



# AGENDA REPORT

**TO:** FRED BLACKWELL  
CITY ADMINISTRATOR

**FROM:** Doug Cole

**SUBJECT:** Army Base Utility Program Closure

**DATE:** April 7, 2014

City Administrator

Date

Approval

4/10/14

**COUNCIL DISTRICT: 3**

## RECOMMENDATION

Staff recommends that the City Council adopt:

**A Resolution Authorizing the City Administrator to Negotiate and Execute an Amendment to the Utilities Program Management Agreement with the Port of Oakland, for Limited Continued Operation of the Existing Integrated Utility Systems at the Former Oakland Army Base**

**A Resolution Authorizing the City Administrator to Negotiate and Execute an Amendment to Terminate the Resource Management Services Agreement whereby the Port of Oakland Provides Electricity to the City-Owned Portion of the Former Oakland Army Base**

## OUTCOME

As a result of the proposed legislation the City would: (1) re-negotiate and extend the term of the existing Utilities Program Management Agreement with the Port of Oakland (including an assignment of the City's rights and obligations under the existing Base Resource Contract with Western Area Power Administration (WAPA) to the Port of Oakland); and (2) and terminate the Resource Management Services Agreement with the Port of Oakland.

## BACKGROUND/LEGISLATIVE HISTORY

The City, through its predecessors-in-interest, the Oakland Base Reuse Authority (OBRA) and Oakland Redevelopment Agency (the "Agency"), operated an Interim Leasing Program at the former Oakland Army Base from 2000 to 2013. In order to operate the Interim Leasing Program, the City needed to provide its Interim Leasing tenants with utility services since the traditional utility service providers in the area refused to operate and maintain, or take ownership of, the existing Army Base utility systems. The City determined the operation of the Interim Leasing

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Program required utility services and the expected interim leasing revenue was significant enough to accept the costs, expense and liability of operating the utility systems. Based a prior Interim Leasing Program cost benefit analysis, the City and Port of Oakland (“Port”) decided to jointly operate the utility systems on an interim basis through a joint venture between the City and Port.

To facilitate the Interim Leasing Program and the operation and maintenance of the former Army Base utility systems, the City and Port of Oakland entered into a Utilities Operations Agreement dated July 26, 2000 (“Original Utilities Operations Agreement”) administered by OBRA to provide efficient, and cost effective utility services to the tenants at the Army Base. These utilities included electricity, water, sewer, storm drain and other necessary services.

On August 7, 2006, OBRA transferred approximately 170-acres of the former Oakland Army Base property to the Agency. Following this property transfer, OBRA ceased its operations on July 1, 2007 and also transferred all of its assets and liabilities to the Agency, including all of OBRA’s rights and obligations under the Utility Operations Agreement, Resource Management Agreement (defined below) and Base Resource Contract (defined below).

The City and Port entered into a Resource Management Services Agreement as of January 1, 2005 (“Resource Management Services Agreement”) pursuant to which: (1) Port provides electricity to the Army Base and the City and Port pay costs therefor for their respective portions of the Army Base; (2) the Parties agreed on the rights to and allocation of a 20-year Base Resource Contract with Western Area Power Administration (Contract No. 00-SNR-381) to provide wholesale electrical power to the Army Base; and (3) Port provided Agency and its tenants with a percentage of WAPA’s Base Resource power

The City and Port entered into an Amended and Restated Utilities Program Management Agreement on February 26, 2008, to supplement and replace the Original Utilities Operations Agreement in order to maintain, operate and administer utility services for the Army Base to facilitate the redevelopment of the Army Base. The City and Port entered into a First Amendment to the Amended and Restated Utilities Program Management Agreement on July 1, 2011 for the continued maintenance, operation and administration of utility services at the Army Base. The Amended and Restated Utilities Program Management Agreement, as amended by the First Amendment, is herein referred to as the “Utilities Operations Agreement.

Pursuant to Council authorization, the City and California Capital Group, inc. (CCIG) executed a Lease Disposition and Development Agreement (“LDDA”) for the development of a portion of the Army Base. The LDDA also provided that, pursuant to a Property Management Agreement (“PMA”), CCIG would: (1) serve as the City’s property manager for the City-owned portion of the Army Base; and (2) execute and oversee the construction of public infrastructure required for development of the Army Base (“Public Infrastructure Project”). Pursuant to the PMS, on October 16, 2013, CCIG entered into a Design Build Contract with Turner/Goodfellow Top Grade/Flatiron Joint Venture for the construction of public infrastructure improvements at the

former Oakland Army Base for the construction of new underground utilities, public streets, landscaping and lighting. The Design Build Contract also includes soil import and materials handling in order to address geotechnical concerns such as liquefaction and settlement. A significant amount of fill material must be imported to stabilize the soil and raise the grade for pad development. The time to complete this work, including contingencies, is 54 months (4.5 years) from the Notice to Proceed date of October 21, 2013.

## **ANALYSIS**

The closure of the Army Base Interim Leasing Program in 2013 and the commencement of the Army Base Public Infrastructure Project pursuant to the Design Build Contract have changed the City's Army Base utility systems operations and maintenance services and needs. While staff would prefer to entirely shutdown and abandon the existing utility systems and its services during the four and half year long Design Build Contract period, this is mostly likely not feasible until the Design Build Contractor replaces the existing utility systems.

Staff has worked with Port staff to change the Army Base utility program for the Design Build Contract period. Pursuant to those discussions, staff is seeking Council authorization to: (1) amend the Utility Program Management Agreement to continue operation and maintenance of the existing integrated utility systems at the Army Base on a limited basis, and (2) terminate the Resource Management Services Agreement.

## **Utility Program Management Agreement Amendments**

Staff is proposing the following Utility Management Program Agreement provisions:

1. Extend agreement until June 2018
2. Terminate City's 50% share of the existing utility service operations and maintenance obligation.
3. Remain on East Bay Municipal Utility District (EBMUD) water and sewer account until June 2018, with the provisions that: (a) City will remain on the EMBUD as account holder only if the cumulative billing does not exceed \$500,000 per year; (b) the Port will either direct pay or reimburse the City for the EBMUD billing; and (c) the City will immediately terminate its EMBUD account if the Port fails to direct pay or reimburse the City within thirty (30) days.
4. Retain ability to contract with the Port for as-needed utility maintenance work (Design Build Contractor or Army Base Project to reimburse City for any work)
5. Ability to become a Port utility customer and/or function as a pass-through utility customer for Oakland Maritime Support Services (OMSS), Caltrans or the City's Army Base Public Infrastructure Project.

### **Explanation of Proposed Amendments**

Historically the City's annual 50% share of the utility service operations and maintenance cost has been \$1 million annually. This 50% share included the cost of providing electricity, water, sewer, storm drain and other services to the City's Army Base tenants. Staff is proposing to terminate the City's 50% share of utility service operations and maintenance obligations (with one exception described below) and to close the City's Army Base utility program for the most part. It is staff's preference to entirely close the interim utility services program. However, fire safety, dust control, and obligations to Caltrans Bay Bridge Constructidn Project may require the City to remain as a utility provider at the former Oakland Army Base.

The one exception is the City would remain as the account holder for the EBMUD water and sewer account. The proposal between the City and Port is the City would remain the account holder until June 2018 with the City acting as a pass-through for the Port. The Port would either pay the EBMUD invoice directly or reimburse the City for the invoice amount. Tho agreement with the Port would have a -30-day EBMUD account termination clause in the event the Port failed to pay the invoice or reimburse the City. The reasons for the City remaining as EBMUD account holder are as follows. The process for obtaining a new water service from EBMUD is lengthy and carries new costs. Additionally, Port and City staff recently obtained a new 5-year wastewater discharge permit from EBMUD for the account. The process and cost for replacing or transferring this permit is also lengthy and results in new costs. Rather than the City directly providing utility service to its three remaining "customers" at the Army Base, the Port has agreed to allow OMSS, the City's Army Base Public Infrastructure Project, and Caltrans to become direct Port utility customers. Additionally, staff would propose we retain the option to hire the Port on an as-needed basis for utility maintenance work on the existing utility systems on City-owned Army Base property. The Port has historical knowledge of the Army Base utility systems and has expertise in certain utility inaiatenance and operations.

### **WAPA Base Resource Contract**

The Western Area Power Administration provides federal facilities with electricity generated by dams in in the western states. In 2004, OBRA entered into a 20-year Base Resource Contract with WAPA to receive an allocated amount of electricity from WAPA. The amount of electricity was/is dependent on the amount of rainfall that is captured in reservoirs and released through federally-owued dams. From 2000 to 2005, the City hired a contractor to provide various services at the Army Base including managing the WAPA Base Resource Contract. In 2005, as the City and Port were moving toward the current Utility Program model wherein the Port purchased the commodities necessary to operate the Army Base utility systems, the City assigned the WAPA contract to the Port. In the early 2000s when the cost of marketplace electricity was extremely high, WAPA power (electricity) was a bargain. Currently, the cost of marketplace power is actually cheaper than WAPA power. As part of the termination of the Resource Management Services Agreement, staff is proposing to permanently assign and release the City's WAPA Base Resource Contract rights and obligations to the Port.

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### **Resource Management Services Agreement**

As noted above the City and Port entered into a Resource Management Services Agreement which obligated the Port to provide electricity to the Army Base and defined the allocation of WAPA Base Resource Contract by and between the City and Port. Now that the City has closed its Interim Leasing Program, is installing new electrical infrastructure that will be fed by PG&E, and will be terminating the Utilities Program Management Agreement when the Public Infrastructure Project is completed, staff is proposing to terminate the existing Resource Management Services Agreement with the Port of Oakland.

### **COST SUMMARY/IMPLICATIONS**

#### **COST ELEMENTS OF AGREEMENT/CONTRACT:**

The current Utilities Program Management Agreement costs the City approximately \$1 million annually. The \$1 million breaks down into two categories: i) Utility Program operations and maintenance (approximately \$500,000 annually), and ii) EBMUD water and sewer invoices (approximately \$500,000 annually). The proposed amendment would terminate the City's Utility Program operations and maintenance costs (\$500,000 annually). The proposed amendment would transfer the EBMUD water and sewer invoice costs (\$500,000 annually) to the Port with the City acting as a pass-through account holder. The City would remain the account holder and ultimately responsible for payment. The Port would be contractually obligated to pay; however, the Port would either pay EBMUD directly or reimburse the City for payment to EBMUD.

There are no direct costs to the City associated with the WAPA Base Resource Contract or Resource Management Services Agreement. The cost associated with the WAPA Base Resource Contract and Resource Management Services Agreement are paid or recaptured through the Utility Program Management Agreement.

#### **SOURCE OF FUNDING:**

Entity (1) OBRA Leasing & Utility Fund (5671) Oakland Army Base Redevelopment  
Org (02444) OBRA Leasing & Utility Project (P294110)

#### **FISCAL IMPACT:**

The proposed amendment to the Utilities Program Management Agreement and the termination of the Resource Management Services Agreement would reduce the City's fiscal obligations at the Army Base by \$1 million annually. The City may still have to pay approximately \$500,000 annually for the EBMUD water and sewer charges, but these costs would be reimbursed by the Port and/or Army Base Project.

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### **FISCAL/POLICY ALIGNMENT**

The proposed amendment to the Utilities Program Management Agreement and the termination of the Resource Management Service Agreement would reduce the City's fiscal obligations at the Army Base by \$1 million annually. The City may still have to pay approximately \$500,000 annually for the EBMUD water and sewer charges, but these costs would be reimbursed by the Port and/or Army Base Project. The proposed action also is in alignment with the City's Army Base Infrastructure Development Project and Army Base development program. Additionally, the requested action does not create any fiscal impact to the City's General Fund.

### **PUBLIC OUTREACH/INTEREST**

This item did not require any additional public outreach other than the required posting on the City's website.

### **COORDINATION**

This action has been coordinated with City Attorney's Office, City Budget Office, the Port of Oakland and California Capital & Investment Group (City's Agent).

### **SUSTAINABLE OPPORTUNITIES**

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

*Environmental:* This proposed action does not provide any environmental benefits.

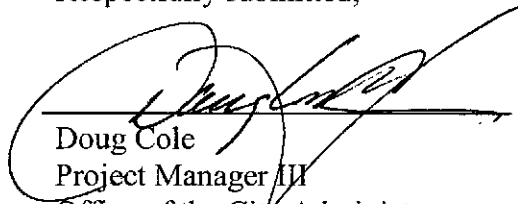
*Social Equity:* This proposed action does not provide any social benefits or social equity to Oakland citizens.

CEQA

An Environmental Impact Report (EIR) was certified in 2002 for the Oakland Army Base Project which included the operation and maintenance of existing utility systems and infrastructure. None of the circumstances necessitating further CEQA review are present, thus, the City can rely on the previous CEQA documents. In addition, the actions contemplated in this report are categorically exempted from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15268(b) (ministerial projects), and 15061(b)(3) (no significant effect on the environment), each as a separate and independent basis.

For questions regarding this report, please contact John Monetta, Project Manager I, at (510) 238-7125.


Respectfully submitted,

  
Doug Cole  
Project Manager III  
Office of the City Administrator  
Oakland Army Base Project

Prepared by:  
John Monetta, Project Manager I  
Office of the City Administrator  
Oakland Army Base Project

2014 APR 18 AM 9:30

Approved as to Form and Legality

  
Office of the City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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## RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE UTILITIES PROGRAM MANAGEMENT AGREEMENT WITH THE PORT OF OAKLAND, FOR LIMITED CONTINUED OPERATION OF THE EXISTING INTEGRATED UTILITY SYSTEMS AT THE FORMER OAKLAND ARMY

**WHEREAS**, the City, through its predecessors-in-interest, operated an Interim Leasing Program at the former Oakland Army Base from 2000 to 2013, and needed to provide its Interim Leasing tenants with utility services since the traditional utility service providers in the area refused to operate and maintain, or take ownership of, the Army Base utility systems; and

**WHEREAS**, the City determined that the expected interim leasing revenue was significant enough to accept the costs, expense and liability of operating the utility systems; and

**WHEREAS**, based on this Interim Leasing Program cost benefit analysis, the City and Port of Oakland ("Port") decided to operate the utility systems on an interim basis through a joint venture between the City and Port; and

**WHEREAS**, to facilitate the Interim Leasing Program and the operation and maintenance of the former Army Base utility systems, the City and Port of Oakland entered into a Utilities Operations Agreement dated July 26, 2000 ("Original Utilities Operations Agreement"), to create a cost-effective and efficient program administered by the City's predecessor-in-interest to provide utility services (among them electricity, water, sewer, storm drain and other services) to the tenants and operations at the Army Base; and

**WHEREAS**, in order to maintain, operate and administer utility services for the Army Base to facilitate the redevelopment of the Army Base, the City and Port entered into: (1) an Amended and Restated Utilities Program Management Agreement on February 26, 2008, to supplement and replace the Original Utilities Operations Agreement; and (2) a First Amendment to the Amended and Restated Utilities Program Management Agreement on July 1, 2011 (together the Amended and Restated Utilities Program Management Agreement and the First

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Amendment thereto shall be referred to herein as the "Utilities Program Management Agreement); and

**WHEREAS;** the closure of the City's Army Base Interim Leasing Program in 2013, and the commencement of a public infrastructure construction project at the Army Base have changed the City's Army Base utility systems operations and maintenance services and needs; and

**WHEREAS,** in view of the City's reduced need to provide utility services at the Army Base, the City desires to negotiate an amendment to the Utilities Program Management Agreement; and

**WHEREAS,** an Environmental Impact Report (EIR) was certified in 2002 for the Oakland Army Base Project which included the operation and maintenance of existing utility systems and infrastructure. None of the circumstances necessitating further CEQA review are present, thus, the City can rely on the previous CEQA documents. In addition, the actions contemplated in this report are categorically exempted from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15268(b) (ministerial projects), and 15061(b)(3) (no significant effect on the environment), each as a separate and independent basis; now, therefore, be it

**RESOLVED,** that the City Administrator, or his designee, is hereby authorized to execute an amendment to the Utility Program Management Agreement containing, among other terms, the following provisions: 1) extend agreement until June 2018, 2) terminate City's 50% share of utility service operations and maintenance, 3) remain on East Bay Municipal Utility District (EBMUD) water and sewer account until June 2018, with the provisions that: (a) City will remain on the EMBUD as account holder only if the cumulative billing does not exceed \$500,000 per year; (b) the Port will either direct pay or reimburse the City for the EBMUD billing; and (c) the City will immediately terminate its EMBUD account if the Port fails to direct pay or reimburse the City within thirty (30) days, 4) retain ability to contract with the Port for as-needed utility maintenance work; and 5) ability to become a Port utility customer and/or function as a pass-through utility customer for Oakland Maritime Support Services (OMSS), Caltrans or the City's Army Base Public Infrastructure Project; and be it

**FURTHER RESOLVED,** that staff is hereby authorized to accept, appropriate and expend funds from Entity (1) OBRA Leasing & Utility Fund (5671) Oakland Army Base Redevelopment Org (02444) OBRA Leasing & Utility Project (P294110) for the purposes of this Resolution; and be it

**FURTHER RESOLVED,** that the City has independently reviewed and considered the environmental determination, and the City finds and determines

that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to CEQA Guidelines sections 15301 (existing facilities), 15268(b) (ministerial projects), and 15061(b)(3) (no significant effect on the environment), each as a separate and independent basis; and be it

**FURTHER RESOLVED**, that the City Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

**FURTHER RESOLVED**, that the City Administrator is further authorized to take whatever action is necessary with the respect to Utilities Program Management Agreement consistent with this Resolution and its basic purposes.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2014**

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

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 APR 16 AM 11:15

Approved as to Form and Legality

  
Office of the City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDMENT TO TERMINATE THE RESOURCE PROGRAM MANAGEMENT SERVICES AGREEMENT WITH THE PORT OF OAKLAND WHEREBY THE PORT PROVIDES ELECTRICITY TO THE CITY-OWNED PORTION OF THE FORMER OAKLAND ARMY BASE**

**WHEREAS**, the City, through its predecessors-in-interest, operated an Interim Leasing Program at the former Oakland Army Base from 2000 to 2013, and needed to provide its Interim Leasing tenants with utility services since the traditional utility service providers in the area refused to operate and maintain, or take ownership of, the Army Base utility system; and

**WHEREAS**, the City determined that the expected interim leasing revenue was significant enough to accept the costs, expense and liability of operating the utility systems; and

**WHEREAS**, based on this Interim Leasing Program cost benefit analysis, the City and Port of Oakland ("Port") decided to operate the utility systems on an interim basis through a joint venture between the City and Port; and

**WHEREAS**, as a component of operating the utilities operation, the City and Port entered into a Resource Management Services Agreement as of January 1, 2005 pursuant to which: (1) Port provides electricity to the Army Base and the City and the Port pay their respective costs therefor; (2) the Parties agreed on the rights to and allocation of a 20-year Base Resource Contract with Western Area Power Administration (Contract No. 00-SNR-381) (herein the "WAPA Contract"); and (3) Port provided Agency and its tenants with a percentage of WAPA's Base Resource power; and

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**WHEREAS**, because the City has wound down most of its leasing activity at the Army Base, and is in the process of negotiating with the Port under a separate agreement to directly provide electrical service to the City's three remaining entities at the Base who need such services; and

**WHEREAS**, the City no longer needs the Port to provide electrical service to the City-owned portion of the Army Base through the Resource Management Services Agreement; now therefore, be it

**RESOLVED**, that the City has independently reviewed and considered the environmental determination, and the City finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to CEQA Guidelines sections 15301 (existing facilities), 15268(b) (ministerial projects), and 15061(b)(3) (no significant effect on the environment), each as a separate and independent basis; and be it

**FURTHER RESOLVED**, that termination of the Resource Management Services Agreement complies with CEQA; and be it

**FURTHER RESOLVED**, that the City Administrator, or his designee, is hereby authorized to negotiate and execute an amendment terminating the Resource Management Services Agreement, which could include assignment of the City's interest in the WAPA Contact to the Port; and be it

**FURTHER RESOLVED**, that the City Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

**FURTHER RESOLVED**, that the City Administrator is further authorized to take whatever action is necessary with the respect to termination of the Resource Management Services Agreement consistent with this Resolution and its basic purposes.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2014**

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

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