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OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. **13761** C.M.S.

AN ORDINANCE:

(1) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A THIRD AMENDMENT TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (LDDA) BETWEEN THE CITY OF OAKLAND AND OMSS, LLC, FOR DEVELOPMENT OF AN ANCILLARY MARITIME SUPPORT FACILITY FOR TRUCK PARKING AND RELATED SERVICES AT 11 BURMA ROAD AND 2307 WAKE AVENUE, TO EXTEND THE OUTSIDE CLOSING DATE BY ONE YEAR WITH AN EXTENSION PAYMENT OF \$50,000, AND ESTABLISH THE AMOUNTS OF THE FAIR SHARE CONTRIBUTION AND A CONTRIBUTION TO THE WEST OAKLAND COMMUNITY FUND REQUIRED UNDER THE LDDA; AND

(2) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, on July 30, 2014, the City of Oakland ("City") and OMSS, LLC ("OMSS") entered into that certain Ancillary Maritime Support Project Lease Disposition and Development Agreement (the "Original LDDA") related to approximately 16.78 Acres of land located at 11 Burma Road and 2307 Wake Avenue (the "Property") within the Gateway Development Area of the former Oakland Army Base for the development of an ancillary maritime support facility for truck parking and related services (the "Project"); and

WHEREAS, Sections 3.2 and 4.4.1 of the Original LDDA provide formulas for determining the amounts of the Fair Share Contribution (as defined in the Original LDDA) to the cost of standard conditions and/or mitigations and a contribution to the West Oakland Community Fund (the "West Oakland Community Fund Contribution"), respectively; and

WHEREAS, in addition to the foregoing contributions, certain other payments required under the Original LDDA were not internally authorized for acceptance and appropriation; and

WHEREAS, the Original LDDA was amended on August 31, 2017 by that certain First Amendment to the Original LDDA ("First Amendment"), which, among other things, permitted City to pave a portion of the Property for truck parking; and

WHEREAS, on May 3, 2022, the City and OMSS executed a Second Amendment to the Original LDDA, and as amended by the First Amendment (collectively, the “LDDA”) to revise the Schedule of Performance and establish the Outside Closing Date (each as defined in the LDDA) as May 1, 2023, in accordance with Section 10.7.2 of the LDDA; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes the City Administrator, without returning to the City Council, to (a) execute a third amendment to the LDDA (“Third Amendment”) to extend the Outside Closing Date by one (1) year to May 1, 2024 with a nonrefundable extension payment of \$50,000 and to establish the amounts of the Fair Share Contribution and the West Oakland Community Fund Contribution; (b) negotiate and execute such other additions, amendments or other modifications to the foregoing document that the City Administrator, in consultation with the City Attorney’s Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Ordinance; and (c) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney’s Office, to implement the LDDA and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 2. City Council hereby authorizes that the \$50,000 extension payment will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

SECTION 3. City Council hereby authorizes that an approximately \$431,749 Fair Share Contribution, will be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OAB Fair Share Project (1005263), OARB Bay Bridge Gateway Program (SC07).

SECTION 4. City Council hereby authorizes that an approximately \$21,962.76 proportionate share payment, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

SECTION 5. City Council hereby authorizes that an approximately \$267,200 West Oakland Community Fund Contribution plus an additional \$0.0025 per unit of energy sold above 850,000 units per year for contributions, would be accepted and appropriated to the Miscellaneous Trusts Fund (7999), Oakland Army Base Redevelopment Organization (85244), DP850 Administrative Project (1000019) OARB Bay Bridge Gateway Program (SC07).

SECTION 6. City Council hereby authorizes that an additional \$0.0025 per unit of energy sold above 850,000 units per year for contributions, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Workforce Development Organization (85311), West

Oakland Jobs Resource Center Project (1000036), OARB Bay Bridge Gateway Program (SC07).

SECTION 7. City Council hereby authorizes that an additional \$0.01 per unit of energy sold per year up to 850,000 units per year, and \$0.0025 per unit of energy sold above 850,000 units per year, would be accepted and appropriated to the OBRA Leasing & Utility Fund (5671), Oakland Army Base Redevelopment Organization (85244), OBRA Leasing & Utility Project (1001542), OARB Bay Bridge Gateway Program (SC07).

SECTION 8. The City Council hereby finds that this action is exempt under California Environmental Quality Act (“CEQA”) Guidelines section 15063(b)(3) (common sense exemption) since the action under consideration is limited to the Third Amendment to the LDDA, an extension of an existing real estate contract which has no reasonable possibility of an effect on the environment. On a separate and independent basis, the City Council hereby finds that the anticipated environmental effects of this action have been adequately evaluated by the 2002 Oakland Army Base Redevelopment Plan Environmental Impact Report (“EIR”), as amended by the 2012 Addendum (together, the “2002 EIR/2012 Addendum”). Therefore, in accordance with California Public Resources Code Section 21166 and CEQA Guidelines Section 15164, the 2002 EIR/2012 Addendum will comprise the full and complete CEQA evaluation necessary and no further CEQA evaluation will be required for this action.

SECTION 9. All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney’s Office prior to execution by the City and shall be placed on file with the City Clerk.

SECTION 10. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council’s decision.

SECTION 11. The record before this Council relating to this Ordinance, includes without limitation, the Agenda Report for this item and the attachments thereto.

SECTION 12. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 13. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **OCT 03 2023**

AYES – FIFE, ~~CHAVEZ~~, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 7

NOES ~~1~~
ABSENT ~~1~~
ABSTENTION ~~1~~
1 Excused - Gallo

Introduction Date

SEP 19 2023

ATTEST: _____



ASHA REED

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

Date of Attestation: _____

October 9, 2023

NOTICE AND DIGEST

AN ORDINANCE:

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(2) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance authorizes a third amendment to the Ancillary Maritime Support Project Lease Disposition and Development Agreement (as amended, the "LDDA") between the City of Oakland and OMSS, LLC, for development of an ancillary maritime support facility for truck parking and related services at 11 Burma Road and 2307 Wake Avenue in the Gateway Area of the former Oakland Army Base, to extend the Outside Closing Date (as defined in the LDDA) by one (1) year to May 1, 2024 with an extension payment of \$50,000 and establish the amounts of the Fair Share Contribution (as defined in the LDDA) and a contribution to the West Oakland Community Fund required under the LDDA, and adoption of California Environmental Quality Act findings.