

7-22-14

(R-2014-846)

#100

RESOLUTION NUMBER R- 309143

DATE OF FINAL PASSAGE JUL 28 2014

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 of the historic shipyard area of San Diego Bay (Shipyards Sediments Site); and

WHEREAS, the schedule of the approved Remedial Action Plan under the Order requires that remedial action for the BAE Systems shipyard commence in September 2014; and

WHEREAS, the basis and extent of the City's liability for cleanup costs under the Order is currently being litigated in the 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, in September 2013 by Resolution R-308451 the Council previously authorized expenditure of funds, subject to reserved rights, for a City contribution toward the cleanup of sediments at the National Steel and Shipbuilding Company (NASSCO) shipyard, and that work at the south NASSCO portion of the Shipyard Sediments Site is now complete; and

WHEREAS, notwithstanding the pending Litigation and insurance claims relating to the City's responsibility for cleanup costs, the City now desires, subject to a full reservation of rights in the Litigation and the insurance claims, to continue to cooperate with the clean up by advancing certain funding for the north section of the Shipyard Sediments Site at the BAE Systems shipyard so that the remediation can commence according to the ordered schedule; and

WHEREAS, BAE Systems as the current occupant and operator of the northern portion of the Shipyards Sediment Site has obtained permits for the work and is in a position to hire a contractor through its remedial trust to proceed with work in that northern area of the Shipyard Sediments Site during September 2014; and

WHEREAS, the Order requires Dischargers to reimburse the State Water Resources Control Board for regulatory 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 restrictions made herewith, the Mayor or his designee, is authorized and directed to pay, for and on behalf of the City, up to \$9,000,000 from the Public Liability Reserve Contingency Fund 720045 to the San Diego Bay Restoration Trust – North and for the purpose of cooperating and maintaining compliance with the Order through the payment of a share of the remedial work costs in the northern section of the Shipyard Sediment Site, and to pay up to \$190,046.18 from the same fund to the State Water Resources Control Board for oversight costs, 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 Mayor or his designee pay a sum not to exceed \$9,000,000 for the advancement of funds to the San Diego Bay Restoration Trust – North to maintain compliance with San Diego Regional Water Quality Board Cleanup & Abatement Order No. R9-2012-0024 for the Shipyard Sediments Site, \$40,046.18 for the payment to the California State Water Resources Control Board (SWRCB) for the past oversight costs in the South shipyard, and \$150,000 for payment to the SWRCB for past oversight costs for the North shipyard, all from the Public Liability Fund 720045.

3. That the Chief Financial Officer is authorized to transfer \$9,190,046.18 from the Public Liability Reserve-Contingency Fund 720046 to the Public Liability Fund 720045 for the purpose of funding all elements of this action.

4. That the Chief Financial Officer is authorized to appropriate and expend, subject to an express reservation of rights, an amount not to exceed \$9,000,000.00 for the advancement of remediation funds to the San Diego Bay Restoration Trust – North from the Public Liability Fund 720045, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for this expenditure are, or will be, on deposit with the City Treasurer.

5. That the Chief Financial Officer is authorized to appropriate and expend an additional amount of \$40,046.18 above the \$261,000 previously authorized by Resolution R-308451 for payment of an amount not to exceed a total of \$301,046.18 to the California State Water Resource Control Board for past oversight costs in the South shipyard from the Public Liability Fund 720045, contingent upon Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for this expenditure are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$150,000.00 for the payment of the California State Water Resources Control Board for the past oversight costs for the North shipyard from the Public Liability Fund 720045, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for this expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:mt
6/25/2014
Or.Dept:Risk Mgmt.
Doc. No.: 811431

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 7/22/14.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk
[Signature]
KEVIN L. FAULCONER, Mayor

Approved: 7/25/14
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 22 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherrri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 JUL 28 2014

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

AUTHENTICATED BY:

KEVIN L. FAULCONER
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
Resolution Number R- <u>309143</u>