirm that they are authorized to execute on Developer's behalf.

[Signatures on following page]

IN WITNESS WHEREOF, this Second Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services, Inc. has been executed by the Parties as of the date first written above.

AGENCY:

The REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Dan Lindheim
Agency Administrator

Approved as to form and legality:

By: _____
Dianne Millner
Agency Counsel

DEVELOPER:

OAKLAND MARITIME SUPPORT SERVICES, INC.,
a California Corporation

By: _____
William I. Aboudi
President