CITY OF OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Claudia Cappio
Assistant City Administrator

SUBJECT: Status Report on Coal and Authorization of a Professional Services Contract with Environmental Science Associates

DATE: April 21, 2016

City Administrator Approval

Date: 4/21/16

RECOMMENDATION

To accept a status report as a follow up to the September 21, 2015 informational public hearing on coal's potential health and/or safety impacts, and to Adopt A Resolution (A) Waiving Advertising, Competitive Bidding, and Request for Proposals/Qualifications (RFP/Q) Competitive Selection Requirements and (B) Authorizing the City Administrator or Her Designee to Enter into a Professional Services Contract with Environmental Science Associates in the Amount of $120,000 for the Analysis of Potential Health and/or Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal at the Oakland Army Base West Gateway Site Without Returning to City Council.

EXECUTIVE SUMMARY

On September 21, 2015, the City Council held an informational public hearing about the potential health and/or safety impacts of the transport, transloading, handling and export of coal products through or within the City of Oakland. Comments and information were also gathered about the adequacy of existing regulations and the City's ability to regulate the transportation and handling of coal products. The City Council requested that staff review and evaluate all the information and public testimony and assess what types of expertise and assistance may be necessary to develop potential follow up actions for the City Council. On February 16, 2016, staff returned to the City Council with an outline of a draft approach and preliminary scope of work from Environmental Science Associates (ESA) that included major work tasks, schedule and budget. The Council and members of the public expressed concerns about aspects of this work, and staff has since revised the work program, eliminating some work tasks and narrowing others. The draft scope was sent out for public comment on March 25, 2016 and five letters were received. Staff further refined the work program and recommends that City Council adopt the attached resolution, authorizing the City Administrator to enter into a professional services contract with ESA. Due to the specialized expertise involved in this work, it is further recommended that the Council waive the advertising, competitive bidding and RFP/Q process for this work.

Item: _____
City Council
May 3, 2016

BACKGROUND/LEGISLATIVE HISTORY

Previous City Council Actions

Two previous City Council actions are most relevant to the current set of concerns about the transportation, transloading, handling and export of coal at the Oakland Army Base. In June, 2014, the Council adopted Resolution No. 85054 C.M.S., A Resolution Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City of Oakland.

In 2013, the City Council adopted a Development Agreement (DA) for the Bulk Commodities Terminal at the Army Base West Gateway Parcel. This agreement vested rights to the developer (CCIG) to operate the facility under the current set of laws at the time of adoption, with limited exceptions. No specific restriction or prohibition on coal was made part of that agreement. There is an exception related to health and/or safety (Section 3.4.2 of the DA). Specifically, the DA creates a two part test to determine if the adoption of a new health and/or safety regulation is permissible. First, the regulation must be permissible under federal and state constitutions, statutes and laws. Second the City must determine, "based on substantial evidence and after a public hearing that a failure to [adopt the ordinance] would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety." Therefore, supplemental analysis and review must be undertaken to ascertain whether there is substantial evidence to base any new rule change governing the bulk commodities terminal.

Revised Scope of Work

The ESA March 25, 2016 draft scope of work providing the City assistance on the review and organization of the public testimony and information submitted during the public hearing comment period ending in October, 2015 was further revised (***Attachments 1 and 2***) in response to comments received at the February 16, 2016 public hearing and five comment letters received by April 1, 2016 (***Attachments 3-7***). The work still includes an assessment of the "basis of design" (BOD) documents and materials provided by CCIG, the terminal developer. The commodities that will be studied include bituminous coal, fuel oils, gasoline, crude oil and petcoke; the commodities that were the focus of City Council Resolution No. 85054 C.M.S. and listed within the Draft BOD dated July 21, 2015. The framework of analysis is specifically limited to the potential health and/or safety effects to people. This report will be submitted to the City Council in their future deliberations concerning any follow up actions to protect the health and/or safety of occupants or users of the Project, adjacent neighbors, or any portion of thereof, or all of them.

Additional Public Health Impact Proposal

On April 14, 2016, the City received an unsolicited proposal from Human Impact Partners (HIP) to conduct a public heath impact analysis of the transportation, loading, unloading, storage and export of coal through the OBOT (***Attachment 8***). City staff has reviewed the proposal in comparison with the revised proposal submitted by ESA. While there are similarities between the two proposals, such as a review of the public record and a summary of the available data

and evidence of coal's public health impacts in Oakland, staff has concluded that the HIP proposal is not as comprehensive as ESA's and recommends it not be further considered. Specifically:

- The HIP proposal only appears to addresses health impacts and does not propose to evaluate whether there is a substantial danger related to safety. Alternatively, ESA's proposal would evaluate the project's potential safety risks and consequences related to road traffic congestion at grade crossings, derailment, fire, explosions, and upset (spillage conditions).

- The HIP proposal includes the assembling of an expert panel to guide the analysis, review the preliminary findings, and ultimately address whether there is substantial evidence that the transportation, loading, and unloading of coal will pose substantial hazards to public health and safety in Oakland. Alternatively, ESA proposes to assist a City determination of whether the information in the public record constitutes "substantial evidence" that would support a findings of "substantial endangerment" pursuant to and consistent with Section 3.4.2 and 3.4.4 of the Development Agreement. City staff does not believe an expert panel is neither necessary nor warranted and will, in all likelihood, further delay the process. Moreover, previous commenters were concerned that the City Council retain its authority to make the determination as to "substantial evidence"; the HIP proposal would give the expert panel that power.

- The HIP proposal only evaluates the effects of coal. The ESA scope would analyze health and/or safety impacts related to different types of coal as well as fuel oils, gasoline and petcoke consistent with the 2014 Oakland City Council Resolution No. 85054 C.M.S. opposing transportation of these fossil fuel commodities through Oakland.

- The HIP proposal does not include a complete evaluation of the terminal developer's BOD for the bulk commodities terminal. The ESA proposal would confirm the project design, examine the BOD and drawings, note any differences within the public record, provide necessary clarifying questions to the developer, and describe the terminal facilities, operations and rail components. This understanding of the project is an important component in order to ensure an accurate and thorough analysis.

- Finally, the HIP proposal is conceptual and includes the further development of a detailed scope/process to conduct the analysis. Furthermore, the proposal does not include a detailed description of the tasks or a schedule for completion of a final report, nor a firm budget. City staff believes that an additional 2-4 months would be necessary to negotiate the scope/budget and enter into a contract.

Therefore, staff has concluded that the proposal should not be further considered and recommends that the City Council proceed with the authorization to enter into a contract with ESA.

Requirements for Waiver of Advertising, Competitive Bidding and Request for Proposal Competitive Selection

The City's Purchasing Ordinance requires staff to conduct advertising and competitive processes to purchase products, supplies, equipment and services (Oakland Municipal Code (OMC) Title 2, Chapter 2.04, Sections 2.04.050 and 2.04.051.) The City Council may waive those processes upon a finding and determination that it is in the best interests of the City to do so.

ANALYSIS AND POLICY ALTERNATIVES

City staff completed a review of the public testimony and other reports and information that was submitted during the September, 2015 informational public hearing and afterwards. It became evident that an environmental consulting firm with broad, interdisciplinary capacity would offer the type of specialized expertise that could be called upon when necessary during the study period. Current staff resources, capacity and topical expertise can thus be supplemented to provide the strongest informational and analytical basis in support of future Council consideration and possible action protecting potential health and/or safety effects. Environmental Science Associates (ESA) has the necessary expertise, capacity and experience and has worked collaboratively and successfully with and for the City for many years, on many different types of projects.

As work progresses, the consultants could be directed to provide a more detailed analysis on a health and/or safety aspect or risk associated with coal or the other commodity materials that have been identified.

FISCAL IMPACT

This work was not authorized under the City's 2015-17 Budget. Staff recommends that funding for this contract be taken from the Undesignated General Purpose Fund Balance.

ACTION REQUESTED OF THE CITY COUNCIL

To Adopt A Resolution (A) Waiving Advertising, Competitive Bidding, and Request for Proposals/Qualifications (RFP/Q) Competitive Selection Requirements and (B) Authorizing the City Administrator or Her Designee to Enter into a Professional Services Contract with Environmental Science Associates in the Amount of $120,000 for the Analysis of Potential Health and Safety Effects of Certain Commodities Proposed at the Oakland Bulk and Oversized Terminal at the Oakland Army Base West Gateway Site Without Returning to City Council.

For questions regarding this report, please contact Claudia Cappio, Assistant City Administrator, at 238-6654.

Respectfully submitted,

Claudia Cappio, Assistant City Administrator

Attachments:

1) Revised Draft Scope of Work (Clean Version)
2) Revised Draft Scope of Work (Redline Version)
3) Email from Albert Kueffner on Draft Scope of Work – 4/1/16
4) Email from Dan Nourse (ROJE Consulting) on Draft Scope of Work – 3/28/16
5) Letter from No on Coal in Oakland – 4/1/16
6) Letter from Stice-Block – 4/1/16
7) Letter from Environmental Coalition (CBE, Sierra Club, SF Baykeeper, W. Oakland Environmental Indicators Project, Asian Pacific Environmental Network) – 4/1/16
8) Human Impact Partners Proposal, 4/14/16

Attachment 1

ESA

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REVISED PUBLIC REVIEW DRAFT

City of Oakland Review of Public Comments Received Regarding Potential Health and/or Safety Effects of Coal and Other Hazardous Fossil Fuel Materials Proposed at the Oakland Bulk and Oversized Terminal

Draft Approach and Preliminary Scope of Work
April 6, 2016

I. OVERVIEW

ESA is pleased to provide this proposal to review public comments that the City received regarding the potential health and/or safety effects of rail transportation and related handling of certain commodities proposed by the Oakland Bulk and Oversized Terminal (OBOT) at the former Oakland Army Base ("Project"). As articulated by the City, the purpose of this review is to assist the City in determining whether the information in its public record constitutes "substantial evidence[1]" that would support a finding of substantial endangerment, pursuant to and consistent with the requirements of the *2013 Development Agreement By and Between City of Oakland and Prologis CCIG Oakland Global, LLC Regarding the property and Project Known as "Gateway Development/Oakland Global",* (DA) sections 3.4.2 and 3.4.4. [2]

Specifically, pursuant to DA section 3.4.2, if the City finds, based upon substantial evidence, that **"a failure to [adopt the ordinance] would place existing or future <u>occupants or users of the Project, adjacent neighbors</u>, or any portion thereof, or all of them, in a condition <u>substantially dangerous to their health or safety,</u>"** the City may impose new regulations on the Project. In addition, under DA section 3.4.4, the City can impose new Building and/or Fire Codes on the Project.

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1 "Substantial evidence" referred to in this document is as defined in Section 15384 of the California Environmental Quality Act (CEQA): (a) "Substantial evidence" means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.... Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence; (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

2 "Public comments" and "public record" in this document refers to existing documents submitted to the City and/or listed in the City's project record including comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S, comments received by October 7, 2015, on the Army Base Redevelopment Project any additional comments or evidence uncovered while reviewing the public record, and any additional comments received. (See scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of comments.)

The ESA analysis of the public record will be presented in a Report that will categorize and assess the public comments and information that was submitted in support of those comments to assist the City Council in making a determination regarding whether or not the information in the public record constitutes substantial evidence that would support a finding of substantial endangerment.

The scope of this review is focused on those commodities listed in the Proponents Draft Basis on Design (BOD) dated July 21, 2015 and that are also directly or indirectly addressed in the 2014 Oakland City Council Resolution No. 85054 C.M.S., opposing transportation of coal and other "hazardous fossil fuel materials" through the Oakland. Specifically, these commodities include:

a) bituminous coal (washed coal, clean coal, or soft coal);
b) fuel oils (heating oil, off-road diesel fuel, high-sulfur diesel, residual fuel oils for furnaces and boilers, and fuel for low and medium speed diesel engines); and
c) gasoline (all grades)
d) crude oil
e) petcoke

The scope of this review is also specifically limited to the potential health and/or safety effects to people, pursuant to the required finding in DA section 3.4.2, above.[3] This is not a CEQA review, and is not limited to CEQA topics or the use of regulatory standards as significance criteria, but rather will consider the public comments as they may apply to health and/or safety effects, regardless of whether the mechanisms for these effects are fully understood or documented in peer-reviewed scientific sources.

ANALYSIS

ESA will review background information and public comments that could be useful to the City in determining whether or not there is "substantial evidence" that the rail transport and terminal activities for the export of coal (or other hazardous fossil fuel materials) would be "substantially dangerous" to workers or the nearby population.

The work product will be a focused short-term initial review that may provide adequate evidence for City determinations addressing DA sections 3.4.2 and 3.4.4.

The elements of Analysis are:

- *Task 1.1: Confirm OBOT Project Design*
- *Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials*

[3] For example, the Study Area will not encompass the potential for bulk materials to be introduced into Bay waters by settlement.

- *Task 1.3: Review Public Input to Date on Army Base Redevelopment Project*
- *Task 1.4: Summarize Existing Regulatory Setting*
- *Task 1.5: Commodities Characterization*
- *Task 1.6: Prepare Draft Report*
- *Task 1.7: Revise/Prepare Final Report (as needed) / Meeting Attendance*
- *Task 1.8: Detailed Scoping and Consultation*

ESA and Subconsultants[4]

The proposed ESA Team is comprised of air quality and hazardous materials and rail transportation risk experts, particularly those with expertise regarding coal. Proposed subconsultants include **Adelante Consulting (Barbara Toole O'Neil)** and **MRS**.

COST-HOURS OVERVIEW

Section IV (Table 1) provides a preliminary draft of the labor and cost effort, which is intended as an informed starting point for discussion of this scalable scope of work. As drafted, we estimate a total of approximately **548 hours ($120K)**, *including* limited engagement by the subconsultants (66hours), as well as detailed scoping and consultation by ESA with the City necessary to prepare the draft approach and scope of work presented herein (65 hours).

SCHEDULE OVERVIEW

Section V (Table 2) summarizes a preliminary draft schedule of the proposed work, also intended as a starting point for refinement in collaboration with the City. As with the scope of work, the initial schedule makes informed assumptions and is scalable to meet the City's intended milestone of a City Council determination in summer 2016. The draft shows ESA performing work over a **four-week period**, providing a draft Report to the City in **late May, 2016**.

II. DRAFT APPROACH / SCOPE

Task 1.1: Confirm OBOT Project Design

- Confirm with the City the proponent's project design, as specified in the Draft Basis on Design (BOD) dated July 21, 2015 to be used as the project description considered during the review of the public input (Task 1.3).
- Based on information provided to date, the proposed commodities that are expected to be imported to and exported from OBOT, and considered in this scope

[4] Throughout this document, ESA proposes to conduct all tasks except where specifically noted as "[Named Subconsultant]" or "[ESA and Named Subconsultant]."

of work, are bituminous coal (washed coal, clean coal, or soft coal); fuel oils (heating oil, off-road diesel fuel, high-sulfur diesel, residual fuel oils for furnaces and boilers, and fuel for low and medium speed diesel engines); and gasoline (all grades) (the latter two being hazardous fossil fuels and having similar adverse characteristics as "crude oil" per the City's 2014 Resolution).

- Examine BOD and Drawings. Review the BOD Material Safety Data Sheets for the proposed commodities. Note differences in BOD, developer's reports, and City-generated documents in current City record. Provide the City a list of questions and specific requests for clarifying information from the proponent.[5]
- Describe proponent's proposed facilities and infrastructure (distinguish existing from any proposed new changes for clarity about the baseline) based on a determination of the project description to be evaluated in this analysis.
- Describe proponent's proposed operations. Describe the operations to be evaluated in this analysis, including structural and procedural measures proposed to control emissions and prevent spills of bulk commodities. Identify the characteristics of the BOD versus proponent-initiated mitigating measures that have been proposed for OBOT.
- Include consideration of the existing agreement between CCIG (on behalf of OBOT) and East Bay Municipal Utility District regarding rail traffic.
- Note any differences in throughput by commodity type, facilities design and projected operations.
- Note the proposed combination of coal, fuel oils, and gasoline and projected operations based on these specific commodities transported through the OBOT at the same time.
- Describe proponent's proposal to confirm how the proposed new rail will be classified and constructed to be adequate and appropriate for use in transporting the heavy loads associated with coal in particular.

Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials

- Characterize the OBOT activities to be considered within the scope of the Review, which include rail transportation of coal, fuel oils, and gasoline within adjacent areas, but limited to the Oakland city limits (see scope assumptions in Section IV, Labor and Cost Estimate, regarding this task) ("Study Area") (as determined by the

[5] ESA will promptly submit this data request to the City in order to expedite obtaining the requested information from the Proponent.

City); and terminal activities such as transloading of these commodities from railcar at the bulk terminal; stockpiling or other storage of these commodities pending onboarding for marine transport; and onboarding of these commodities for marine transport. These activities are collectively referred to as "terminal activities" throughout this document.

- The review will consider the *combination* of proposed bulk commodities listed above, if proposed by the proponent.
- This scope assumes that the scope of the review does not include the: (i) rail transportation of coal, fuel oils, gasoline, crude oil, or petcoke from the point of origin to the Study Area, except as the effects occur along the rail lines within the Study Area (ii) transportation of coal, fuel oils, gasoline, crude oil, or petcoke by ship from the point at which is the commodity is on-boarded in the Study Area to its ultimate destination.

Task 1.3: Review Public Input to Date on Army Base Redevelopment Project

- Thoroughly review the existing documents and comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S, comments received by October 7, 2015 on the Army Base Redevelopment Project (indexed binder previously provided to ESA by the City), any additional comments or evidence uncovered while reviewing the public record, and any additional comments received, as well as other relevant documents (as determined by the City) including the 2012 Amendment to the 2002 Army Base Redevelopment Project EIR, East Bay Municipal Utility District/City Memorandum of Agreement regarding rail traffic. (See scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of comments in this task.)

- Prepare and maintain for inclusion in the Report a comprehensive list of information and sources provided in public comments that are considered appropriate for review and consideration throughout the work described in this scope. Organize/categorize information and sources from the public comments according to particular aspects of potential health and/or safety effects (what the potential effects are, and how they may occur) relevant to the consideration of substantial endangerment, pursuant to DA section 3.4.2.
- Health-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following.
    - Summary of existing documentation related to adjacent neighbors of the Project who are disproportionately at an increased risk of health effects due to their race, ethnicity, income, and/or level of exposure to other health risks.

- Potential levels of fugitive coal dust;
- Estimated diesel particulate and other locomotive air emissions in the Study Area;
- Thresholds that employ metrics that do and do not require receptor modeling to develop specific human exposure projections;
- Various particulate and other air pollutant characteristics and quantities by commodity and by the specific design and operation of receiving, storage, and shipping facilities;
- Incremental locomotive emissions in West Oakland resulting from the transport of coal, specifically considering that coal trains are among the heaviest and require additional fuel and produce additional elevated emissions; and
- Methodology to quantify comparative effects of hauling coal versus other commodities.

- Safety-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following:
  - Available thresholds relevant to the potential risks and consequences of road traffic congestion (at grade crossings), derailment, fire, combustion (including spontaneous combustion), explosion, and upset conditions (including spillage), in the Study Area;
  - Existing studies that distinguish among the characteristics of coal, fuel oils, gasoline, crude oil, or petcoke that contribute to or minimize safety risks.

- Greenhouse Gas Emissions and Climate Effects-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following:
  - Off-gassing of GHGs, including carbon monoxide and methane from coal storage piles, and release of short-lived climate pollutants; see scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of this task);
  - Potential for incremental increase of GHG emissions locally and globally from storing coal in the Study Area;
  - Existing information regarding how burning coal overseas and receiving, storing, and shipping coal at the OBOT could affect air pollution and global warming/sea level rise for the Study Area;
  - Quantified incremental increase in GHG emissions as CO2 equivalent;

- Method and/or calculation of GHG contribution from coal storage piles at OBOT;

- Existing agency-developed health and/or safety thresholds to be used in the determination of whether there is "substantial evidence" that the project is "substantially dangerous"; see scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of this task);
- Potential health and/or safety risks associated with the proposed rail transport through the Study Area and terminal activities for coal, fuel oils, gasoline, crude oil, or petcoke at OBOT for onboarding to marine vessels.

Task 1.4: Summarize Existing Regulatory Setting

- Summarize screening levels set by the U.S. Environmental Protection Agency and/or the California Environmental Protection Agency for concentrations of coal-specific trace elements that could be ingested, including in dust form or via the consumption of surface water or produce grown in the Study Area.
- Identify existing coal dust performance requirements of relevant entities, potentially including:
  - Federal Railroad Administration, BNSF Railway (including BNSF's load profile template)[6] and/or UP;
  - Board of Port Commissioners of the Port of Oakland;
  - BAAQMD and/or the California Air Resources Board; U.S. EPA
  - State Water Resources Control Board and/or the Regional Water Quality Control Board; and
  - Other City environmental requirements.
  - 2012 Army Base Standard Condition of Approval / Mitigation Monitoring Reporting Program

Task 1.5: Commodities Characterization

- As needed to supplement the public information reviewed in Task 1.3, Describe and compare the characteristics of coal for export from OBOT.
  - Describe and compare U.S. coal types generally, and specifically Utah coal types by County and/or mine, as related to health and/or safety. Include a simplified description of chemical characteristics that contribute to or minimize potential human health and/or safety effects,

[6] BNSF, 2015. Coal Dust Frequently Asked Questions. [http://www.bnsf.com/customers/what-can-i-ship/coal/coal-dust.html#1] Accessed November 30, 2015.

including the coal composition and potentially harmful trace constituents like silica (crystalline silica respirable fraction) mercury, lead, arsenic, and barium as well as polycyclic aromatic hydrocarbons (PAHs) and other off-gasses including methane.[7]

- Describe coal dust as a form of particulate matter (PM) and explain how it can be generated during rail transport, storage and transloading activities.
- Summarize the factors affecting the total amount of fugitive coal dust generated,[8] including the factors affecting the volume of coal dust released during train idling or waiting, offloading, storage, and on-boarding to marine vessel. Estimate the volume of coal dust released during each activity per day, month and year.
- Describe mobilization and factors influencing mobilization of coal dust to achieve exposure to humans via inhalation, ingestion and leaching into surface water and ground water.
- Provide a brief summary review of existing studies of emission, dispersion, and deposition of coal dust from rail cars and provide a high-level overview of the methods that prior studies have used to evaluate potential effects.[9] Specific examples of conservative assumptions will be identified.[10]
- Identify potential coal dust palliatives (also referred to as surfactants or "topping agents") and distinguishing characteristics of each, including

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7 A potential reference to be evaluated regarding coal characteristics includes the coal dust analysis provided as Appendix G of the Surface Transportation Board's analysis for the Tongue River Railroad project. If analysis is referenced, also describe the history, current status, and relevant comments received in response to the Draft EIS of the project as part of the evaluation.

8 Section 4 (Environmental Impacts Associated with Coal Transportation) of the U.S. EPA's May 1978 Environmental Assessment of Coal Transportation (p. 59 et seq.) will be reviewed to inform this discussion. USEPA, 1978, Environmental Assessment of Coal Transportation. EPA-600/7-78-081. [http://www.scribd.com/ doc/129807057/9100T7M9] May 1978. Section 6.3.3.1 of the Surface Transportation Board's EIS (p. 6-6 et seq.) for the Tongue River Railroad Project (and references cited therein) also will be reviewed.

9 See, e.g., Chapter 6, *Coal Dust*, of the EIS being prepared by the Surface Transportation Board for the Tongue River Railroad. If analysis is referenced, also describe the history, current status, and relevant comments received in response to the Draft EIS of the project as part of the evaluation. See also Kotchenruther (EPA Region 10), 2013. Fugitive Dust from Coal Trains: Factors Effecting Emissions & Estimating PM2.5. [http://lar.wsu.edu/nw-airquest/docs/201306_meeting/20130606_Kotchenruther_coal_trains.pdf]

10 An example of this is provided in SNC-Lavalin, 2014, on page 131 et seq., although we do not anticipate that the referenced level of detail would be needed or helpful in this project.

known and unknown chemical composition and any health concerns related to ingredients.[11]

- Review surfactants and their scientifically-measured (ideally peer-reviewed) effects on reducing fugitive coal dust from open top coal trains.

- As mentioned in Task 1.2, describe the effects of handling coal, fuel oils, gasoline, crude oil, and petcoke through the OBOT all at once (i.e., specific bulk commodities most likely to be handled through OBOT based on the BOD and/or that are addressed by the 2014 Oakland Resolution). Certain commodities are excluded from this review due to their lack of health and/or safety risk issues (or low risk) and/or regulation by the fire and building codes.

[Subconsultants, Adelante Consulting (Barbara Toole-O'Neil); and MRS]

Task 1.6: Prepare Draft Report

(2) ESA will conduct the following tasks to prepare the Draft Report:

- Categorize, synthesize, and summarize the information gained and reviewed through Task 1.1 through Task 1.5, detailed above; the categorization of information gained from those preceding tasks may be further refined for purposes of the Draft Report.
- Prepare a Draft Report containing the categorization, synthesis, summary, evaluation, and references record of the public comments and other information in the City public record.

Task 1.7: Revise/Prepare Final Report (as needed) / Meeting Attendance

- ESA understands that the City may circulate the Report to the public and project proponent for review and comment. Under this task, ESA will revise the finalize or modify the Report, as needed or directed. Attendance at one (1) public meeting is assumed to hear public comment on the Report. Preparation of responses to comments is not assumed.

Task 1.8 Detailed Scoping and Consultation

(3) This task includes ESA's work and communication with City staff to understand the background and context of the OBOT proposal relative to the DA and the City's 2014 Resolution, and to assist the City in developing the technical aspects

[11] This discussion would further develop and refine information provided in Table 3-8 (Composition of Dust Palliatives) provided in SNC-Lavalin, 2014. Human Health Risk Assessment: Fraser Surry Docks Direct Transfer Coal Facility Revised Final Report. July 18, 2014.

of a scope of work pertinent to the City determining whether the information in its public record constitutes substantial evidence of substantial endangerment

III. PROPOSED SUBCONSULTANTS

ESA has identified qualified subconsultants who will provide specialized expertise required for certain tasks identified in this preliminary scope, and referenced throughout the scope. ESA has previous working relationships with each of these firms and expert analysts. **Adelante Consulting (Barbara Toole O'Neil)**and **MRS** will focus on Task 1.5 (Commodities Characterization), with assistance as needed in Task 1.3 (Review Public Input to Date). However, it is anticipated that subconsultants will provide consultation as needed throughout the work and participate in other various tasks as needed.

IV. LABOR AND COST ESTIMATE

Table 1 presents a revised preliminary draft labor and cost estimate for the proposed work, revised in response to public comments received by April 1, 2016, on the Draft Scope of Work, dated March 25, 2016. As discussed with City staff to date, this process and the proposed deliverables are fairly unique, and the actual effort required could vary widely based on the quantity, scope and nature of public engagement and response, as well as the actual process that the City undertakes. This revised initial estimate factors in this uncertainty, but represents thoughtful initial estimates based on our understanding and initial review of information the City initially provided to ESA.

TABLE 1- PRELIMINARY DRAFT LABOR AND COST ESTIMATE

Task	ESA Hours	Subconsultant Hours (Estimated based on Average Hourly Bill Rate)	Total Hours	Total Approximate Cost
Task 1.1: Confirm OBOT Project Design	38		38	$8,219
Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials	~~42~~58		~~42~~58	~~$8,683~~ $12,113
Task 1.3: Review Public Input to Date on Army Base Redevelopment Project	~~86~~100	~~9~~22	~~95~~122	~~$20,459~~ $26,865
Task 1.4: Summarize Existing Regulatory Setting	40		40	$8,302
Task 1.5: Commodities Characterization	58	44	102	$23,541
Task 1.6: Prepare Draft Report	64		64	$13,596
Task 1.7: Revise/Prepare Final Report (as Needed) / Meeting Attendance	~~48~~58		~~48~~58	~~$10,578~~ $12,587
Task 1.8: Detailed Scoping and Consultation	65		65	$13,055
Subtotal	~~441~~481	~~53~~66	~~494~~548	~~$ 106,433~~ $ 118,278
Direct Expenses (Print/Deliveries)				$1,380
TOTAL HOUR/COST ESTIMATES	~~441~~481	~~53~~66	~~494~~548	~~$ 107,813~~ $ 119,658

Scope Assumptions

The following key assumptions and limitations pertain to specific April 6, 2016 revisions made to the preliminary draft labor and cost estimate and provided for clarity:

Task 1.2:

(1) *Study Area*. This scope of work assumes that the "Study Area" will be limited to within the geographic boundary of the city of Oakland. Analysis of a larger Study Area is not assumed in this scope or cost estimate and may warrant scope/cost modifications.

Task 1.3:

(2) *Modeling*. This scope of work does not include tasks that involve any quantitative modeling.

(3) *Thresholds*. This scope of work does not include the development of any new thresholds.

(4) *Scope of 2014 Public Comments*. This scope of work assumes up to 8 hours (approximately $1,600) of additional ESA effort to "review existing documents and comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S." Additional effort due to the actual nature and number of those comments may warrant scope/cost modifications.

(5) *Scope of Additional Future Comments*. This scope of work assumes up to 10 hours (approximately $2,060) of additional ESA effort to review " any additional comments or evidence uncovered while reviewing the public record...." Additional effort due to the actual nature and number of those comments may warrant scope/cost modifications.

Overall:

(6) *Expenditure of Effort by Task*. Given the fairly unique nature of the proposed process and deliverables addressed by this scope of work (as describe above in this Section IV), this budget assumes flexibility in the expenditure of effort/hours across tasks, as necessary to accomplish the work described. For example, as work proceeds, fewer hours may be warranted for certain tasks while more hours may be warranted for another tasks.

V. PRELIMINARY DRAFT SCHEDULE

Table 2 presents a preliminary draft schedule of the proposed work, intended as a starting point for refinement in collaboration with the City. Key assumptions are listed as table notes and apply approaches and administrative draft review durations that the City generally applies for its review of certain environmental review processes. It is assumed that certain tasks may warrant interim review and feedback from the City.

(Table 2 presented on the following page.)

TABLE 2 - PRELIMINARY DRAFT SCHEDULE

Tasks	Duration (Weeks)	Start	End
ESA-City Approach/Scope Review and Revision		1/11/16	3/25/16
ESA Team Work Tasks	4 wks	4/26/16	5/24/16
[illegible]			
[illegible]			
[illegible]			
[illegible]			
[illegible]			
[illegible]			
City Review / ESA Revision	2.5 wks[a]	5/25/16	6/8/16
Publish Report (17-day public review)		6/10/16	6/27/16
[illegible]		As needed	
Public Hearing #2 [b]		July 2016	

a Assumes one round of City review and Report clarifications by ESA.

b Public Hearing #1 assumed to have occurred in Fall 2015.

VI. QUALIFICATIONS AND KEY RESUMES

Resumes of key ESA technical staff and subconsultants for this proposed scope of work are provided to the City under separate cover.

Attachment 2

350 Frank H. Ogawa Plaza, Suite 300
Oakland, CA 94612
510.839.5066 phone
510.896.5825 fax

www.esassoc.com

REVISED PUBLIC REVIEW DRAFT

City of Oakland Review of Public Comments Received Regarding Potential Health and/or Safety Effects of Coal and Other Hazardous Fossil Fuel Materials Proposed at the Oakland Bulk and Oversized Terminal

Draft Approach and Preliminary Scope of Work
~~March 25~~April 6, 2016

I. OVERVIEW

ESA is pleased to provide this proposal to review public comments that the City received regarding the potential health and/or safety effects of rail transportation and related handling of certain commodities proposed by the Oakland Bulk and Oversized Terminal (OBOT) at the former Oakland Army Base ("Project"). As articulated by the City, the purpose of this review is to assist the City in determining whether the information in its public record constitutes "substantial evidence[1]" that would support a finding of substantial endangerment, pursuant to and consistent with the requirements of the *2013 Development Agreement By and Between City of Oakland and Prologis CCIG Oakland Global, LLC Regarding the property and Project Known as "Gateway Development/Oakland Global"*, (DA) sections 3.4.2 and 3.4.4. [2]

Specifically, pursuant to DA section 3.4.2, if the City finds, based upon substantial evidence, that **"a failure to [adopt the ordinance] would place existing or future occupants or users of the Project, adjacent neighbors, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety,"** the City may impose new regulations on the Project. In addition, under DA section 3.4.4, the City can impose new Building and/or Fire Codes on the Project.

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1 "Substantial evidence" referred to in this document is as defined in Section 15384 of the California Environmental Quality Act (CEQA): (a) "Substantial evidence" means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.... Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence; (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

2 "Public comments" and "public record" in this document refers to existing documents submitted to the City and/or listed in the City's project record ~~that were~~including comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S, comments received by October 7, 2015, on the Army Base Redevelopment Project~~.~~ any additional comments or evidence uncovered while reviewing the public record, and any additional comments received. (See scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of comments.)

The ESA analysis of the public record will be presented in a Report that will categorize and assess the public comments and information that was submitted in support of those comments to assist the City Council in making a determination regarding whether or not the information in the public record constitutes substantial evidence that would support a finding of substantial endangerment.

The scope of this review is focused on those commodities listed in the Proponents Draft Basis on Design (BOD) dated July 21, 2015 and that are also directly or indirectly addressed in the 2014 Oakland City Council Resolution No. 85054 C.M.S., opposing transportation of coal and other "hazardous fossil fuel materials" through the Oakland. Specifically, these commodities ~~are~~include:

a) bituminous coal (washed coal, clean coal, or soft coal);
b) fuel oils (heating oil, off-road diesel fuel, high-sulfur diesel, residual fuel oils for furnaces and boilers, and fuel for low and medium speed diesel engines); and
c) gasoline (all grades)
d) crude oil
e) petcoke

The scope of this review is also specifically limited to the potential health and/or safety effects to people, pursuant to the required finding in DA section 3.4.2, above.[3] This is not a CEQA review, and is not limited to CEQA topics or the use of regulatory standards as significance criteria, but rather will consider the public comments as they may apply to health and/or safety effects, regardless of whether the mechanisms for these effects are fully understood or documented in peer-reviewed scientific sources.

ANALYSIS

ESA will review background information and public comments that could be useful to the City in determining whether or not there is "substantial evidence" that the rail transport and terminal activities for the export of coal (or other hazardous fossil fuel materials) would be "substantially dangerous" to workers or the nearby population.

The work product will be a focused short-term initial review that may provide adequate evidence for City determinations addressing DA sections 3.4.2 and 3.4.4.

The elements of Analysis are:

- *Task 1.1: Confirm OBOT Project Design*
- *Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials*

[3] For example, the Study Area will not encompass the potential for bulk materials to be introduced into Bay waters by settlement.

- *Task 1.3: Review Public Input to Date on Army Base Redevelopment Project*
- *Task 1.4: Summarize Existing Regulatory Setting*
- *Task 1.5: Commodities Characterization*
- *Task 1.6: Prepare Draft Report*
- *Task 1.7: Revise/Prepare Final Report (as needed) / Meeting Attendance*
- *Task 1.8: Detailed Scoping and Consultation*

ESA and Subconsultants[4]

The proposed ESA Team is comprised of air quality and hazardous materials and rail transportation risk experts, particularly those with expertise regarding coal. Proposed subconsultants include **Adelante Consulting (Barbara Toole O'Neil)** and **MRS**.

COST-HOURS OVERVIEW

Section IV (Table 1) provides a preliminary draft of the labor and cost effort, which is intended as an informed starting point for discussion of this scalable scope of work. As drafted, we estimate a total of approximately ~~494~~548 **hours ($~~108K~~120K)**, *including* limited engagement by the subconsultants (~~53 hours~~66 hours), as well as detailed scoping and consultation by ESA with the City necessary to prepare the draft approach and scope of work presented herein (65 hours).

SCHEDULE OVERVIEW

Section V (Table 2) summarizes a preliminary draft schedule of the proposed work, also intended as a starting point for refinement in collaboration with the City. As with the scope of work, the initial schedule makes informed assumptions and is scalable to meet the City's intended milestone of a City Council determination in summer 2016. The draft shows ESA performing work over a **four-week period**, providing a draft Report to the City in **late May, 2016**.

II. DRAFT APPROACH / SCOPE

Task 1.1: Confirm OBOT Project Design

- Confirm with the City the proponent's project design, as specified in the Draft Basis on Design (BOD) dated July 21, 2015~~, and subsequently specified in the project~~

[4] Throughout this document, ESA proposes to conduct all tasks except where specifically noted as "[Named Subconsultant]" or "[ESA and Named Subconsultant]."

~~proponent's correspondence of January 20, 2016,~~ to be used as the project description considered during the review of the public input (Task 1.3).

- Based on information provided to date, the proposed commodities that are expected to be imported to and exported from OBOT, and considered in this scope of work, are bituminous coal (washed coal, clean coal, or soft coal); fuel oils (heating oil, off-road diesel fuel, high-sulfur diesel, residual fuel oils for furnaces and boilers, and fuel for low and medium speed diesel engines); and gasoline (all grades~~).~~) (the latter two being hazardous fossil fuels and having similar adverse characteristics as "crude oil" per the City's 2014 Resolution).
    - Examine BOD and Drawings. Review the BOD Material Safety Data Sheets for the proposed commodities. Note differences in BOD, developer's reports, and City-generated documents in current City record. Provide the City a list of questions and specific requests for clarifying information from the proponent.[5]
    - Describe proponent's proposed facilities and infrastructure (distinguish existing from any proposed new changes for clarity about the baseline) based on a determination of the project description to be evaluated in this analysis.
    - Describe proponent's proposed operations. Describe the operations to be evaluated in this analysis, including structural and procedural measures proposed to control emissions and prevent spills of bulk commodities. Identify the characteristics of the BOD versus proponent-initiated mitigating measures that have been proposed for OBOT.
    - Include consideration of the existing agreement between CCIG (on behalf of OBOT) and East Bay Municipal Utility District regarding rail traffic.
    - Note any differences in throughput by commodity type, facilities design and projected operations.
    - Note the proposed combination of coal, fuel oils, and gasoline and projected operations based on these specific commodities transported through the OBOT at the same time.
    - Describe proponent's proposal to confirm how the proposed new rail will be classified and constructed to be adequate and appropriate for use in transporting the heavy loads associated with coal in particular.

[5] ESA will promptly submit this data request to the City in order to expedite obtaining the requested information from the Proponent.

Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials

- Characterize the OBOT activities to be considered within the scope of the Review, which include rail transportation of coal, fuel oils, and gasoline within ~~the West Oakland "Study Area" (to be specified~~adjacent areas, but limited to the Oakland city limits (see scope assumptions in Section IV, Labor and Cost Estimate, regarding this task) ("Study Area") (as determined by the City); and terminal activities such as transloading of these commodities from railcar at the bulk terminal; stockpiling or other storage of these commodities pending onboarding for marine transport; and onboarding of these commodities for marine transport. These activities are collectively referred to as "terminal activities" throughout this document.
- The review will consider the *combination* of proposed bulk commodities listed above, if proposed by the proponent.
- This scope assumes that the scope of the review does not include the: (i) rail transportation of coal, fuel oils, ~~or~~ gasoline, crude oil, or petcoke from the point of origin to the Study Area, except as the effects occur along the rail lines within the Study Area (ii) transportation of coal, fuel oils, ~~or~~ gasoline, crude oil, or petcoke by ship from the point at which is the commodity is on-boarded in the Study Area to its ultimate destination.

Task 1.3: Review Public Input to Date on Army Base Redevelopment Project

- Thoroughly review the existing documents ~~in the City's project record that were~~and comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S, comments received by October 7, 2015 on the Army Base Redevelopment Project (indexed binder previously provided to ESA by the City), any additional comments or evidence uncovered while reviewing the public record, and any additional comments received, as well as other relevant documents (as determined by the City) including the 2012 Amendment to the 2002 Army Base Redevelopment Project EIR, East Bay Municipal Utility District/City Memorandum of Agreement regarding rail traffic. (See scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of comments in this task.)
- Prepare and maintain for inclusion in the Report a comprehensive list of information and sources provided in public comments that are considered appropriate for review and consideration throughout the work described in this scope. Organize/categorize information and sources from the public comments according to particular aspects of potential health and/or safety effects (what the potential effects are, and how they may occur) relevant to the consideration of substantial endangerment, pursuant to DA section 3.4.2.

- Health-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following.
    - Summary of existing documentation related to adjacent neighbors of the Project who are disproportionately at an increased risk of health effects due to their race, ethnicity, income, and/or level of exposure to other health risks.
    - Potential levels of fugitive coal dust;
    - Estimated diesel particulate and other locomotive air emissions in the Study Area;
    - Thresholds that employ metrics that do and do not require receptor modeling to develop specific human exposure projections;
    - Various particulate and other air pollutant characteristics and quantities by commodity and by the specific design and operation of receiving, storage, and shipping facilities;
    - Incremental locomotive emissions in West Oakland resulting from the transport of coal, specifically considering that coal trains are among the heaviest and require additional fuel and produce additional elevated emissions; and
    - Methodology to quantify comparative effects of hauling coal versus other commodities.
- Safety-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following:
    - Available thresholds relevant to the potential risks and consequences of road traffic congestion (at grade crossings), derailment, fire, combustion (including spontaneous combustion), explosion, and upset conditions (including spillage), in the Study Area;
    - Existing studies that distinguish among the characteristics of coal, fuel oils, ~~or~~ gasoline, crude oil, or petcoke that contribute to or minimize safety risks.
- Greenhouse Gas Emissions and Climate Effects-related topics that public comments address and that shall be especially considered in the review include, but are not necessarily limited to, the following:
    - Off-gassing of GHGs, including carbon monoxide and methane from coal storage piles~~;~~, and release of short-lived climate pollutants; see scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of this task);

- Potential for incremental increase of GHG emissions locally and globally from storing coal in the Study Area;
- Existing information regarding how burning coal ~~oversees~~overseas and receiving, storing, and shipping coal at the OBOT could affect air pollution and global warming/sea level rise for ~~West Oakland~~the Study Area;
- Quantified incremental increase in GHG emissions as CO2 equivalent;
- Method and/or calculation of GHG contribution from coal storage piles at OBOT~~.~~;

- ~~Appropriate~~Existing agency-developed health and/or safety thresholds to be used in the determination of whether there is "substantial evidence" that the project is "substantially dangerous"; see scope assumptions in Section IV., Labor and Cost Estimate, regarding the scope of this task);
- Potential health and/or safety risks associated with the proposed rail transport through ~~West Oakland~~the Study Area and terminal activities for coal, fuel oils, ~~or~~ gasoline, crude oil, or petcoke at OBOT for onboarding to marine vessels.

Task 1.4: Summarize Existing Regulatory Setting

- Summarize screening levels set by the U.S. Environmental Protection Agency and/or the California Environmental Protection Agency for concentrations of coal-specific trace elements that could be ingested, including in dust form or via the consumption of surface water or produce grown in the Study Area.
- Identify existing coal dust performance requirements of relevant entities, potentially including:
  - Federal Railroad Administration, BNSF Railway (including BNSF's load profile template)[6] and/or UP;
  - Board of Port Commissioners of the Port of Oakland;
  - BAAQMD and/or the California Air Resources Board; U.S. EPA
  - State Water Resources Control Board and/or the Regional Water Quality Control Board; and
  - Other City environmental requirements.
  - 2012 Army Base Standard Condition of Approval / Mitigation Monitoring Reporting Program

[6] BNSF, 2015. Coal Dust Frequently Asked Questions. [http://www.bnsf.com/customers/what-can-i-ship/coal/coal-dust.html#1] Accessed November 30, 2015.

Task 1.5: Commodities Characterization

- As needed to supplement the public information reviewed in Task 1.3, Describe and compare the characteristics of coal for export from OBOT.
    - Describe and compare U.S. coal types generally, and specifically Utah coal types by County and/or mine, as related to health and/or safety. Include a simplified description of chemical characteristics that contribute to or minimize potential human health and/or safety effects, including the coal composition and potentially harmful trace constituents like silica (crystalline silica respirable fraction) mercury, lead, arsenic, and barium as well as polycyclic aromatic hydrocarbons (PAHs) and other off-gasses including methane.[7]
    - Describe coal dust as a form of particulate matter (PM) and explain how it can be generated during rail transport, storage and transloading activities.
    - Summarize the factors affecting the total amount of fugitive coal dust generated,[8] including the factors affecting the volume of coal dust released during train idling or waiting, offloading, storage, and on-boarding to marine vessel. Estimate the volume of coal dust released during each activity per day, month and year.
    - Describe mobilization and factors influencing mobilization of coal dust to achieve exposure to humans via inhalation, ingestion and leaching into surface water and ground water.
    - Provide a brief summary review of existing studies of emission, dispersion, and deposition of coal dust from rail cars and provide a high-level overview of the methods that prior studies have used to

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[7] A potential reference to be evaluated regarding coal characteristics includes the coal dust analysis provided as Appendix G of the Surface Transportation Board's analysis for the Tongue River Railroad project. If analysis is referenced, also describe the history, current status, and relevant comments received in response to the Draft EIS of the project as part of the evaluation.

[8] Section 4 (Environmental Impacts Associated with Coal Transportation) of the U.S. EPA's May 1978 Environmental Assessment of Coal Transportation (p. 59 et seq.) will be reviewed to inform this discussion. USEPA, 1978, Environmental Assessment of Coal Transportation. EPA-600/7-78-081. [http://www.scribd.com/ doc/129807057/9100T7M9] May 1978. Section 6.3.3.1 of the Surface Transportation Board's EIS (p. 6-6 et seq.) for the Tongue River Railroad Project (and references cited therein) also will be reviewed.

evaluate potential effects.[9] Specific examples of conservative assumptions will be identified.[10]

- Identify potential coal dust palliatives (also referred to as surfactants or "topping agents") and distinguishing characteristics of each, including known and unknown chemical composition and any health concerns related to ingredients.[11]
- Review surfactants and their scientifically-measured (ideally peer-reviewed) effects on reducing fugitive coal dust from open top coal trains.

- As mentioned in Task 1.2, describe the effects of handling coal, fuel oils, ~~and~~ gasoline, crude oil, and petcoke through the OBOT all at once~~.~~
- ~~Perform the same evaluation as above in this subtask, for fuel oils, and gasoline~~ (i.e., ~~the other~~ specific bulk commodities most likely to be handled through OBOT based on the BOD and/or that are addressed by the 2014 Oakland Resolution). Certain commodities are excluded from this review due to their lack of health and/or safety risk issues (or low risk) and/or regulation by the fire and building codes.

[Subconsultants, Adelante Consulting (Barbara Toole-O'Neil); and MRS]

Task 1.6: Prepare Draft Report

(2) ESA will conduct the following tasks to prepare the Draft Report:

- Categorize, synthesize, and summarize the information gained and reviewed through Task 1.1 through Task 1.5, detailed above; the categorization of information gained from those preceding tasks may be further refined for purposes of the Draft Report.

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9 See, e.g., Chapter 6, *Coal Dust*, of the EIS being prepared by the Surface Transportation Board for the Tongue River Railroad. ~~The Draft EIS was issued for comment on April 17, 2015 [http://www.tonguerivereis.com/draft_eis.html]. A second extension of the comment period was granted until September 23, 2015. We presume the Final EIS is in progress and may provide independent confirmation as to the appropriateness and completeness of the scope of issues to be considered in this proposed Report.~~If analysis is referenced, also describe the history, current status, and relevant comments received in response to the Draft EIS of the project as part of the evaluation. See also Kotchenruther (EPA Region 10), 2013. Fugitive Dust from Coal Trains: Factors Effecting Emissions & Estimating PM2.5. [http://lar.wsu.edu/nw-airquest/docs/201306_meeting/20130606_Kotchenruther_coal_trains.pdf]

10 An example of this is provided in SNC-Lavalin, 2014, on page 131 et seq., although we do not anticipate that the referenced level of detail would be needed or helpful in this project.

11 This discussion would further develop and refine information provided in Table 3-8 (Composition of Dust Palliatives) provided in SNC-Lavalin, 2014. Human Health Risk Assessment: Fraser Surry Docks Direct Transfer Coal Facility Revised Final Report. July 18, 2014.

- Prepare a Draft Report containing the categorization, synthesis, summary, evaluation, and references record of the public comments and other information in the City public record.

Task 1.7: Revise/Prepare Final Report (as needed) / Meeting Attendance

- ESA understands that the City may circulate the Report to the public and project proponent for review and comment. Under this task, ESA will revise the finalize or modify the Report, as needed or directed. Attendance at one (1) public meeting is assumed to hear public comment on the Report. Preparation of responses to comments is not assumed.

Task 1.8 Detailed Scoping and Consultation

(3) This task includes ESA's work and communication with City staff to understand the background and context of the OBOT proposal relative to the DA and the City's 2014 Resolution, and to assist the City in developing the technical aspects of a scope of work pertinent to the City determining whether the information in its public record constitutes substantial evidence of substantial endangerment

III. PROPOSED SUBCONSULTANTS

ESA has identified qualified subconsultants who will provide specialized expertise required for certain tasks identified in this preliminary scope, and referenced throughout the scope. ESA has previous working relationships with each of these firms and expert analysts. **Adelante Consulting (Barbara Toole O'Neil)**and **MRS** will focus on Task 1.5 (Commodities Characterization), with assistance as needed in Task 1.3 (Review Public Input to Date). However, it is anticipated that subconsultants will provide consultation as needed throughout the work and participate in other various tasks as needed.

IV. LABOR AND COST ESTIMATE

Table 1 presents a revised preliminary draft labor and cost estimate for the proposed work, revised in response to public comments received by April 1, 2016, on the Draft Scope of Work, dated March 25, 2016. As discussed with City staff to date, this process and the proposed deliverables are fairly unique, and the actual effort required could vary widely based on the quantity, scope and nature of public engagement and response, as well as the actual process that the City undertakes. This revised initial estimate factors in this uncertainty, but represents thoughtful initial estimates based on our understanding and initial review of information the City initially provided to ESA.

TABLE 1- PRELIMINARY DRAFT LABOR AND COST ESTIMATE

Task	ESA Hours	Subconsultant Hours (Estimated based on Average Hourly Bill Rate)	Total Hours	Total Approximate Cost
Task 1.1: Confirm OBOT Project Design	38		38	$8,219
Task 1.2: Characterize OBOT Activities for Coal and Other Hazardous Fossil Fuel Materials	~~424~~258		~~424~~258	~~$8,683~~ $12,113
Task 1.3: Review Public Input to Date on Army Base Redevelopment Project	~~8686~~100	~~99~~22	~~9595~~122	~~$20,459~~ $26,865
Task 1.4: Summarize Existing Regulatory Setting	40		40	$8,302
Task 1.5: Commodities Characterization	58	44	102	$23,541
Task 1.6: Prepare Draft Report	64		64	$13,596
Task 1.7: Revise/Prepare Final Report (as Needed) / Meeting Attendance	~~48~~ 4858		~~48~~4858	~~$10,578~~ $12,587
Task 1.8: Detailed Scoping and Consultation	65		65	$13,055
Subtotal	~~441~~441481	~~535~~366	~~494~~494548	~~$ 106,433~~ $ 118,278
Direct Expenses (Print/Deliveries)				$1,380
TOTAL HOUR/COST ESTIMATES	~~441~~441481	~~535~~366	~~494~~494548	~~$ 107,813~~ $ 119,658

Scope Assumptions

The following key assumptions and limitations pertain to specific April 6, 2016 revisions made to the preliminary draft labor and cost estimate and provided for clarity:

Task 1.2:

(1) *Study Area.* This scope of work assumes that the "Study Area" will be limited to within the geographic boundary of the city of Oakland. Analysis of a larger Study Area is not assumed in this scope or cost estimate and may warrant scope/cost modifications.

Task 1.3:

(2) *Modeling.* This scope of work does not include tasks that involve any quantitative modeling.

(3) *Thresholds*. This scope of work does not include the development of any new thresholds.

(4) *Scope of 2014 Public Comments*. This scope of work assumes up to 8 hours (approximately $1,600) of additional ESA effort to "review existing documents and comments received prior to and at the public hearing adopting the 2014 Oakland City Council Resolution No. 85054 C.M.S." Additional effort due to the actual nature and number of those comments may warrant scope/cost modifications.

(5) *Scope of Additional Future Comments*. This scope of work assumes up to 10 hours (approximately $2,060) of additional ESA effort to review " any additional comments or evidence uncovered while reviewing the public record...." Additional effort due to the actual nature and number of those comments may warrant scope/cost modifications.

Overall:

(6) *Expenditure of Effort by Task*. Given the fairly unique nature of the proposed process and deliverables addressed by this scope of work (as describe above in this Section IV), this budget assumes flexibility in the expenditure of effort/hours across tasks, as necessary to accomplish the work described. For example, as work proceeds, fewer hours may be warranted for certain tasks while more hours may be warranted for another tasks.

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Table 2 presents a preliminary draft schedule of the proposed work, intended as a starting point for refinement in collaboration with the City. Key assumptions are listed as table notes and apply approaches and administrative draft review durations that the City generally applies for its review of certain environmental review processes. It is assumed that certain tasks may warrant interim review and feedback from the City.

(Table 2 presented on the following page.)

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a Assumes one round of City review and Report clarifications by ESA.

b Public Hearing #1 assumed to have occurred in Fall 2015.

VI. QUALIFICATIONS AND KEY RESUMES

Resumes of key ESA technical staff and subconsultants for this proposed scope of work are provided to the City under separate cover.

Attachment 3

Cappio, Claudia

From:	Klein, Heather
Sent:	Monday, April 04, 2016 10:18 AM
To:	Cappio, Claudia; Wald, Mark
Cc:	Ranelletti, Darin
Subject:	FW: Proposed Scope of ESA Coal Study
Attachments:	SOW Oakland Review_PUBLIC REVIEW DRAFT_032516-1.pdf

From: ALBERT KUEFFNER [mailto:albertkueffner@sbcglobal.net]
Sent: Friday, April 01, 2016 3:00 PM
To: Kalb, Dan; Klein, Heather
Cc: Office of the Mayor; McElhaney, Lynette; Campbell Washington, Annie; Guillen, Abel; Gallo, Noel; Brooks, Desley; Reid, Larry; At Large; OCOP; Salinas, Victoria; Alameda ICAN; Ella Teevan; Will Scott; rockyspad@earthlink.net; bawswa@juno.com
Subject: Proposed Scope of ESA Coal Study

Dan,

Thank you for your exemplary commitment to finding an equitable solution to the coal issue..

In this regard, ESA's proposed scope of study (attached) covers the health and safety effects of OBOT through-put of fossil fuels in isolation from other already-permitted sources of pollution, when its effects are in addition to, not separate from these other sources.

To be more credible as a study to determine whether there is substantial evidence that OBOT through-put of fossil fuels would be a threat to the health or safety of West Oakland workers or residents, its scope may include, in addition with those of OBOT fossil fuel-through-put, quantitative time-line projections of these effects on or from:

1. Increases by 2035, of 4,500 housing units, 92 acres of non-residential floor space, 10,000 in population and 10,000 in employment projected and permitted in 30 percent of West Oakland by the West Oakland Specific Plan and EIR, approved by the City Council, July, 2014*
2. The 2000 non-OBOT workers expected to be employed on the redeveloped army base site**
3. Non-coal train traffic to and from the seventeen 4,000 foot rail spurs constructed near the OBOT
4. Truck and auto traffic on, from or to the freeways surrounding West Oakland
5. The massive new recycling plant near the OBOT site

*The current population of West Oakland is 36,000, and the OBOT lease is for 66 years.
**The OBOT is expected to employ 120.

Best,

Al Kueffner

Attachment 4

Cappio, Claudia

From: Klein, Heather
Sent: Monday, April 04, 2016 10:18 AM
To: Cappio, Claudia; Wald, Mark
Cc: Ranelletti, Darin
Subject: FW: Public Review Draft Scope of Work regarding Health and/or Safety Effects of Coal at the OBOT

From: Dan Nourse [mailto:dan@rojeconsulting.com]
Sent: Monday, March 28, 2016 8:57 AM
To: Klein, Heather
Cc: Phil Tagami; Mark McClure; Megan Morodomi; Jeff Wynton
Subject: Re: Public Review Draft Scope of Work regarding Health and/or Safety Effects of Coal at the OBOT

Heather,

I am the senior environmental project manager for the Oakland Army Base redevelopment project. In my review of the scope of work for ESA, I note that they have not included a search for similar projects or similar studies on coal transport. One such study exists in an EIS just released late last year. It is for the Tongue River Railroad Company 83 mile expansion for coal transport in Montana. It can be found here http://www.tonguerivereis.com . The EIS is extensive in its study of dispersion and environmental impacts of coal rail transport. It is an extremely relevant document that ESA would be remiss in not analyzing as part of their scope of work.

I hope to see a revised SOW that includes this analysis.

Sincerely,

Dan

— Daniel Nourse
Senior Environmental Project Manager
ROJE Consulting

From: "Klein, Heather" <HKlein@oaklandnet.com>
Date: Friday, March 25, 2016 at 4:50 PM
Subject: Public Review Draft Scope of Work regarding Health and/or Safety Effects of Coal at the OBOT

To interested parties:

Attached is the revised Draft Scope of Work regarding health and/or safety effects of coal and other hazardous fossil fuel materials that may be proposed for the Oakland Bulk and Oversized Terminal. The revised draft hopefully addresses concerns that have been raised regarding the previous draft. We understand there still may be concerns about the need for the work, but **if you any substantive comments, please submit them no later than April 1, 2016 by 4:00 p.m.**

City staff will consider all comments received and will revise the scope, as necessary, prior to the tentatively scheduled City Council meeting on April 19, 2016, to consider http://www.tonguerivereis.com award of the professional services contact.

Attachment 5

No Coal
In Oakland

349 Mandela Parkway
Oakland, CA 94607
510-282-9454

April 1, 2016

Via Electronic Mail

Claudia Cappio
Assistant City Administrator
1 Frank Ogawa Plaza, 3rd Floor
Oakland 94612

Dear Assistant City Administrator Cappio,

In February, No Coal in Oakland opposed the hiring of private consulting firm ESA to play a central, and likely decisive, role in the City's evaluation of the evidence that supports a ban on handling coal at the Oakland Bulk and Oversized Terminal (OBOT) at the former Oakland Army Base ("Project").

In our judgment, if this proposal had been adopted, ESA, an organization that enjoys little credibility in Oakland's environmental justice community, would have usurped the judgment of elected officials to decide whether substantial evidence supports a determination that "a failure to [adopt an ordinance banning coal] would place existing or future occupants or users of the Project [or] adjacent neighbors … in a condition substantially dangerous to their health or safety."[1]

ESA's original proposal called for a lengthy eight-month review process. ESA has now returned with a revised draft scope of work that eliminates some of the bulk of ESA's prior proposal, but retains for ESA—a company that earns its keep by writing environmental impact reports funded by developers—a central role in determining the level of danger to health or safety that the community should tolerate.

For the reasons set forth in our letter to Mayor Schaaf in February, we consider the involvement of any consulting firm that is in the business of writing EIRs as unnecessary and potentially prejudicial to the City's right and duty to protect its residents' health and safety. We did not

[1] 2013 Development Agreement By and Between the City of Oakland and Prologis CCIG Oakland Global, LLC Regarding the Property and Project Known as "Gateway Development/Oakland Global ("DA"), section 3.4.2.

single out ESA for criticism because our objection was based on the institutional bias that is common to all such consulting firms. A review of the resumes of the team of experts ESA proposes to assign to the review shows that our fears of institutional bias were not unfounded. We don't doubt ESA's intimate familiarity with the fossil fuel industries but so far as we can determine from their resumes, they have overwhelmingly supported developers, rather than the communities affected by the developments they analyze.

We proposed, as an alternative to hiring a private consulting firm that depends on the goodwill of the fossil-fuel and other industries for their livelihood, the appointment of an independent commission consisting of public health experts including scholars and researchers, as well as practitioners familiar with the health issues of the disadvantaged minority communities that live "down by the tracks." ESA's team includes not a single public health expert.

No Coal in Oakland understands that some City Councilmembers feel the need for a distillation of the evidence that was provided to them with great effort and at great expense in connection with the September 21, 2015 public hearing. However, it is the City Council and not a private firm like ESA that must determine whether the weight of the evidence is sufficient to support the adoption of an ordinance under 3.4.2. Accordingly, we think it is important to establish more clearly the limited role that a third party can constructively play. Most importantly, the job of the reviewer should be to summarize the evidence that supports an ordinance banning coal or imposing other restrictions. It is also to present in clear, non-technical language the facts concerning potential health and safety impacts of a coal terminal in OBOT, based upon relevant factual research and expert opinions. The presentation should leave to the City Council the question of whether the risks rise to the level of "substantial endangerment," a term that we assume ESA intends as shorthand to the substantive legal standard under section 3.4.2.

We remain skeptical of ESA's ability to fairly summarize evidence that contradicts their record of EIRs supporting refinery and pipeline interests and we continue to urge that the City accept the substantial evidence received in 2015 or employ an independent panel over commercial consulting firms such as ESA. Nevertheless, we appreciate the opportunity to offer specific suggestions on the draft scope of review, and we submit the following recommendations:

1. The review must be conducted by a team that includes relevantly trained public health experts and it must include analysis of the baseline public health setting in West Oakland and other Oakland communities that may be impacted by coal shipments.

The potential health and safety effects of rail transportation and handling of coal at an Oakland maritime facility must be evaluated in the context of the public health of the impacted neighborhoods and populations. In September, there was substantial testimony concerning the health problems of West Oakland, in particular, that are already present and in violation of health equity. Any assessment of coal impact must be made relative to this baseline context.

Failure to include in the draft SOW any baseline health assessment of the populations identified in section 3.4.2. might derive from the fact that the ESA team does not contain a single public

health expert. Given that *the* central issue is the health and safety impacts of coal export, for any team to be qualified it must include public health professionals with expertise in air, noise, water and socio-behavioral-related health impacts.

2. The review should be limited to coal and petcoke.

The draft scope would expand the City's review process beyond coal and petcoke to encompass fuel oils including heating oil, off-road diesel fuel, high-sulfur diesel, residual fuel oil for furnaces and boilers, and fuel for low- and medium-speed diesel engines as well as all grades of gasoline.

The draft scope, citing "information provided to date," states that these commodities are "expected to be imported to and exported from OBOT." We do not know who has provided this information so we cannot comment on the accuracy of ESA's expectations, but we know that the public controversy that the City needs to resolve promptly is the result of a coal company's efforts to find an outlet for coal from its mines in Utah.

Expanding the range of commodities under review to cover myriad fossil fuel products, each with its own public health and safety risks would delay resolution of the coal issue and bury coal opponents in a high-stakes battle to respond to a mountain of research by fossil-fuel interests allegedly proving that each of their products poses no danger to human health or safety. We are fighting coal—the clear and present danger facing Oakland given the state of Utah's recent legislative action to allocate $51 million to build a coal terminal at OBOT. Widening the range of commodities at issue to numerous products threatens to dilute the City's and the public's limited resources to deal with coal.

The draft scope is largely silent on how it will review these other commodities which were not covered in the September 21, 2015 hearing and related submissions. Is ESA going to simply cut and paste from environmental impact reports it has written on behalf of fossil fuel projects elsewhere? Obviously, there is no time for original research to be completed or for the public to respond adequately. The City would have to hold an additional public hearing under section 3.4.2 to consider the health and safety impacts of each of the other commodities identified by ESA. ESA's proposal to consider numerous commodities other than coal and petcoke at this time would manufacture a crisis where one does not exist.

We submit that the most efficient path forward is to finish the City's work on coal and let it be a model of how other commodities will be dealt with, both in terms of procedure and substance.

3. The reviewers should not establish "appropriate thresholds".

No Coal in Oakland opposes the proposal that ESA define "appropriate thresholds to be used in the determination of whether there is 'substantial evidence' that the project is 'substantially dangerous.'" It is appropriate for the City Council to be provided with an organized summary of the evidence concerning health and impacts of use of coal as well as of the "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" in the record. In

contrast, thresholds are not evidence but are standards developed for a variety of purposes such as screening when certain levels of reporting and analysis are required under environmental laws. They may or may not offer adequate protection of human populations from "substantial danger" as that term is used in section 3.4.2 of the DA. The City Council should not hand ESA (or any third party) what amounts to final say over the definition of "substantial danger" when it is ultimately their responsibility to evaluate.

4. The definition of "substantial evidence" in CEQA is generally acceptable, but contains some language that is specific to CEQA and should not be used here.

The draft scope incorporates parts of the definition of "substantial evidence" contained in section 15384 of the California Environmental Quality Act guidelines. Although this definition is in general accord with how courts have interpreted "substantial evidence," the definition contains some language that is specific to inquiries under CEQA. The draft scope eliminated some of this language but inappropriately kept the CEQA language providing for the exclusion of "evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment." This phrase should be eliminated from the SOW. As the draft scope acknowledges on page 2, "This is not a CEQA review, and is not limited to CEQA topics." Section 3.4.2 limits relevant evidence to evidence that bears on public health and safety, a scope that is both narrower and broader than what may be considered under CEQA.

5. The "Study Area," adjacent neighbors" and "nearby population" are undefined and unspecified, and if these terms are to be used at all, they must be defined and specified explicitly in the next draft of the scope of work.

On page 4, the draft scope states that ESA will "[c]haracterize the OBOT activities to be considered within the scope of the Review, which include rail transportation of coal, fuel oils, and gasoline within the West Oakland 'Study Area' (to be specified by the City); and terminal activities…." This implies that any impact outside West Oakland (or in parts of West Oakland that are deemed outside the currently undefined "Study Area" will not be considered by ESA even if coal transport activities place these populations in a condition substantially dangerous to their health or safety.

This point is made more explicit on page 5, where the draft scope "assumes" that the scope of review excludes the "rail transportation of coal, fuel oils, or gasoline from the point of origin to the Study Area, except as the effects occur along the rail lines within the Study Area" and "transportation of coal, fuel oils, or gasoline by ship from the point at which the commodity is on-boarded in the Study Area to its ultimate destination." These limitations are not found in section 3.4.2 and should be eliminated.

ESA should not exclude any evidence that bears on danger to the health and safety of the project's occupants or adjacent neighbors. "Adjacent neighbors" should not be so narrowly defined. The review must include all impacted Oakland neighborhoods, including at a minimum those where coal trains, whether they arrive from northern or southern corridors, will pass

through, including Fruitvale, San Antonio, East Oakland, Chinatown, and Jack London Square. The Study Area should also include neighborhoods such as North Oakland that are downwind from OBOT.

In addition, on page 2, the draft scope of work states that ESA will review whether terminal activities for the export of coal (or other hazardous fossil fuel materials) would be "substantially dangerous" to "workers or the nearby population." The term "nearby population" is undefined. If it refers only to waterfront communities, then it must be revised to include other communities in Oakland that would be affected by coal transport through Oakland.

The references to an undefined "Study Area" and "nearby population," – the defining of which is left to the unconstrained discretion of City staff and/or ESA – are not acceptable. If the next revision of the scope of work uses these terms or the terms "adjacent neighbors," they must be defined precisely in terms of geography and their function within ESA's analysis. Those definitions must incorporate our comments above.

6. The review should cover dangers not just from coal dust, but from diesel exhaust and other health and safety impacts from the transport of coal.

An important consequence of the dedication of all or a large portion of the throughput of OBOT to coal will be the incremental impacts from the heavier and higher volume loads associated with coal. These include but are not limited to diesel exhaust, vibrations, noise, and traffic congestion, and accidents / derailments.

7. The review must consider impacts on water.

The draft scope states that ESA will not consider any impacts on water, even though they may pose a danger to human health and safety. As discussed in the report of Dr. Phyllis Fox, the impacts on water could be quite severe and pose a danger to public health in West Oakland and many other places, for example through contamination of drinking water and food supply. Review of the evidence on potential fresh and Bay water contamination, environmental destruction of the shoreline and of marine life and their impact on human health should be included in the scope of review.

8. The review must include analysis of the cumulative impacts of this terminal on this population.

Because humans live longer than the 66 year sunset of the Development Agreement, the projections of health and safety impacts must reach and exceed the duration of that agreement. Further, the cumulative effects of extended exposure to coal transport must be considered for current – and future – residents and generations. We note that for these reasons, epigenetic hazards of coal must also be considered.

9. The review must consider the GHG-related health and safety impacts of 66 years of coal shipments as CO2 accumulates in the atmosphere and remains there for thousands of years.

The quantities of coal to be shipped over an extended period of time will have a measurable and increasing impact on climate such that local effects of climate change in the near and long-term can be attributable to OBOT.

10. The commodities characterization is irrelevant and should be eliminated.

The clear and present danger facing Oakland is coal from Utah. Ultimately though, *where* the coal will be shipped from, be it from Utah, Colorado, New Mexico Wyoming, or elsewhere, and *what type* of coal will arrive at OBOT, are not within the control of the City, or, for that matter, of TLS. Market forces control the type of coal that will be transported to Oakland. Furthermore, there is no such thing as clean coal and so the impact of variations in coal types would not meaningfully diminish the risks to human health and safety. The plan to, "Describe and compare U.S. coal types generally, and specifically Utah coal types by County and/or mine" should be abandoned.

11. The analysis of the regulatory setting should be eliminated or curtailed.

Analysis of the regulatory setting is not critical to protecting health and safety in Oakland. Regulations may establish the floor but not the ceiling for what protecting health and safety actually requires. In fact, no law prevents the City from providing greater protections than is afforded through regulations.

Yet, all too often, fossil fuel proponents cite regulatory limits on exposures as if compliance with those limits is equivalent to proof of no danger. This misuse of standards is pervasive. Two days ago, on the radio, the developers' representative asserted that coal is not hazardous because it is not on California's Proposition 65 list of chemicals known to the State to cause cancer or reproductive toxicity. Exceedance of recognized standards for exposure to toxic substances is strong evidence of a hazard. However the reverse is not true; even if an exposure to coal does not exceed a current standard adopted by a governmental agency, or even if coal is not on a list of *chemicals,* that does not ensure human health and safety are being protected. It is widely recognized that U.S. toxics regulations are out of date and do not address all the mechanisms that characterize many of the substances in coal. In an analogy, cigarettes are legal in all 50 states, yet no one today disputes that they cause illness and death

Although the regulatory setting may be relevant from a legal point of view, defining the regulatory setting is not an innocuous undertaking. The legal issues should be dealt with by the City Attorney and not be outsourced.

12. The review should explicitly use the precautionary principle as its guiding framework.

Under the precautionary principle, an action or policy that has a suspected risk of causing harm, must be assumed to be harmful unless proven to be safe – with the burden of proof that it is *not* harmful falling on those who wish to take the action. In other words, coal must be factually proven to be safe and if there is any doubt, it should be considered harmful. The City Council should also be guided by the precautionary principle in its decision-making.

13. The review should not accept as foundational facts or evidence any promises or projections by the developer that are not enforceable through existing contracts or regulations.

The review should be based on verifiable facts and conditions that are enforceable, and that the developer agrees are enforceable, through existing contracts and regulations. Accordingly, promises or projections concerning how coal will be transported, stored, or handled should not be treated as facts unless they are enforceable. The draft scope refers in several places to information received or to be received from the developer, none of which should be included as evidence in the review unless verifiable and enforceable. The developers have suggested that they will use covers on their coal cars. That product may be in the design stage, but is not in use anywhere in the world and is therefore untested. Thus the review cannot represent as evidence promises and speculation that such covers will be used unless there is a mechanism to compel such use. Since Federal law prohibits the City from directly regulating rail traffic, the City would have no ability to enforce covering coal cars. Furthermore, train covers cannot be considered evidence of effective mitigation unless verifiable tests of their efficacy are submitted.

14. The review may not exclude evidence in support of an ordinance merely because it is not part of the public record.

The draft scope implies that only public comments and other information in the City public record that were received by October 7, 2015 may be considered by the City.

Nowhere does section 3.4.2 state that evidence to support an ordinance must be limited to evidence produced at a public hearing. In order to impose an ordinance on the project under section 3.4.2, the City must (1) hold a public hearing and (2) make a determination that there is substantial evidence to support the ordinance. The plain language of section 3.4.2 does not require that the determination of substantial evidence be based only on evidence submitted at a public hearing for the adoption of a valid ordinance.

Accordingly, in categorizing, synthesizing, and summarizing information, the review should not overlook other evidence submitted since October 7 that would support the conclusion that failure to adopt an ordinance would result in danger to public health or safety.

15. The review should include only information supplied by the developer that has been or will be promptly made public by the City.

The review must be limited to evidence that is publicly available. Any information that is provided to ESA aside from what is already indexed as part of the public record of the public hearing last fall must be made available for immediate public access without requiring public records act requests. On page 2, the draft scope states that ESA will "provide the City a list of questions and specific requests for clarifying information from the proponent." Both the questions posed and answers received should be made available to the public simultaneous with their transmittal to and from the developers. In addition, The City's web page devoted to the project should include a separate section of documents received after October 7, 2015 that were not included in the City's index.

16. ESA's contract should end with the preparation of its report and opponent groups must have adequate time to provide rebuttal to ESA's report in advance of any Council deliberation or decision-making.

On page 11, in Table 2 – Preliminary Draft Schedule, ESA proposes allocating 2.5 weeks to the City to review its Draft Report and thereafter a 17 day public comment period. To ensure adequate opportunity and time for the community of residents, neighbors, and coal opponent groups to review, critique and rebut the Draft Report, ESA's report should be submitted to the City and the public simultaneously.

The SOW also states that ESA "understands" that it will get a chance to rebut any criticisms of its report and draft a revised report. In other words, ESA would get the "last word" on any disputed issues. We strongly disagree with this reservation of the final word to an outside body. If the public's criticism and rebuttal of the ESA Draft Report leads to conflicting evidence, the City Council – not ESA – should decide what evidence it finds credible or not credible.

Respectfully,

/s Lora Jo Foo

Lora Jo Foo
No Coal in Oakland

Cc: Sabrina Landreth, City Administrator
Libby Schaaf, Mayor
Barbara Parker, City Attorney
City Councilmembers

Attachment 6

David C. Smith
(510) 735-0034
dsmith@sticeblock.com

April 1, 2016

TRANSMITTED VIA ELECTRONIC MAIL
hklein@oaklandnet.com

Heather Klein
Planner III
CITY OF OAKLAND
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, California 94612

Re: Proposed Scope of Work for ESA and Review of Administrative Record as to the Presence or Absence of Health and/or Safety Effects of Coal at the OBOT

Dear Ms. Klein,

On behalf of our clients, California Capital & Investment Group and Oakland Bulk and Oversized Terminal, we write in response to your March 25, 2016 request for comments on a proposed scope of work provided to the City by ESA (Scope) regarding the above-referenced review. We are confused by the Scope. It specifically purports to review the administrative record the City has compiled regarding the potential transport of coal, which record was generated from a September 21, 2015 public hearing and request for submission of additional material on October 6, 2015. All such information gathering related exclusively to coal. Yet, the scope of work purports to be for both coal and "other hazardous fossil fuel materials." The City has never requested, nor have entities ever submitted materials or "evidence" regarding "other hazardous fossil fuel materials." Thus, the proposed scope is inaccurate, overbroad, and, at best, premature.

Characterizing ESA's proposed work, the Scope states: "The ESA analysis of the public record will be presented in a Report that will categorize and assess the public comment and information that was submitted in support of those comments to assist the City Council in making a determination regarding whether or not the information in the public record constitutes substantial evidence that would support a finding of substantial endangerment."

The sole potential commodity for which the City solicited and accepted "evidence" from the public is coal. After the October 6, 2015 supplemental submission deadline, the public comment period on the matter was closed by prior motion of the City Council. Never has there been a request for similar submittals related to "other hazardous fossil fuel materials."

Nonetheless, the Scope goes on: "The scope of this review is focused on those commodities listed in the Proponents Draft Basis of Design (BOD) dated July 21, 2015 <u>and</u> that are also directly or indirectly addressed in the 2014 Oakland City Council Resolution No. 85054 C.M.S., opposing transportation of coal and other 'hazardous fossil fuel materials' through the Oakland (sic). Specifically, these commodities are:

a) bituminous coal (washed coal, clean coal, or soft coal);
b) fuel oils (heating oil, off-road diesel fuel, high-sulfer diesel, residual fuel oils for furnaces and boilers, and fuel for low and medium speed diesel engines); and
c) gasoline (all grades)."

The City has never solicited comment or evidence on any of these materials, other than coal. But the Scope specifically states that ESA "will consider the public comments as they may apply to health and/or safety effects, regardless of whether the mechanisms for these effects are fully understood or documented in peer-reviewed scientific sources."

So what exactly is the City's intention in retaining ESA? If it is to review and report on the evidentiary record compiled to date, that report would related to coal and only coal. If it is to report to the City on "other hazardous fossil fuel materials," query what ESA would be reviewing in that there has been no public comment or solicitation period for such materials.

The Scope references the Basis of Design submitted by our clients. However, as the City is well aware, the Basis of Design simply compiles and documents the universe of statues, regulations, and conditions of approval with which the project must comply. It is not a confirmed articulation of what commodities will or will not pass through the terminal over its useful life, nor is it a full or even partial articulation of the suites of specific safety measures that will be implemented on the project site relative to each commodity once confirmed for transport. Again, it is a foundation and minimal-standard starting-point upon which all such commodity-specific safety measures will be based.

Accordingly, we must object to the proposed Scope. As noted in the staff's prior Staff Report on this matter, the purpose of retaining ESA, at least originally, was to review the administrative record already compiled. But this Scope outlines an excursion without bounds far beyond the breadth of the current record, the purpose of which and information upon which it would reach its conclusions are unclear to us.

We would ask that ESA be directed to focus its efforts on the matter at hand, reviewing and hopefully bringing to conclusion the City's seemingly interminable review of coal. As to any further review, as has proven the case with coal, any such review in advance of clear determination of commodities that will or will not come through the project is premature and a waste of the City's, the project's, and the community's time and resources.

Respectfully,

David C. Smith
STICE & BLOCK, LLP

Attachment 7

SIERRA CLUB
SAN FRANCISCO BAYKEEPER

April 1, 2016

Via Electronic Mail
Oakland City Council
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
(510) 238-2386
cityclerk@oaklandnet.com
Re: Draft Scope of Work for City of Oakland Review of Public Comments Received Regarding Potential Health and/or Safety Effect of Coal and other Hazardous Fossil Fuel Materials Proposed at the Oakland Bulk and Oversized Terminal

To the Oakland City Council:

The Sierra Club, Communities for a Better Environment ("CBE"), West Oakland Environmental Indicators Project, Asian Pacific Environmental Network ("APEN") and San Francisco Baykeeper provide the following comments on the Draft Approach and Preliminary Scope of Work ("Scope of Work") for ESA to assist in the City of Oakland's ("City") review of public comments received regarding potential health and safety impacts of coal proposed at the Oakland Bulk and Oversized Terminal ("OBOT"). The undersigned groups support the City of Oakland moving forward with its health and safety regulatory process in order to conclude it as soon as possible.

As a preliminary matter, we express our concerns with ESA's environmental review of other fossil fuel-related projects. The company has recently prepared environmental review documents under the California Environmental Quality Act ("CEQA") for various fossil fuel infrastructure projects around the Bay Area, including, for instance, the Valero Benicia Crude by Rail Project,[1] and the Phillips 66 Rodeo Propane Recovery Project.[2] Both environmental reviews for these projects have proven deficient and failed to properly consider significant health and safety impacts. In February 2016, the City of Benicia Planning Commission unanimously refused to certify the Environmental Impact Report for the Valero project. CBE, another local community group, and a labor/worker safety group are currently in litigation regarding the adequacy of the Rodeo environmental review document prepared by ESA. Providing adequate parameters and clarification of ESA's role, as discussed below, could address, and avoid,

[1] Valero Benicia Crude by Rail Project, Revised Draft Environmental Impact Report, August 2015, available at http://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/RDEIR-NoAppendics.pdf.
[2] Phillips 66 Propane Recovery Project, Overview available at http://www.co.contra-costa.ca.us/4729/Phillips-66-Propane-Recovery-Project.

several similar shortcomings in this particular summary of impacts for the proposed coal export activities at OBOT. Alternatively, the city could explore using other consultants that have more experience and credentials working on public health issues, and a more diverse staff.

We highlight the following concerns with the Scope of Work: (1) the inappropriate role of ESA to render legal determinations; (2) the inadequate scope of review of factors affecting the health and safety of Oakland residents; (3) the inappropriate reliance on past studies from a now defunct coal rail project; (4) the failure to outline a process for addressing additional commodities, which have not had public comment, and the erroneous omission of petcoke; (5) the inadequate scope of review of impacts to local communities; (6) the failure to include past relevant documents in the record; (7) erroneous reliance on unenforceable developer commitments;(8) failure to incorporate an adequate summary of cumulative and disproportionate impacts on low-income communities of color Low-Income Communities of Color; and (9) an inadequate period set for public comment.

For these reasons, we respectfully request the City of Oakland to clarify the scope of work for its consultant's role to organize evidence and not to stand in the shoes of the City to evaluate the record or provide a legal standard, and to consider our other comments below.

I. ESA May Not Render Legal Determinations

The Scope of Work notes that,

> "[a]s articulated by the City, the purpose of this review is to assist the City in determining whether the information in its public record constitutes 'substantial evidence' that would support a finding of substantial endangerment, pursuant and consistent with the requirements of 2013 Development Agreement By and Between City of Oakland and Prologis CCIG Oakland Global, LLC Regarding the property and Project Known as 'Gateway Development/Oakland Global', ["LDDA"] sections 3.4.2 and 3.4.4."[3]

The City should clarify that the role of ESA as the consultant is mainly to organize the public comments received by the City in regards to this Project. It is inappropriate for ESA to render legal opinions, and specifically, to define what constitutes substantial evidence, substantial endangerment, and consistency with the LDDA. Those roles are reserved for the City of Oakland.

The Scope of Work's "review" of the public's comments includes a vague reference to "[a]ppropriate thresholds to be used in the determination of whether there is 'substantial evidence' that the project is 'substantially dangerous'".[4] ESA's role is not to establish thresholds —that is an evaluation for the City to make based on the record

[3] Draft Approach and Preliminary Scope of Work, March 25, 2016 ("Scope of Work") at 1.
[4] Scope of Work at 6.

before it. In addition, the Scope of Work's references to the consultant's "evaluation" of information triggers the same concern since it is ultimately the City that must make a decision and evaluate the information before it.[5]

II. The Scope of Work Fails to Include Factors Affecting the Health and Safety of Oakland Residents

One major omission from the Scope of Work is the failure to analyze pollutant blowback to Oakland from coal burned elsewhere (i.e., mercury deposition, etc.).

In addition, when characterizing the commodities at issue, the analysis must include looking at the silica content of coal, a component that contributes to lung-related ailments in workers. Utah coal is known to have a high silica content.

Finally, the Scope of Work must acknowledge that the developer has only given the city vague plans. The developer has not been forthright with the city or the community about shipping coal, let alone the mines from which it will originate, or the planned rail routes. While the link to Utah coal is well borne out through public records and Utah legislation, this study must also acknowledge the possibility that Powder River Basin coals could also be transported through OBOT and should accordingly analyze those coals as well.

III. The Scope of Work Inappropriately Relies on Past Studies from a Now-Defunct Project

The Scope of Work includes multiple references to the Surface Transportation Board's (STB) analysis of the Tongue River Railroad Project.[6] Notably, the Scope of Work states "[w]e presume the Final EIS is in progress and may provide independent confirmation as to the appropriateness and completeness of the scope of issues to be considered in this proposed Report."[7]

The Tongue River Railroad is a now defunct project, with the environmental review on indefinite hold. On November 25, 2015, the Tongue River Railroad Company filed a petition with the STB to hold the proceeding in abeyance due to delays in obtaining a mining permit for the Otter Creek mine and weak international coal markets.[8] The STB granted a stay of the deadlines on December 3, 2015.[9] Later, on March 10, 2016, Arch Coal announced it was suspending its permitting efforts for the Otter Creek mine also citing weak market conditions and a lack of capital.[10] The Tongue River

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[5] *Id.* at 8.
[6] *Id.* at 7-8, fn. 7-9.
[7] *Id.* at fn. 9.
[8] *See* Petition of Tongue River Rail Company to Hold Proceeding in Abeyance, November 25, 2015, http://www.tonguerivereis.com/documents/239626.pdf; http://www.tonguerivereis.com/
[9] *See* http://www.tonguerivereis.com/.
[10] Arch Coal Suspends Plans for Otter Creek Mine in Montana, March 10, 2016, Billings Gazette, http://billingsgazette.com/business/arch-coal-suspends-plans-for-otter-creek-mine-in-montana/article_3dcba267-d149-50c7-8cd8-ed107c1110eb.html

Railroad would have hauled Otter Creek coal to the West Coast for export through the proposed Pacific Northwest coal terminals. Arch Coal is currently in bankruptcy proceedings. The plans to build the Tongue River Railroad, and the environmental review for the railroad project, are indefinitely on hold.[11] Groups including the Sierra Club and Earthjustice submitted extensive comments on the Tongue River Draft EIS pointing out multiple flaws.[12] Because the EIS process is on indefinite hold, the STB will not weigh in on comments about the flawed Draft EIS or complete a Final EIS. Accordingly, the Tongue River Draft EIS should not be relied upon here. The Scope of Work should omit all references to the Tongue River EIS.

IV. The Scope of Work does not adequately outline a process for addressing additional commodities, which have not had public comment, and omits Petcoke

The Scope of Work fails to address petroleum coke (petcoke), one of the subjects of the September 21, 2015 hearing. This must be added to the study. We do think it is important that the Scope of Work include a variety of oil commodities, including fuel oils such as high-sulfur diesel, and other hazardous fossil fuels with similar characteristics to crude oil.[13] The undersigned groups share concern that hazardous fossil fuel commodities pose a threat to health and safety for Oakland residents and do not want to see these commodities shipped through Oakland; however, we have not yet been offered the opportunity to provide public comment on those commodities. These oil commodities were not part of the scope for the original September 21, 2015 health and safety hearing, which was limited to coal and petcoke. A process for public comment on these additional fossil fuels is needed.

V. The Scope of Work Fails to Account for Project Impacts on Certain Oakland Communities

ESA's analysis notes that it will review whether terminal activities for the export of coal (or other hazardous fossil fuel materials) would be "substantially dangerous" to "workers or the nearby population." The term "nearby population" requires further definition. If it refers only to portside communities, then it must be revised to incorporate other communities in Oakland that the record illustrates would be affected by this Project, such as, but not limited to, those living near the rail lines. Similarly, the Scope of Work fails to define, but refers continually to, the "Study Area." The Scope of Work seems to reference only West Oakland. The City must clarify and ensure it addresses every potentially affected community.

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[11] Tongue River Railroad Plans on Hold due to Mine Permitting Delays, The Missoulian, November 25, 2015, http://missoulian.com/news/state-and-regional/tongue-river-railroad-plans-on-hold-due-to-mine-permitting/article_7cdeed9b-db50-5ee9-bc07-85498227f61f.html

[12] *See e.g.*, Comments on Tongue River Railroad http://www.tonguerivereis.com/documents/deis_comments_organizations/FD-30186-000317.html

[13] *See* Scope of Work at 2, 3, 5, 6, 8.

VI. The Scope of Work Fails to Include Past Relevant Documents in the Record

Our prior comments on this Project have stressed its unstable and ever-shifting project description. The Scope of Work states that ESA will look at the proponent's current plans for OBOT operations.[14] ESA should also look at prior proposals and documents describing OBOT (i.e., TIGER grant documents, the LDDA, California Transportation Commission grant applications, prior EIRs) to compare how the project objective has shifted over time.

VII. The Scope of Work Erroneously Relies on Unenforceable Developer Commitments

The Scope of Work should be limited to only demonstrably enforceable mitigation. The review should not accept as foundational facts any promises or projections by the developer that are not enforceable through existing contracts or regulations. Further, the developer has only provided a Basis of Design for the terminal, which is conceptual only. For instance, the Scope of Work notes that it will "describe the operations to be evaluated in this analysis, including structural and procedural measures *proposed* to control emissions and prevent spills of bulk commodities."[15] To unnecessarily broaden the review of evidence to merely hypothetical measures would simply result in illusory and insufficient mitigation of significant environmental impacts.

VIII. The Scope of Work Fails to Incorporate an Adequate Summary of Evidence of Cumulative and Disproportionate Impacts on Low-Income Communities of Color.

The record includes evidence of the disproportionate impact of fossil fuel-related goods movement on low-income communities of color. The City should ensure that the Scope of Review include a summary of such evidence.

IX. The Scope of Work Establishes an Inadequate Period for Public Comment

The Scope of Work establishes a preliminary draft schedule for moving forward, including a public review period of 17 days. Based on the highly technical information in the record, our organizations will require significantly more time to ensure the accuracy of ESA's summary of evidence and report our conclusions to our several members and allied organizations. A mere 17 days will not allow for adequate public participation. At the same time, it is imperative that this study stick deadlines allowing for a summer City Council determination.[16] City Council took evidence on September 21, 2015 on this issue

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[14] Id at 3-4.

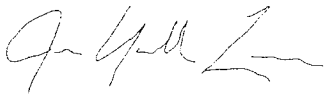
[15] Id. at 4 (emphasis added).

[16] Id. at 3 and 11 (noting a City review period of May 25-June 8, public review from June 10-27, and a July 2016 public hearing.)

and this study should not further delay any action. We suggest a quicker deadline for the initial draft study to allow more time for public comment.[17]

We appreciate the City of Oakland taking proactive steps forward to conclude the health and safety regulatory process. Thank you for considering our comments. We are available to answer any questions.

Sincerely,



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On behalf of Sierra Club, Communities for a Better Environment, West Oakland Environmental Indicators Project, Asian Pacific Environmental Network ("APEN") and San Francisco Baykeeper

Honorable Mayor Libby Schaaf
officeofthemayor@oaklandnet.com

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Council District 4 Annie Campbell Washington:

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[17] For instance, an initial draft deadline of 5/18 would allow a city review from 5/19-6/ 1 and would thus allow more time for public comment without delaying final action.

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Attachment 8

HUMAN IMPACT PARTNERS

304 12th St. Suite 2B Oakland CA 94607 510 452 9442

April 14, 2016

Via Electronic Mail

RE: Proposal for a public health impact review of coal transport, handling, and storage related to the bulk commodities terminal to be built at the former Oakland Army Base

Dear Assistant City Administrator Cappio, Mayor Schaaf and City Councilmembers,

Human Impact Partners is pleased to submit this brief proposal to the City of Oakland to conduct a public health impact review for the export of coal through Oakland, addressing **whether or not there is substantial evidence that the transportation, loading, unloading, and storage of coal will pose substantial dangers to public health and safety in Oakland.**

The City of Oakland is facing an important decision that we understand will rest in large part on the Council's determination as to the answer to this question. **Oakland is blessed with a rare aggregation of nationally-known public health and environmental health professionals who, combined, have hundreds of years of relevant expertise and experience.** We propose to marshal this expertise to assess the evidence submitted into the public record as well as other relevant knowledge to reach public health findings on the risks to Oakland residents and workers.

Proposal

Human Impact Partners (HIP) will assemble a **panel of Bay Area public health experts** with a variety of backgrounds, including environmental health (including air quality, water quality, and noise), environmental justice, occupational health and medicine, and epidemiology. It is likely to include current and former staff at local and state health agencies, academics, medical professionals, and non-profit leaders. It will also include experts working at the intersection of energy policy and public health. Through in-person meetings and phone calls, this panel will guide the review process, providing feedback at each step of the project as described below.

HIP will then carry out the following steps.

1) Establish a detailed process for conducting the public health impact review. HIP will propose a detailed process, including, for example, how to assess the quality of available studies and the general level of confidence in the findings. This process will be modeled on rapid health analyses developed by Human Impact Partners, for example in a grant-funded pilot program with the Health Officers Association of California to assess the health impacts of proposed California state legislation. The expert panel will provide feedback about the proposed process.

2) Review all comments submitted as part of the public record about the transport of coal through Oakland. Our goal will be to understand and evaluate all evidence presented to date about potential health risks of coal transport, loading/unloading, and storage to Oakland residents and workers. We will also review available data about the health of Oakland residents, especially those living near the facilities that will be used to transport and store the coal and populations with underlying vulnerabilities that could be exacerbated by the proposed facility and related activities. Additionally, we will review information submitted about potential strategies to mitigate risks, and related published and other evidence about mitigation strategies. HIP will conduct this review, summarize the findings, and then review with the expert panel.

3) Identify and fill gaps in the public record. HIP will review peer reviewed and government-published literature and other resources (e.g., "The Human Health Effects of Rail Transport of Coal Through Multnomah County, Oregon") to identify any gaps in the evidence submitted to the public record. We will ask the expert panel to identify both potential gaps and additional resources to review. HIP will then review and summarize these identified resources.

4) Reach and summarize findings in a report. HIP will convene the expert panel, review preliminary findings with them, and lead a process with the panelists to answer the question: Is there substantial evidence that the transportation, loading, and unloading of coal will pose substantial hazards to public health and safety in Oakland? The process will provide an opportunity for the experts to discuss specific aspects of the proposal and specific potentially related risks and hazards, as well as the summary determination as to the extent of those risks and hazards. HIP will then draft a report about the findings, on which the panel will provide feedback. The technical report will include a non-technical executive summary. After the report is submitted, HIP and panelists will be available to present findings to elected officials, city staff, and the public.

Team Qualifications

Founded in 2006, HIP is an independent non-profit corporation (501(c)3) based in Oakland. HIP's mission is to transform the policies and places people need to live healthy lives by increasing the consideration of health and equity in decision making. We have conducted action-oriented public health research projects on the local, state and federal levels – with experience in communities across the country, from California to Maine. Findings from our research and recommendations have been integrated into policymaking, planning, and project design and implementation.

HIP is a recognized national leader in the field of Health Impact Assessment, having co-founded and led the Society of Practitioners of Health Impact Assessment and co-authored widely cited guidance for the field, including: Minimum Elements and Practice Standards for Health Impact Assessment; Guidance and Best Practices for Stakeholder Participation in Health Impact Assessments; and Promoting Equity through the Practice of Health Impact Assessment. To date, HIP has conducted over 40 public health research projects in many domains, including land use, transportation, and housing. We have also provided training and technical assistance to organizations throughout the country as they conduct public health research projects, successfully assisting these partners as they work to improve health and reduce health inequities locally.

PSE Healthy Energy will be a subcontractor for HIP. PSE Healthy Energy, a non-profit energy science and policy institute and also based in Oakland, is dedicated to supplying evidence-based, scientific and technical information and resources on the public health, environmental and climate dimensions of energy production and use. The mission of PSE Healthy Energy is to bring scientific transparency and clarity to energy policy discussions, helping to level the playing field for citizens, NGOs, the media, and policymakers by generating, translating, and disseminating scientific information. No other interdisciplinary collaboration of physicians, scientists, and engineers exists to focus specifically on health and sustainability at the intersection of energy science and policy.

Budget

While a full budget will need to be negotiated with the City, we estimate the budget to be approximately $80,000.

If the City is willing to consider a proposal from HIP, we can prepare a proposed scope of work. We understand that the earliest possible date upon which the City Council could provide the City

Administrator with authority to enter into a contract for services with HIP would be May 3, 2016. We would be happy to meet with the City Administration to discuss details of how to move this process forward as swiftly as possible.

Thank you,

Jonathan Heller
Co-Director and Co-Founder
Human Impact Partners
jch@humanimpact.org

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 APR 21 PM 6:00

Approved as to Form and Legality
DRAFT
_____
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO._____C.M.S.

Introduced by Councilmember _____

A RESOLUTION (A) WAIVING ADVERTISING, COMPETITIVE BIDDING, AND REQUEST FOR PROPOSALS/QUALIFICATION ("RFP/Q") COMPETITIVE SELECTION REQUIREMENTS AND (B) AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH ENVIRONMENTAL SCIENCE ASSOCIATES NOT TO EXCEED $ 120,000 FOR THE ANALYSIS OF POTENTIAL HEALTH AND/OR SAFETY EFFECTS OF CERTAIN COMMODITIES PROPOSED AT THE OAKLAND BULK AND OVERSIZED TERMINAL AT THE OAKLAND ARMY BASE WEST GATEWAY SITE WITHOUT RETURNING TO CITY COUNCIL FROM UNDESIGNATED GENERAL PURPOSE FUND BALANCE

WHEREAS, the Oakland Army Base Gateway Redevelopment Project West Gateway Parcel is approved for construction of a bulk and oversized commodity terminal that may include the shipment, transloading, transportation and handling and export of a variety of materials; and

WHEREAS, the approval of the Oakland Army Base Gateway Redevelopment Project included the approval of a Development Agreement, which vested the rights to develop, among other projects, the bulk and oversized commodity terminal on the West Gateway Parcel, subject, in part, to an exception for certain later-enacted health and/or safety regulations; and

WHEREAS, the Development Agreement authorizes the City Council to adopt regulations that would bind the bulk and oversized commodity terminal if the regulations are related to health and/or safety, if the regulation is permissible by state and/or federal law and if the City Council determines, based upon substantial evidence and after a public hearing that a failure to adopt the regulations would place existing or future occupants or uses of the project, adjacent neighbors or any portions thereof, in a condition substantially dangerous to their health and/or safety; and

WHEREAS, the proposed initial list of bulk commodity materials submitted by the developer of bulk and oversized commodity terminal to the City of Oakland in September, 2015 includes bituminous coal, fuel oils and gasoline, along with borax, muriate of potash, soda ash, sodium sulfate and bicarbonate of soda; and

WHEREAS, in June 17, 2014, the City Council adopted Resolution No. 850454 C.M.S., Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City of Oakland; and

WHEREAS, substantial public concern has been raised by community stakeholders about the transport, handling and management of certain identified bulk commodity items, specifically coal, crude oil, and petroleum coke at the Oakland Army Base West Gateway Parcel and the City Council took action to hold an informational public hearing on September 21, 2015 to receive oral and written testimony to help inform future potential Council actions related to health and/or safety regulations, in part, under the Development Agreement; and

WHEREAS, as a follow up to the September 21, 2015 informational public hearing, the City Council requested staff to complete an evaluation of all the submitted information and public testimony and further directed that staff develop and evaluate potential actions that the City could employ to address the health and/or safety impacts of the transloading, transportation and handling and export of coal at the proposed bulk and oversized commodity terminal; and

WHEREAS, on February 16, 2016, the City Council reviewed the initial scope of work for the evaluation of health and/or safety impacts and requested that the scope be revised and refined to address public comments and concerns; and

WHEREAS, the Oakland Municipal Code ("OMC") Section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of supplies, equipment, products and services and the award to the lowest responsible, responsive bidder if the award is made; and

WHEREAS, OMC Section 2.04.050 I.5 provides an exception to the advertising and competitive bidding requirement of the OMC upon a finding and determination by the City Council that it is in the best interests of the City to do so; and

WHEREAS, OMC Section 2.04.051 requires a competitive request for proposals or request for qualification selection process for award of contracts that exceed $ 25,000 for professional services contracts and which are exempt from bidding under Section 2.04.0501.1; and

WHEREAS, OMC Sections 2.02.050.I and 2.04.051 B permits the City Council to waive the advertising, competitive bidding and the RFP/RFQ solicitation processes upon a finding and determination that it is in the best interests of the City to do so; and

WHEREAS, staff recommends that it is in the best interests of the City to waive the advertising competitive bidding and the RFP/RFQ competitive selection requirements because of the specialized expertise that is required to complete the evaluation of written and oral public testimony and other information as well as to assess, analyze and recommend potential actions to the City Council to address any identified health and/or safety impacts; and

WHEREAS, Environmental Science Associates (ESA) has been identified as a firm that can provide this specialized and additional expertise and has the capacity to perform a broad array of qualitative and quantitative analyses that call for a multi-discipline approach to address the issues that have been identified and further, ESA has submitted a draft statement of work for the assessment, an estimated budget in the amount of $120,000 and schedule, the qualifications of the experts who would perform the work and an overall public process; and

WHEREAS, the proposed draft statement of work includes but is not limited to a characterization and evaluation of the commodities that have been identified, an assessment of the thresholds and measures that should be used to evaluate the potential health given the specialized nature of the analysis that is required to determine potential health and/or safety impacts and the broad, multi-disciplined expertise that is required; and

WHEREAS, the $ 120,000 expenditure that is required for this work was not previously authorized in the FY 2015-2017 budget and staff recommends that the costs be drawn from undesignated General Funds; now therefore be it

RESOLVED: that the City Administrator is authorized to execute a Professional Services Agreement with Environmental Science Associates in the amount of $120,000 from undesignated General Purpose Fund balance for the analysis of potential health and safety effects of certain commodities proposed at the Oakland Army Base West Gateway site bulk and oversized terminal without returning to City Council; and

FURTHER RESOLVED: that the City Council finds and determines, under OMC Section 2.04.050 I.5 and 2.04.051. B, that it is in the best interests of the City of Oakland to waive the competitive bidding, advertising and the RFP/RFQ requirements for the reasons set forth above and in the staff report accompanying this item, because of the specialized expertise that is required for this work and the broad interdisciplinary approach that ESA has demonstrated to perform the work proposed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California