

2014 APR 18 AM 9:30

Approved as to Form and Legality

J. Mulvaney
Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 84954 C.M.S.

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

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.

MAY 6 2014

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON, McELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN - 6

NOES - 0

ABSENT - REID, GIBSON McElHaney

ABSTENTION - 0

ATTEST: _____

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