

RESOLUTION NUMBER R- 308451

DATE OF FINAL PASSAGE OCT 08 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING CERTAIN ADVANCE
PAYMENTS TO MAINTAIN COMPLIANCE WITH
SAN DIEGO REGIONAL WATER QUALITY CONTROL
BOARD ORDER NO. R9-2012-0024

WHEREAS, the City of San Diego (City) is named as a Discharger in San Diego Regional Water Quality Control Board (RWQCB) Cleanup and Abatement Order No. R9-2012-0024 (Order), and together with other Discharger parties is held responsible by the Order for the cleanup of polluted sediments in the historic shipyard area of San Diego Bay (Shipyard Sediments Site); and

WHEREAS, the schedule in the approved Remedial Action Plan under the Order requires that remedial action commence in September 2013; and

WHEREAS, the basis and extent of the City's liability for cleanup costs under the Order is currently being litigated in United States District Court for the Southern District of California Case No. 09cv2275-WQH (BGS) (Litigation); and

WHEREAS, the City has made certain claims upon insurance policies in connection with the Order, and these claims are still being adjusted and not yet settled; and

WHEREAS, notwithstanding the pending Litigation and insurance claims relating to the City's responsibility for cleanup costs, the City desires, subject to a full reservation of rights in the Litigation and the insurance claims, to cooperate with the cleanup by advancing certain funding so that the remediation can commence according to the ordered schedule; and

WHEREAS, another Discharger under the Order, National Steel and Shipbuilding Company (NASSCO), the current occupant and operator of the southern portion of the Shipyards Sediment Site, through the San Diego Bay Environmental Restoration Trust -South, has prepared plans and specifications for the remedial work in the southern sector of the Shipyard Sediments Site, obtained permits for the work, and is in a position to hire a contractor to proceed with work in that southern sector during September 2013; and

WHEREAS, the Order requires Dischargers to reimburse the RWQCB for oversight costs related to the Order; NOW THEREFORE;

BE IT RESOLVED, by the Council of the City of San Diego as follows:

1. That subject to all the resolutions made herewith, the Council President, in his capacity under Charter section 265(i), or his designee, is authorized and directed to pay, for and on behalf of the City, up to \$6,451,000 from Public Liability Fund No. 720045 to the San Diego Bay Environmental Restoration Trust – South for the purpose of cooperating and maintaining compliance with the Order through the payment of a share of the remedial work costs in the southern section of the Shipyard Sediment Site, contingent on the Chief Financial Officer first furnishing one or more certificates demonstrating that the funds necessary for this expenditure are, or, will be, on deposit in the City Treasury.

2. That the Chief Financial Officer is authorized to transfer \$6,451,000 from the Public Liability Reserve-Contingency Fund 720046 to the Public Liability Fund 720045 for the purpose of funding this action.

3. That subject to all the resolutions made herewith, the Council President in his capacity under Charter section 265(i), or his designee, is authorized, empowered, and directed to pay, for and on behalf of the City, \$261,000 from Public Liability Fund 720045 to the State of

California - San Diego Regional Water Quality Control Board for a portion of its past oversight costs relating to the southern sector of the Shipyard Sediments Site, in accordance with ordering paragraph H of the Order.

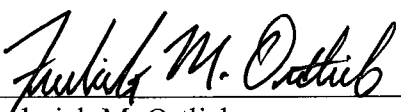
4. That payments authorized pursuant to this Resolution shall be made on the express reservations that the City continues to dispute that it has the obligation to make payments in such amounts, that the payments do not constitute a settlement, that the City admits nothing by making such payments, and that the City reserves the right to reclaim or otherwise adjust the payments in the Litigation and/or the insurance claims.

5. That interim payments to the San Diego Bay Environmental Restoration Trust - South for preparation of the Remedial Action Plan and for design and permitting of work in the South Shipyards Sediment Site shall not exceed \$190,000.

6. That interim payments to the San Diego Bay Environmental Restoration Trust - South for remedial work in the southern Shipyard Sediments Site shall not exceed \$6,000,000.

7. That the Chief Financial Officer is authorized to appropriate and expend a total amount not to exceed \$6,451,000 from Public Liability Fund No. 720045 , solely and exclusively to provide interim funds for remediation of the southern sector of the Shipyards Sediments Site as required by the Order.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Frederick M. Ortlieb
Deputy City Attorney

FMO/jab/cla
9/10/2013
Or.Dept:Risk Mgmt.

Doc. No. 630294_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 9/24/13.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i)

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on SEP 24 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 08 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT

as interim Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By  _____, Deputy

Office of the City Clerk, San Diego, California

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