

Attachment 16

EBMUD MOA

[See attached]

**MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF OAKLAND, THE EAST BAY MUNICIPAL UTILITY DISTRICT AND
CCIG OAKLAND GLOBAL, LLC**

This Memorandum of Agreement ("Agreement") is entered into this 19th day of July, 2012 (the "Execution Date"), between the City of Oakland, a California Charter City (the "City"), and the East Bay Municipal Utility District, a Municipal Utility District created pursuant to Municipal Utility District Act ("EBMUD"), together called the "Parties." CCIG Oakland Global, LLC ("CCIG"), the developer for the West Gateway area, as defined below, is also a party to this Agreement solely with respect to Section 1.e, "Limitations on Rail Traffic," and Section 8, Miscellaneous.

RECITALS

- A. EBMUD's Main Wastewater Treatment Plant ("MWWTP") is located at 2020 Wake Avenue in Oakland, California. The only way to access the main gate to the MWWTP is via Wake Avenue, a public street that crosses real property owned by the City and an easement owned by Burlington Northern Santa Fe ("BNSF"), although there are other locations with more limited access to the MWWTP.
- B. Between 2000 and 2002, the Oakland Base Reuse Authority, the City of Oakland Redevelopment Agency, and the City adopted a Redevelopment Plan for the Oakland Army Base Redevelopment Area ("Redevelopment Plan"), adopted a Final Army Base Reuse Plan ("Reuse Plan") and certified an Environmental Impact Report for the Redevelopment Plan and Reuse Plan. Subsequently, the City and Port of Oakland have taken numerous steps to implement the Redevelopment Plan and Reuse Plan.
- C. To further implement the Redevelopment Plan, the City (1) will enter into a Lease Disposition and Development Agreement (the "LDDA") with Prologis and CCIG Oakland Global, LLC ("Master Developer") to develop a portion of the former Army Base and to develop a Master Plan for certain City-owned and Port-owned properties, including portions of the former Army Base that is further described in the CEQA Addendum as the 2012 Army Base Project ("2012 Army Base Project"), (2) has performed further California Environmental Quality Act (CEQA) review of the 2012 Army Base Project, and (3) plans to redevelop the North Gateway Area of the former Oakland Army Base, adjacent to the MWWTP, for two recycling facilities (CASS and CWS; hereafter "Recycling Facilities" or "Recyclers"), which is a component of the 2012 Army Base Project. CCIG will develop the West Gateway area and the new Oakland Bulk Oversized Terminal. The Oakland Bulk Oversized Terminal, LLC ("OBOT") is an affiliate of Master Developer and, upon the satisfaction of certain conditions precedent set forth in the LDDA, intends to enter into a ground lease for the West Gateway area as further set forth in the LDDA.

D. The Parties wish to ensure that:

1. The designs for the 2012 Army Base Project's roadway and rail line improvements in the North Gateway Area will be constructed in accordance with generally acceptable engineering standards, meeting applicable design criteria, and mitigate impacts to EBMUD by providing EBMUD with safe and reasonable access to the MWWTP; and
2. The 2012 Army Base Project (as shown in **Exhibit A**, attached hereto and incorporated herein by reference) is successfully developed.

TERMS

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Access to EBMUD's Main Wastewater Treatment Plant

The Parties shall implement the following measures (as shown in **Exhibits B and C**, attached hereto and incorporated herein by reference).

a. Realignment of Wake Avenue

- (1) **Realignment.** The City shall realign Wake Avenue and widen the realigned Wake Avenue from two to four lanes. The City shall obtain EBMUD's approval that the detailed design for the realigned Wake Avenue is consistent with the conceptual site plan solely with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.
- (2) **Right of Way.** The new Wake Avenue alignment shall be a public street, which EBMUD, like all members of the public, would be entitled to use.

(3) **Quitclaim of Access Easement.** EBMUD shall, within 30 days of written notice from the City of the completion of the realignment of Wake Avenue pursuant to Section 1.a.(1), relocation of the existing rail line pursuant to Section 1.c.(1), execution of the rail traffic agreement pursuant to Section 1.e, and transfer of property rights for the Burma Road to Engineers Road connection pursuant to Section 1.f, execute and record a quitclaim deed quitclaiming to the City or its successor(s) any and all of its rights and interest in the access easement recorded as Document No. 2004-513852 in a form substantially similar to that shown in **Exhibit D** attached hereto and incorporated herein by reference.

b. Provision of a New Railroad Crossing.

The City shall design a new four-lane railroad crossing compliant with applicable California Public Utilities Commission and Class 1 Rail regulations and design safety requirements, at the proposed intersection between the realigned Wake Avenue and Engineers Road, as generally shown in **Exhibit B**. The City shall obtain EBMUD's approval that the detailed design for new railroad crossing is acceptable with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

The City shall submit the design as required for CPUC approval. EBMUD shall be copied on all communications to the CPUC regarding the design approval, and shall be provided with copies of all communications from the CPUC regarding the design approval. EBMUD shall also be given notice of any in-person or telephonic meetings with the CPUC regarding the design approval, and shall be given the opportunity to attend those meetings.

If CPUC rejects the design, the City shall design a crossing that addresses the specific reasons for rejection set forth by the CPUC. The City shall obtain EBMUD's approval that the detailed design for new railroad crossing is acceptable with respect to access and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed.

Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved. The City shall construct the crossing according to the final approved design.

The intent of this provision is to ensure that EBMUD will have safe and reasonable access to meet its operational needs by providing EBMUD with the widest railroad crossing that will be approved by the CPUC, not to exceed four lanes.

c. Widening of Engineers Road

(1) **Relocation of existing rail line.** The City, or its designee, shall obtain an agreement from Union Pacific, BNSF and Oakland Terminal Rail (OTR) or their respective licensees or successors (collectively called "Rail Entities") for an easement to relocate the existing rail line twenty (20) feet south of the existing alignment along the length of Engineers Road to enable the widening of Engineers Road to 40 feet southward as measured from the current northern boundary of Engineers Road. The design of the relocated rail line will involve a built up ballast rock structure which slopes toward the new northern property line (with the toe of the slope at the property line). The City, or its designee, shall relocate the existing railroad maintenance easement so as to overlay the relocated rail line property. No part of this relocated maintenance easement shall be on EBMUD's property. The Parties acknowledge that the Rail Entities' current use of the existing rail line constitutes forty (40) trips per year for switching purposes along the length of the line by trains of ten (10) cars or less, which traffic crosses in front of the MWWTP's main gate (the "Existing Rail Activity"). The Parties further agree that any agreement with the Rail Entities regarding the relocation of the existing rail line pursuant to this Section 1.c that allows the Rail Entities to conduct activities on the relocated rail line shall expressly provide (a) either (i) such utilization shall be limited to the Existing Rail Activity or (ii) any utilization in excess of the Existing Rail Activity shall be expressly subject to the provisions of Section 1.e below and (b) that EBMUD is an intended third party beneficiary with respect to the limitations on the Rail Entities' use of the relocated rail line. The Parties agree, with respect to both the Existing Rail Activity (whether conducted on the existing rail line or the relocated rail line) and any rail traffic serving the EBMUD MWWTP facility, that (w) such uses shall not be included in the definition of Rail Traffic (as defined in Section 1.e.1.b below), (x) the Crossings caused by such uses shall not be counted toward the maximum Crossings permitted under Section 1.e, (y) such uses shall not be subject to the restrictions set forth in Section 1.e below and (z) neither the Rail Operator nor the City shall be liable for liquidated damages related to such uses.

(2) **No stormwater impacts.** The City shall incorporate and implement design provisions for the relocated rail lines that will prevent any negative stormwater impacts to EBMUD along Engineers Road caused by the relocated rail lines.

- (3) **Construction of safety improvements.** EBMUD shall provide the property necessary for, and shall design and construct, improvements at the intersection of Engineers Road and the new rail crossing that are necessary to mitigate impacts to safety posed by requiring trucks to turn across the relocated rail line at a right or acute angle that is too close to the rail lines, as shown on **Exhibit B**.

EBMUD shall obtain the City's approval of the detailed design, schedule and budget ("Document Submittals") for these safety improvements. City shall have ten (10) Business Days after receiving the Document Submittals to provide written comments or approve such, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the Document Submittals or provide written comments by the specified date means the Document Submittals are deemed approved, unless City notifies EBMUD in writing within the 10-day review period that City requires an additional 10 Business Days for review. If City requests the extended review period, City's failure to provide written comments prior to the expiration of the extended period means the Document Submittals are deemed approved. EBMUD shall review City's comments and incorporate such comments with which it agrees into a revised Document Submittals and provide City (10) Business Days for review and comment on the revised Document Submittals, or to approve the revised Document Submittals, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final Document Submittals within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

- (4) **Construction of Engineers Road.** In conjunction with the safety improvements set forth in Section 1.c.(3), above, EBMUD shall design and construct the improvements necessary for the widening of Engineers Road.

EBMUD shall obtain the City's approval of the detailed design, schedule and budget ("Document Submittals") for these improvements. City shall have ten (10) Business Days after receiving the Document Submittals to provide written comments or approve such, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the Document Submittals or provide written comments by the specified date means the Document Submittals are deemed approved, unless City notifies EBMUD in writing within the 10-day review period that City requires an additional 10 Business Days for review. If City requests the extended review period, City's failure to provide written comments prior to the expiration of the extended period means the Document Submittals are deemed approved. EBMUD shall review City's comments and incorporate such comments with which it agrees into a revised Document Submittals and provide City (10) Business Days for review and comment on the revised Document Submittals, or to approve the revised Document Submittals, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final Document Submittals within ten (10)

Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

The City shall construct a new fence along the new property line along the length of Engineers Road to provide for safe traffic flow. The City shall relocate the existing rail line with a safe offset distance from fence and property line.

The City shall obtain EBMUD's approval that the detailed design for safety-related fence is acceptable with respect to aesthetics, access, and safety-related issues. EBMUD shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to either approve the detailed design or provide written comments by the specified date means the documents are deemed approved, unless EBMUD notifies the City in writing within the 10-day review period that EBMUD requires an additional 10 Business Days for review. If EBMUD requests the extended review period, EBMUD's failure to provide written comments prior to the expiration of the extended period means the documents are deemed approved. The City shall review EBMUD's comments and incorporate such comments with which it agrees into a revised detailed design and provide EBMUD ten (10) Business Days for review and comment on the revised detailed design, or to approve the revised detailed design, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final detailed design within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

- (5) **Timing of Construction.** EBMUD shall complete construction of the safety improvements set forth in Section 1.c.(3) and the widening of Engineers Road under Section 1.c.(4) in coordination with the City's completion of the construction associated with the realignment of Wake Avenue and completion of a new rail crossing under Sections 1.a.(1) and 1.b, above. Construction by EBMUD shall be timely completed so as not to cause any delay in the City's construction of the 2012 Army Base Project, nor use of the constructed infrastructure. Notwithstanding anything to the contrary in this Agreement, provided that the City has provided EBMUD with at least 180 (one hundred eighty) days prior notice of the City's intent to vacate existing Wake Avenue and use realigned Wake Avenue, EBMUD's failure to comply with this Section 1.c.(5) shall not delay the vacation of existing Wake Avenue and the commencement of use of the realigned Wake Avenue.
- (6) **Property Rights.** Following the relocation of the existing rail line pursuant to Section 1.c.(1), and the extinguishment of any existing encroachments and easements on the current rail line site, the City shall execute and record a quitclaim deed quitclaiming to EBMUD its interests for the property area south of existing Engineers Road necessary to widen the entire length of Engineers Road to 40 feet from the existing northern boundary of Engineers Road at no cost to

EBMUD, in a form substantially similar to that shown in **Exhibit E**, attached hereto and incorporated herein by reference.

d. No Changes to Wake Avenue

The City agrees that the realigned Wake Avenue shall not be used and the existing Wake Avenue shall not be vacated under Section 1.a.(1) above unless and until the following occurs:

- Execution of the rail traffic agreement pursuant to Section 1.e;
- Relocation of the existing rail line pursuant to Section 1.c.(1);
- Quitclaim of City property pursuant to Section 1.c.(6);
- Construction of a new rail crossing pursuant to Section 1.b;
- Widening of Wake Avenue pursuant to Section 1.a.(1);
- Transfer of the Burma Road property rights pursuant to Section 1.f.

Should Wake Avenue not be realigned, (i) the City's rights and obligations under this Agreement are limited to Sections 1.c.(1) and 1.e (Limitations on Rail Traffic), 3 (Disconnection of Old Laterals), 6 (EBMUD Access During Construction), and 8 (Miscellaneous); and (ii) the Parties shall, if requested by the City, continue to negotiate in good faith to reach an agreement on an alternative site plan regarding access different from the existing Wake Avenue entrance.

e. Limitations on Rail Traffic

(1) For the purposes of this Section 1.e:

- (a) The term "Crossing" shall mean the time when the safety arms at the railroad crossing at the MWWTP's main gate are down and preventing through traffic on Wake Avenue, during which time one train or Unit Train or two trains or Unit Trains may be making the crossing concurrently. The duration of a Crossing shall not exceed 540 seconds (9 minutes).
- (b) The term "Rail Operator" shall mean CCIG, the ground lessee of the West Gateway area (OBOT), or any entity, successor or assign that has control over the operation of rail traffic serving or otherwise associated with the 2012 Army Base Project on the rail lines crossing EBMUD's main gate to the MWWTP ("Rail Traffic"). The parties agree that neither the Existing Rail Activity (whether conducted on the existing or relocated rail line) nor any rail activity serving the EBMUD MWWTP facility shall be included within the definition of the term "Rail Traffic." At the time of execution of this Agreement the Rail Operator is CCIG; provided, however, consistent with the provisions of Section 1.g below, CCIG's obligations under this Agreement are contingent upon CCIG or any of its affiliated entities having first entered into a ground lease with the City for all or any portion of the West Gateway area or the Central Gateway area.

- (2) The Rail Operator shall prevent trains from parking, stopping and/or unreasonably blocking access to EBMUD's main gate to the MWWTP via the railroad crossing at the existing or realigned Wake Avenue in accordance with the following terms:
- (a) Rail Traffic for "Unit Trains" (defined as any train including more than 10 cars (excluding the locomotive(s))) shall be limited as follows:
 - (i) a maximum of six total Crossings, in either direction, between the hours of 6:00 a.m. and 6:00 p.m.;
 - (ii) a maximum of 12 total Crossings (in either direction) each 24-hour day;
 - (iii) prohibited from using the Wake Avenue crossing from 7:30 a.m. until 9:30 a.m. and from 2:30 p.m. until 4:30 p.m.;
 - (iv) there shall be a minimum 30-minute interval between the end of one crossing and the beginning of the next Crossing; and
 - (v) shall operate at speeds between 5 miles per hour and 10 miles per hour when using the Wake Avenue crossing.
 - (b) Rail Traffic for all other trains shall be limited as follows:
 - (i) shall be a minimum 20-minute interval between the end of one Crossing of Wake Avenue and the beginning of the next Crossing during the hours from 7:30 a.m. until 9:30 a.m. and from 2:30 p.m. until 4:30 p.m.; and
 - (ii) shall operate at speeds between 5 miles per hour and 10 miles per hour when using the Wake Avenue crossing.
 - (c) A Response Plan for addressing stalled trains conducting Rail Traffic that block access to the MWWTP shall be developed and implemented, and shall include (but not be limited to) the following items:
 - (i) All Unit Trains shall include two locomotives with one serving as a backup should the primary locomotive stall.
 - (ii) Backup locomotives shall be available within reasonable proximity to clear the Wake Avenue crossing if both locomotives fail.
 - (d) The Rail Operator shall suspend Rail Traffic operations during emergencies declared by EBMUD's Emergency Operations Team Incident Commander. An "emergency" for the purposes of this section shall include the actual or threatened existence of conditions of disaster or extreme peril to critical EBMUD functions and/or the health and safety of EBMUD staff or the public. Examples of what may cause such conditions include earthquakes, power outages, tsunami, sanitary sewer overflows, explosions, chemical spills, digester spills, or security incidents that necessitates the suspension of rail

(e) The Rail Operator shall comply with the Rail Traffic limitation terms of this Agreement, including the payment of the specified liquidated damages related to the failure to comply with these terms and the implementation of any required corrective measures.

(i) EBMUD shall provide the Rail Operator (with a copy to the City) of any alleged violation of this Section and request a written response setting forth actions taken to address each violation within fifteen (15) Business Days of the receipt of notice from EBMUD.

(ii) If repeated violations (greater than five violations in any 30-day period) of the above terms occur, then:

1. EBMUD shall notify the Rail Operator and the City of this condition in writing.
2. In response, the Rail Operator shall develop a Corrective Action Plan addressing the specific Agreement term(s) violated.
3. This Action Plan shall be submitted to EBMUD within fifteen (15) Business Days from receipt of EBMUD's notice. EBMUD shall review the Corrective Action Plan and provide comments to the Rail Operator within five (5) Business Days. The Rail Operator shall then work to provide a revised Corrective Action Plan to EBMUD within ten (10) Business Days.
4. If the Rail Operator fails to provide the required original or revised (incorporating EBMUD's comments) Corrective Action Plan, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of ten thousand dollars (\$10,000.00) for each occurrence documented in EBMUD's written notification within 60 days of receipt of original written notification from EBMUD as compensation for access condition impacts at the EBMUD MWWTP.

(iii) If, after development and implementation of the Corrective Action Plan, three additional violations of a specific Agreement term previously violated and included in the Corrective Action Plan occur within any 30-day period, EBMUD shall notify the Rail Operator (with a copy to the City) of this condition in writing. In response, the Rail Operator shall pay liquidated damages to EBMUD in the amount of ten thousand dollars (\$10,000.00) for each of the three occurrences documented by EBMUD and any subsequent occurrences (up to a total of ten violations) within 60 days of receipt of written notification from EBMUD.

(iv) If the total number of documented violations of a specific Agreement term exceeds ten violations in a calendar year, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of twenty thousand dollars (\$20,000.00) for each additional occurrence above the first ten violations within the calendar year within 60 days of receipt of written notification from EBMUD.

(v) If the total number of documented violations of a specific Agreement term exceeds twenty violations in a calendar year, the Rail Operator shall pay a liquidated damages penalty to EBMUD in the amount of forty thousand dollars (\$40,000.00) for each additional occurrence above the first twenty violations within the calendar year within 60 days of receipt of written notification from EBMUD.

(vi) At the start of each calendar year, the liquidated damages penalty amount shall reset to ten thousand dollars (\$10,000.00) per occurrence and be applied to any additional violations of this Agreement (up to a total of ten violations in a calendar year); the escalated damages penalty of twenty thousand dollars (\$20,000.00) for each additional occurrence thereafter; and then forty thousand dollars (\$40,000.00) for each occurrence above twenty occurrences during the calendar year.

(f) The terms of Sections 1.e and 8 of this Agreement shall be binding on all successors and assigns of the ground lease for the West Gateway area. A Rail Operator shall have the right to assign its rights and obligations under Section 1.e of this Agreement to the ground lessee of the West Gateway area.

(g) The terms of this Section 1.e shall be incorporated into any lease or other document that anticipates the use of the rail line by any Rail Operator. The intent of this provision is to ensure that the City or City's lessee or other designee will maintain EBMUD's rights under Section 1.e in perpetuity, subject to the provisions of Section 1.e.(4). In the absence of a ground lease, the City will be responsible for the adherence of any Rail Operator to the limitations set forth in Section 1.e, and shall be responsible for the liquidated damages provisions of this Section 1.e should the City fail to include the terms of Section 1.e in any lease or other document that dictates the parameters of rail operations for any Rail Operator.

(3) Emergency Vehicle Access and Emergency Response Plan.

(a) The City shall make reasonable good faith efforts to explore the feasibility of, and if determined feasible, obtain/secure alternate Emergency Vehicle Access to the MWWTP that would not be impacted by the 2012 Army Base rail traffic. The City shall coordinate its efforts with EBMUD.

- (b) The City shall develop, in consultation and coordination with adjacent property owners, including EBMUD, an Emergency Response Plan for the 2012 Army Base Project, which addresses emergency ingress/egress.
- (4) If requested by the City, the Rail Operator and/or EBMUD, the Parties shall meet and confer in good faith to explore potential amendments to this Agreement relating to this provision on Limitations on Rail Traffic.
- (5) The Rail Operator and EBMUD shall meet at reasonable intervals to discuss any mutual concerns relating to rail operations and access to the MWWTP.
- (6) The City shall not enter into an agreement with the Rail Entities to conduct Rail Traffic on the existing rail line described in Section 1.c.1 unless such agreement expressly provides (a) either (i) the Rail Entities' concurrent use of the existing line shall be limited to the Existing Rail Activity or (ii) that any increased use of the existing rail line by the Rail Entities shall be subject to the provisions of this Section 1.e and (b) that EBMUD is an intended third party beneficiary with respect to the limitations on the Rail Entities' use of the existing rail line.

f. Provision of West Burma Road to Engineers Road Connection

- (1) If Wake Avenue is realigned, prior to the abandonment of Wake Avenue the City (or Caltrans if Caltrans requires the use of its under freeway property) shall lease a 40-foot wide easement at no cost to EBMUD to allow construction and use of an extension of Engineers Road under the freeway overpass area along West Grand Avenue to the immediate vicinity of Burma Road, as generally shown in **Exhibit B**. Said lease is subject to approval by Caltrans and Federal Highway Administration as detailed in the City's under-freeway easement recorded in the Alameda County Recorder's Office as document # 2005-171016. The lease area shall avoid all existing column supports for the existing freeway overpass and provide for construction of a safe extension of Engineers Road.
- (2) If Wake Avenue is realigned, prior to the abandonment of Wake Avenue the City shall execute and record a quitclaim deed quitclaiming to EBMUD its interests at no cost to EBMUD to allow construction of a new 40-foot wide extension of Engineers Road to the proposed realigned (or existing) Burma Road, immediately west of the freeway overpass area along West Grand Avenue, as generally shown in **Exhibit B**.
- (3) **Design and Construction of EBMUD Improvements.** EBMUD shall obtain the City's approval, and that of Caltrans if required, of the detailed design for the West Burma Road/Engineers Road intersection with respect to access and safety-related issues only. The City shall have ten (10) Business Days after receiving the detailed design to provide written comments or approve such documents, which approval shall not be unreasonably withheld. Failure to either approve the documents or provide written comments by the specified date means the

document is deemed approved. EBMUD shall review the City's comments and incorporate such comments with which it agrees into a revised document and provide the City ten (10) Business Days for review and comment on the revised document, or to approve the revised document, which approval shall not be unreasonably withheld, conditioned or delayed. If City and EBMUD cannot agree on the final document within ten (10) Business Days, then the Dispute Resolution Process contained in Section 8.1 shall be followed.

- g. **Right of Entry/Temporary Easement.** EBMUD shall grant a Right of Entry/temporary ingress and egress easement over the existing Engineers Road, in a form substantially similar to **Exhibit G**, for use by regular and construction traffic for a duration reasonably necessary to install the rail and West Burma Road improvements for the 2012 Army Base Project, but such temporary easement shall not unreasonably interfere with EBMUD's use of Engineers Road.

2. Utility Easements and Surveys

- a. The City shall quitclaim any rights and obligations it has to the portions of 34th Street within the EBMUD MWWTP property to EBMUD in a form substantially similar to that shown in **Exhibit E**.
- b. EBMUD shall quitclaim any and all of its rights contained in the overhead electrical easement recorded as Document 96-066993 to the City in a form substantially similar to that shown in **Exhibit F**, attached hereto and incorporated herein by reference.

3. Disconnection of Old Lateral Lines

As they are discovered during the course of construction of the 2012 Army Base Project, the City shall, to the maximum feasible extent, identify, disconnect or plug in place (as determined by the City in its sole and absolute discretion), old lateral lines from vacant parcels, buildings, and/or areas in the former City-owned portions of the Oakland Army Base to reduce inflow and infiltration flows to the existing EBMUD 15-inch sewer line that runs along Engineers Road.

4. Funding of Improvements

- a. The City shall fund all of the capital costs including, but not limited to, planning, design, engineering, permits, project management, construction, construction management, design services during construction, and traffic control for the following:
 - (1) Realignment/Expansion of Wake Avenue, as described in Section 1.a;
 - (2) Relocation of the existing rail line to the south, as described in Section 1.c;
 - (3) Provision of new railroad crossing at realigned Wake Avenue, as described in Section 1.b.

- (4) Widening of that portion of Engineers Road to the east of the new Wake Avenue entrance to Engineers Road as described in Section 1.c(4); and
 - (5) Improvements at the intersection of Engineers Road and the rail crossing, as described in Section 1.c.(3);
- b. EBMUD shall fund all of the capital costs including, but not limited to, planning, design, engineering, permits, project management, construction, construction management, design services during construction, and traffic control for the following:
- (1) Construction of the connection of Engineers Road to Burma Road, as described in Section 1.f; and
 - (2) Widening of that portion of Engineers Road to the west of the new Wake Avenue entrance to Engineers Road as described in Section 1.c.(4);

5. EBMUD Access During Construction

The City shall stage construction of the roadways and improvements serving the 2012 Army Base Project in such a manner that allows vehicles to reasonably access the MWWTP via the existing EBMUD entrance at the EBMUD security kiosk. The City acknowledges that such reasonable access may require the City to install temporary pavement in some areas to accommodate the turning movements of the vehicles or develop some other temporary improvements. The City shall keep EBMUD informed of modified traffic patterns and routes during construction and shall provide adequate traffic control. The City shall provide EBMUD with proposed traffic routes at least five (5) Business Days in advance of any modification and shall allow EBMUD to provide input into any such modifications within said five (5) Business Days.

6. Responsibility for Maintenance, Repair and Improvements

EBMUD shall maintain, repair, improve at its own cost and expense all of the roadway improvements, walls, fences, and landscaping on EBMUD property. The City shall be responsible for maintenance of new, realigned Wake Avenue, West Burma Road, and the new rail crossing.

7. Agreement not to Litigate

EBMUD acknowledges that the terms of this Agreement adequately address EBMUD's concerns regarding environmental and access impacts of the 2012 Army Base Project. Therefore, EBMUD agrees that EBMUD and its representatives, employees, agents, and contractors ("EBMUD-related Groups") shall not, on behalf of EBMUD, publicly or privately oppose, or legally challenge the City's approval of the 2012 Army Base Project, in any way, including, but not limited to, file an administrative appeal/challenge/objection, lawsuit, action, cause of action

and/or claim based on any government approvals, permits and/or actions necessary for adoption of the Addendum and the approval of the 2012 Army Base Project, nor implementation of such; nor shall EBMUD-related Groups assist or encourage others to do so.

EBMUD understands that there may be certain unknown or unstated claims relating to this Agreement Not to Litigate provision and EBMUD nevertheless expressly waives any rights or benefits available to it under section 1542 of the Civil Code of California which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

This waiver expressly excludes concerns of EBMUD that could arise in its service delivery area that are unrelated to the 2012 Army Base Project, such as new sub-basin allocations. It also expressly excludes any right that EBMUD may have to compensation for damages directly caused by construction activities related to the project, such as damages caused to EBMUD facilities.

8. Miscellaneous

a. Amendments

Subject to applicable law, this Agreement may be amended only by an instrument in writing signed by authorized representatives of the party against whom enforcement is sought.

b. Remedies

The Parties recognize that certain obligations under this Agreement are special, unique and of extraordinary character, and if any party fails to comply with the obligations and restrictions imposed upon it under this Agreement, the other parties will not have an adequate remedy at law. Under such circumstances, any party, in addition to any other rights which it may have, will be entitled to injunctive relief to enforce any such restrictions and obligations, and in the event any actual proceedings are brought in equity to enforce any such provision, no party will raise as a defense that there is an adequate remedy at law. Nothing in this Agreement will be construed to prohibit any party from pursuing any other available remedies for any breach or threatened breach, including recovery of damages. However, prior to commencing any legal action to enforce any rights, restrictions and/or obligations under this Agreement, the Parties must first undertake and complete the Dispute Resolution process in Section 8.1.

c. Severability

If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations will remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

d. Counterparts

This Agreement may be executed in two or more counterparts, and in facsimile and/or electronic form, all of which will be deemed an original, but each of which will constitute one and the same agreement. Signature pages may be detached from the counterparts and attached to a single copy of the Agreement to physically form one document.

e. Entire Agreement

This Agreement, and the Exhibits A through G to it, constitute the entire agreement between the Parties pertaining to its subject matter, and supersede all prior and contemporaneous agreements and understandings of the Parties in connection with the same. If there is any inconsistency between the body of this Agreement and the Exhibits, the body of this Agreement shall govern.

f. Participation of All Parties; Legal Review

All Parties agree that they have participated in the formation of this Agreement, and that the rule of construction which provides that any ambiguity will be construed against the drafter of an instrument will not apply to the interpretation of this Agreement. Each Party acknowledges that he, she, or it has had an opportunity to have, and did have, this Agreement reviewed by an attorney.

g. No Waiver

No failure by any party to insist on the strict performance of any obligation of another party under this Agreement or to exercise any right, power, or remedy arising out of a breach hereof, will constitute a waiver of such breach or of the enforcing party's right to demand strict compliance with any terms of this Agreement. No acts or

admissions by any party or its employees, agents or contractors, will waive any or all of the enforcing party's rights under this Agreement.

h. Headings

The headings in this Agreement are for reference and convenience of the Parties and do not represent substantive provisions of this Agreement.

i. Notices

Any notice given pursuant to this Agreement will be given in writing, via facsimile or email, and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

To CCIG/Rail Operator

Mr. Phil Tagami
CCIG Oakland Global, LLC
c/o California Capital & Investment Group, Inc.
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612

To EBMUD:

Mr. David R. Williams
Director of Wastewater Department
East Bay Municipal Utility District
375 Eleventh St.
Oakland, CA 94607

To City:

Mr. Fred Blackwell
Assistant City Administrator
City of Oakland
One Frank H. Ogawa Plaza, 3rd floor
Oakland, CA 94612

And

Mr. Mark P. Wald
Deputy City Attorney
City of Oakland
One Frank H. Ogawa Plaza, 6th floor
Oakland, CA 94612

Any Party to this Agreement may change the name or address of representatives for purpose of this Notice section by providing written notice to all other Parties ten (10) Business Days before the change is effective. Notices shall be deemed effective upon receipt; provided, however, that any such notice or other communication is not received or cannot be delivered due to a change in the address of the receiving Party of which notice was not previously given to the sending Party or due to a refusal to accept by the receiving Party, such notice or other communication shall be effective on the date delivery is attempted.

j. Authorization

Each party to this Agreement represents and warrants that the execution, delivery and performance of this Agreement by it have been duly authorized by its governing body.

k. No Requirement to Build; Termination; Void Agreement

- (1) This agreement will be void if subsequent to a legal challenge or later business decision by the City, the City elects not to commence the 2012 Army Base Project, or portions of the Project relating to realignment of Wake Avenue and increased rail activity in the North Gateway area.
- (2) The City shall use good faith efforts to enter into the following agreements necessary to implement the 2012 Army Base Project on such terms as are required by this Agreement and otherwise acceptable to the City, in its sole and absolute discretion (collectively, the "Required Agreements"): the Transportation Corridor Improvement Funding Agreement with the California Transportation Commission, the Cost Sharing Agreement with the Port of Oakland, Lease Disposition and Development Agreement with the Master Developer and an agreement with the Rail Entities for their use of the relocated existing rail line as described in Section 1.c or their use of the existing line as described in Section 1.e.6. If, notwithstanding the use of such good faith efforts, the City is unable to enter into the Required Agreements and decides not to relocate or realign Wake Avenue and provides EBMUD and CCIG with written notice of such, no party shall have any responsibility under this Agreement, including without limitation, to construct any of the improvements described herein, pay for any expenses or pay any liquidated damages.
- (3) This Agreement is not intended to, nor does, commit the City to approving the 2012 Army Base Project.
- (4) This Agreement shall terminate upon termination of the ground lease in the West Gateway area. Upon termination of the ground lease, the terms of Section 1.e of this Agreement shall be incorporated into any document that anticipates the use of the rail line by any Rail Operator, as defined in Section 1.e.(a). The intent of this provision is to ensure that the City or City's lessee or other designee will maintain

EBMUD's rights under Section 1.e in perpetuity, subject to the provisions of Section 1.e.(4). In the absence of a ground lease, the City will be responsible for the adherence of any Rail Operator to the limitations set forth in Section 1.e.

I. Dispute Resolution

- (1) It is the intent of the City, EBMUD and the Rail Operator that conflicts regarding satisfaction of the Parties' rights and obligations under this Agreement be resolved through a dispute resolution method so that such Mediation Issues may be resolved as quickly as possible and at the lowest level possible so as not to adversely impact the Project schedule or course of work. Each utilization of this dispute resolution process shall involve the necessary parties to the dispute.
- (2) The necessary Parties to a dispute shall each designate senior-level representatives ("Senior Representatives") to meet and confer to address specific concerns and/or complaints as they arise. The meeting shall take place within 72 hours after determining that a concern/complaint raised by a Party, could not be resolved, after the concern/complaint is received by the other Party or Parties.
- (3) If the issues cannot be resolved by the senior-level representatives within five (5) Business Days, then the issue shall be forwarded to a Senior Management Committee comprised of – as necessary – the EBMUD Director of Wastewater Department, the Assistant City Administrator (or his/her designees) and/or a Senior Manager as designated by the Rail Operator.
- (4) If the issues cannot be resolved by the Senior Management Committee within five (5) Business Days, then the issue shall be forwarded to an Executive Steering Committee comprised of – as necessary – the City Administrator (or his/her designees), the EBMUD General Manager (or his/her designees) and/or an executive of the Rail Operator.
- (5) If any of the Parties believe the resolution of a recurring or significant problem is time sensitive, such that the Project schedule and/or course of work may be significantly adversely affected by a lack of resolution of the issue, then it may designate the issue to be a significant matter, whereby the time responses for each step (b) and (c) shall be shortened to 48 hours.
- (6) In addition to the provisions above, a mediation of disputes can occur at the written notice/election of one of the Parties if the issue is not resolved after good-faith consultation with the Executive Steering Committee as provided above:
 1. The written notice invoking mediation shall contain a statement setting forth the nature of the dispute, the key issues to be resolved in the mediation, the

amount of money involved, if any, third parties, if any, necessary for resolution, and the remedy sought.

2. The mediator shall be appointed upon the mutual agreement of the Parties. In the event the Parties cannot agree on a person to act as the mediator within five (5) calendar days after the initiation of mediation process, then each Party will provide a list of 10 names of persons with at least five (5) years of experience in resolving disputes. The Parties shall select a mediator from this list, or alternate in striking names from the lists until one name remains. The Party initiating the striking of names will be chosen by random chance, such as a flipping of a coin.
3. The fees and expenses of the mediator shall be shared equally among the Parties.
4. The rules and procedures for the mediation shall be those set forth herein plus any supplemental rules and procedures established by the mediator that are not inconsistent with the rules and procedures set forth herein.
5. All matter submitted to mediation and the results thereof shall be confidential, except if otherwise prohibited by law, or upon agreement of the Parties, or to the extent disclosure is necessary to carry out the terms of any resolution reached in mediation.
6. The mediator shall schedule an initial meeting with the Parties on a mutually acceptable date within ten (10) calendar days after he or she has been appointed. At this meeting, the Parties shall discuss the dispute with the mediator in a good faith attempt to resolve the issues and reach a settlement. If the mediator believes the discussions are productive, the mediator may continue them for a period of time not to exceed fifteen (15) calendar days from the date of the initial meeting. If the dispute has not been resolved through an agreement in principle among the Parties within such fifteen (15) calendar day period, the mediation will cease, unless otherwise mutually agreed to by the Parties.
7. Each Party agrees to provide as participants in the discussions one or more representatives with decision making and settlement authority sufficient to resolve the particular dispute, subject to approval of the Party's Governing Body, where required.
8. The mediator shall have the authority to request any information at any time from any Party as he or she shall deem reasonably necessary for resolution, excluding attorney-client or other privileged information.
 - (i) Each Party may provide to the mediator any information the Party deems reasonably necessary for resolution of the dispute, at any time.

(ii) The mediator shall be authorized to engage in ex parte contacts with any Party or other person with information relevant to dispute at any time until termination of discussions among the Parties and the mediator. All ex parte contacts shall remain confidential to the mediator, to the extent permitted by applicable law or unless otherwise agreed to by the Parties.

(iii) The mediation shall be held in such time and place within the City of Oakland as may be selected by the mediator, subject to the consent of the Parties, which consent shall not be unreasonably withheld.

(1) Any applicable statute of limitations shall be tolled during the period of this dispute resolution process.

m. Effective Date

This Agreement is effective on the date indicated on page one, as the date the Parties entered into this Agreement, subject to Section 8.1.

n. Governing Law

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

o. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

p. No Third Party Obligations

Except as expressly set forth herein, nothing in this Agreement is intended to nor does create duties, obligations or rights in third parties not Parties to this Agreement.

q. Cooperation

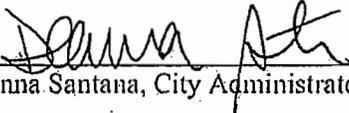
The Parties will work together in the spirit of good faith and cooperation to successfully implement this Agreement, including without limitation any negotiations with third parties. Where the City is required to obtain property rights from the Rail Entities or other third parties, the City shall diligently pursue negotiations with those third parties in good faith. To the extent there are any disagreements among the Parties, including alleged violations of the Agreement, the Parties will immediately raise those disagreements. Prior to initiating any legal action, the Parties will meet in good faith to attempt to resolve the disagreement, as provided in Section 8.1. However, any and all legal actions may be brought only if the preceding dispute resolution process has been completed.

r. Recitals

The recitals are true and correct and are an integral part of this Agreement.

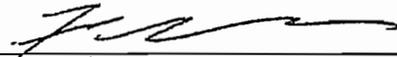
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CITY OF OAKLAND:

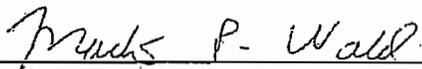
By 
Deanna Santana, City Administrator

7/19/12
Date

Recommended for Approval:

By 
Fred Blackwell, Assistant City Administrator

Approved as to form and legality:


Mark P. Wald, Deputy City Attorney

7/19/12
Date

EAST BAY MUNICIPAL UTILITY DISTRICT:

By _____
Alexander R. Coate, General Manager

Date

Approved as to form and legality:

Craig Spencer, Assistant General Counsel

Date

CCIG OAKLAND GLOBAL, LLC (For Sections 1.e and 8 only):

By _____
Phil Tagami

Date

Approved as to form and legality:

Marc Stice, Esq.

Date

r. Recitals

The recitals are true and correct and are an integral part of this Agreement.

In witness thereof, the Parties subscribed below have entered into this Memorandum of Agreement on the date first written above:

CITY OF OAKLAND:

By _____
Deanna Santana, City Administrator Date

Recommended for Approval:

By _____
Fred Blackwell, Assistant City Administrator

Approved as to form and legality:

Mark P. Wald, Deputy City Attorney Date

EAST BAY MUNICIPAL UTILITY DISTRICT:

By _____
Alexander R. Coate, General Manager Date

Approved as to form and legality:

Craig Spencer, Assistant General Counsel Date

CCIG OAKLAND GLOBAL, LLC (For Sections 1.e and 8, only):

By _____
Phil Tagami Date 7/19/12

Approved as to form and legality:

Marc Stice, Esq. Date

r. Recitals

The recitals are true and correct and are an integral part of this Agreement.

In witness thereof, the Parties subscribed below have entered into this Memorandum of Agreement on the date first written above:

CITY OF OAKLAND:

By _____
Deanna Santana, City Administrator Date

Recommended for Approval:

By _____
Fred Blackwell, Assistant City Administrator

Approved as to form and legality:

Mark P. Wald, Deputy City Attorney Date

EAST BAY MUNICIPAL UTILITY DISTRICT:

By _____
Alexander R. Coate, General Manager Date

Approved as to form and legality:

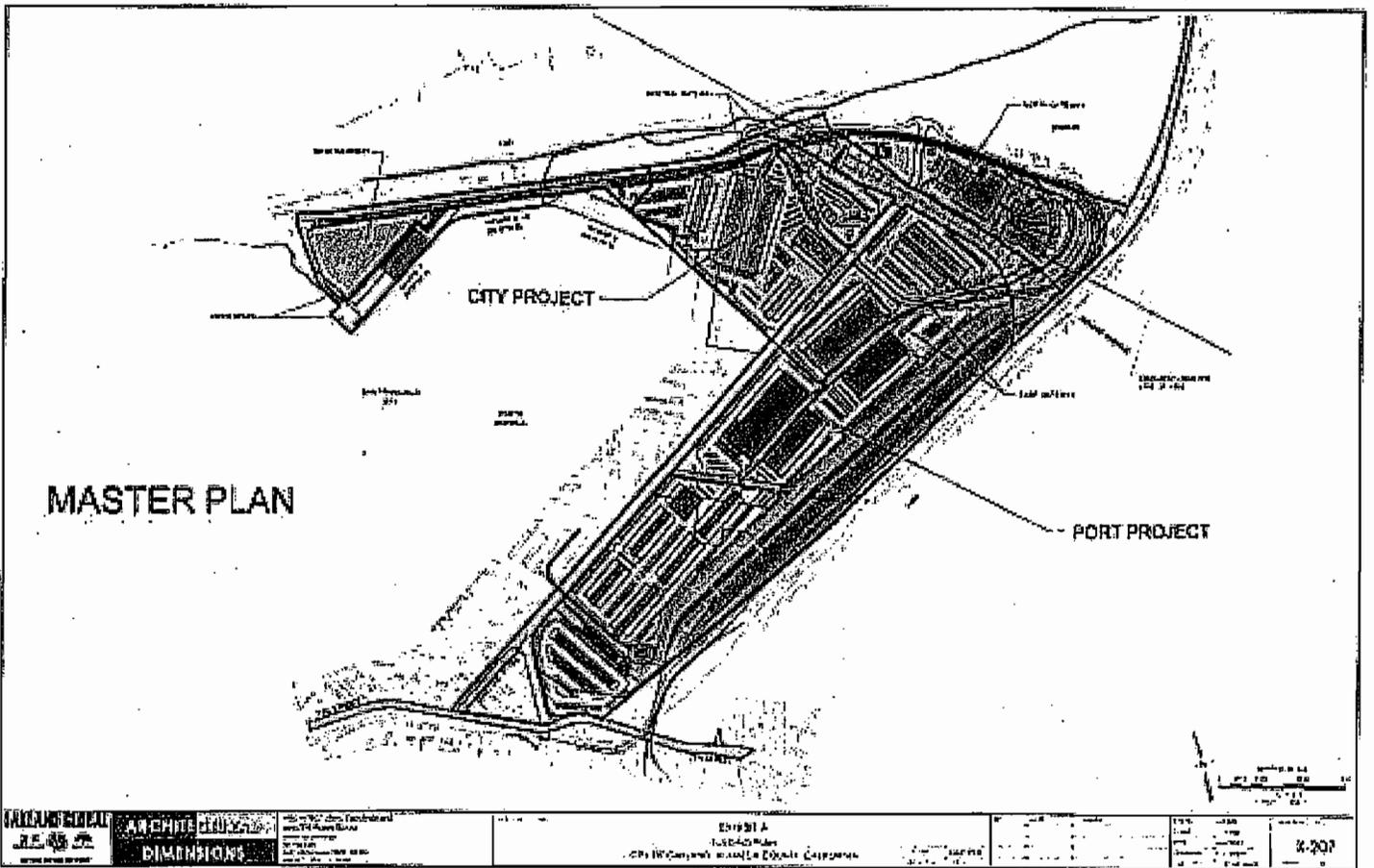
Craig Spencer, Assistant General Counsel Date

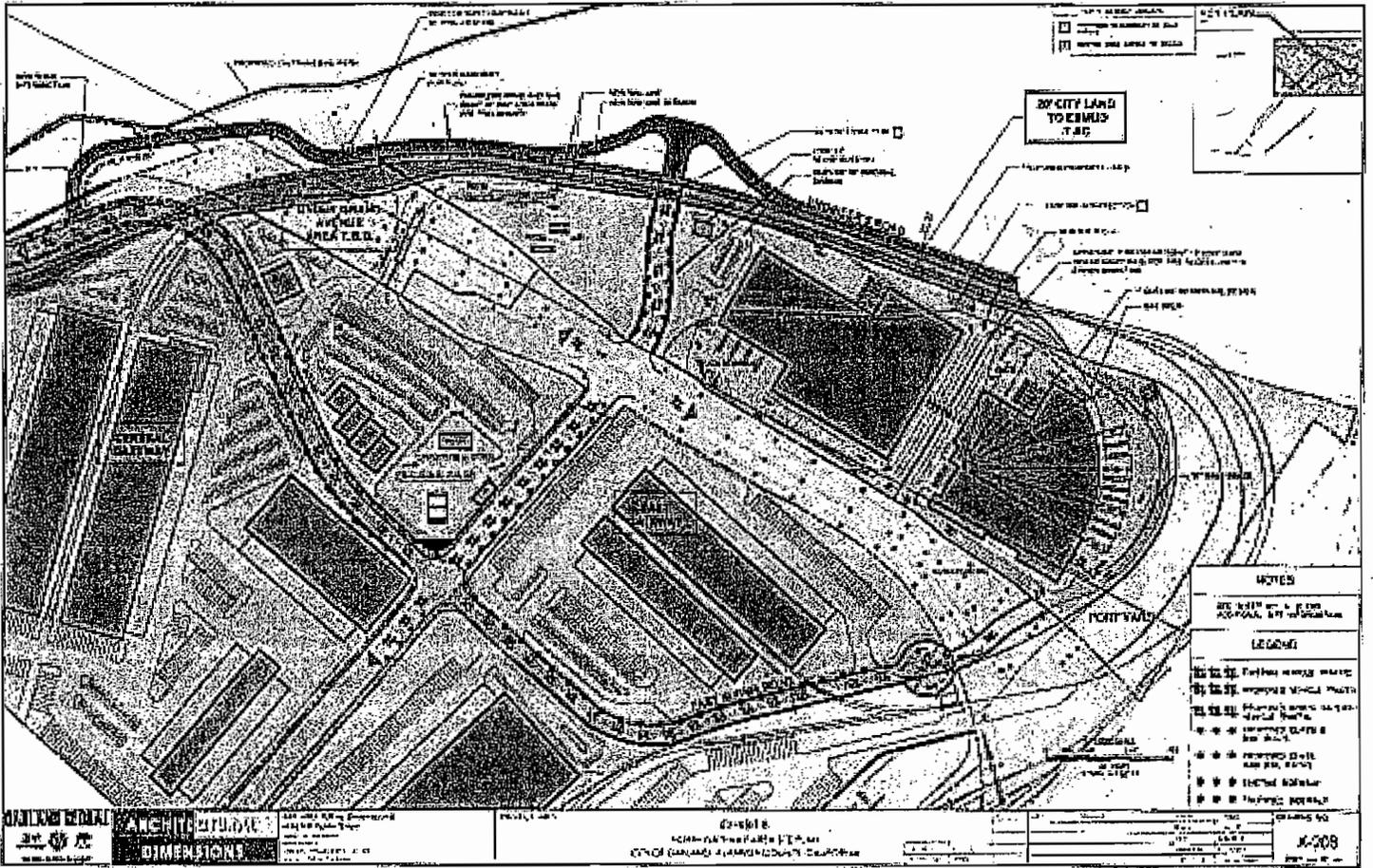
CCIG OAKLAND GLOBAL, LLC (For Sections 1.e and 8 only):

By _____
Phil Tagami Date

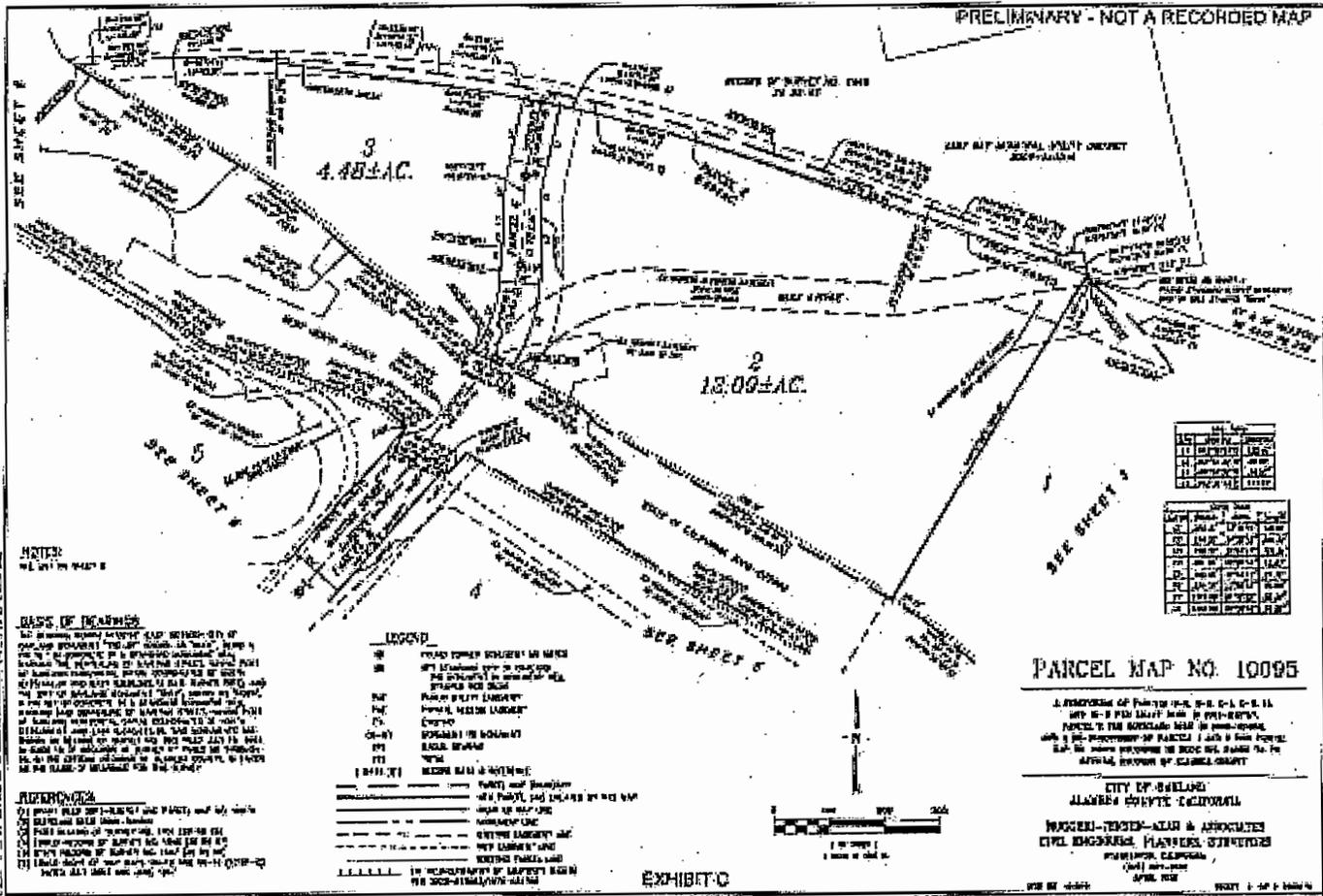
Approved as to form and legality:

Marc Stice, Esq. Date 7-19-12





PRELIMINARY - NOT A RECORDED MAP



NOTES:
SEE SHEET #

BASE OF MAPS:
 1. All areas shown on this map are based on the original survey of the land shown on the map. The survey was conducted by the City of Oakland and is based on the original survey of the land shown on the map. The survey was conducted by the City of Oakland and is based on the original survey of the land shown on the map.

REFERENCES:
 1. City of Oakland, Department of Public Works, Department of Engineering, City of Oakland, California, 1980.
 2. City of Oakland, Department of Public Works, Department of Engineering, City of Oakland, California, 1980.
 3. City of Oakland, Department of Public Works, Department of Engineering, City of Oakland, California, 1980.

- LEGEND**
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 - 1/16" = 1' SCALE
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EXHIBIT D

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY
City of Oakland

AND WHEN RECORDED MAIL TO:
City of Oakland
Real Estate Services Division
250 Frank Ogawa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX: Exempt
DOCUMENTARY TRANSFER TAX: Exempt
SURVEY MONUMENT FEE: Exempt

Computed on the consideration or value of property conveyed. OR
Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

MAIL TAX STATEMENTS TO:
City of Oakland
c/o City of Oakland,
Real Estate Services Division
250 Frank Ogawa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

QUITCLAIM DEED

The East Bay Municipal Utility District, a public corporation organized and existing under the laws of the State of California (herein called "Grantor"), hereby quitclaims to City of Oakland, a municipal corporation (herein called "Grantee") all rights, interest and title to the Grant of Access Easement recorded in the Alameda County Records Office on November 18, 2004 as Document Number 2004-513852 ("Access Easement").

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this _____ day of _____, 201_____.

"GRANTOR"

EAST BAY MUNICIPAL UTILITY DISTRICT,

By: _____
Alexander R. Conte, General Manager

Approved as to form and legality:

By: _____
Assistant General Counsel

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY
City of Oakland

AND WHEN RECORDED MAIL TO:
City of Oakland
Real Estate Services Division
250 Frank Ogawa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

CERTIFICATE OF ACCEPTANCE

The City of Oakland, a municipal corporation (herein called "Grantee") hereby accepts the quitclaim deed from the East Bay Municipal Utility District, a public corporation organized and existing under the laws of the State of California (herein collectively called "Grantor") of any and all real property interests in that certain real property in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit A (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

By accepting this Grant Deed, Grantee covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the Property, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the Property. The foregoing covenants shall run with the land. The foregoing provisions shall be binding upon and shall obligate Grantee and any subcontracting party or parties, or other transferees under this Agreement. The restrictive covenants contained herein shall remain in full force and effect without limitations as to time.

IN WITNESS WHEREOF, Grantee has executed this Certificate of Acceptance this _____
day of _____, 201__.

"GRANTEE"

CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Deputy City Attorney

EXHIBIT E

NO FEE DOCUMENT

Government Code Section 27383

RECORDING REQUESTED BY

East Bay Municipal Utility District

AND WHEN RECORDED MAIL TO:

East Bay Municipal Utility District

Post Office Box 24055

Oakland, CA 94623

Attention: Real Estate Services

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX: Exempt
DOCUMENTARY TRANSFER TAX: Exempt
SURVEY MONUMENT FEE: Exempt

Computed on the consideration or value of property conveyed: OR
Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

MAIL TAX STATEMENTS TO:

East Bay Municipal Utility District

P.O. Box 24055

Oakland CA 94623

Attention: Real Estate Services

APN: _____

QUITCLAIM DEED

The City of Oakland, a municipal corporation (herein called "Grantor"), hereby quitclaims to East Bay Municipal Utility District, a public corporation organized and existing under the laws of the State of California (herein called "Grantee") that certain approximately ____ acres of real property in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit A (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this _____ day of _____, 201__.

"GRANTOR"

CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Deputy City Attorney

Exhibit A

RECORDING REQUESTED BY

EAST BAY MUNICIPAL UTILITY DISTRICT

WHEN RECORDED MAIL TO

EAST BAY MUNICIPAL UTILITY DISTRICT

P. O. BOX 24055
OAKLAND, CA 94623

ATTN: REAL ESTATE SERVICES, MS #903

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the deed or grant dated _____, from _____ to EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation is hereby accepted by the undersigned Officer on behalf of the Board of Directors, pursuant to authority conferred by Resolution No. 30967 of the Board of Directors adopted on December 13, 1983 and the Grantee consents to recordation thereof by its duly authorized Officer.

Dated: _____

By: _____

Lynelle M. Lewis, Secretary of the District.

EXHIBIT F

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY
City of Oakland

AND WHEN RECORDED MAIL TO:
City of Oakland
Real Estate Services Division
250 Frank Oguwa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX: Exempt
DOCUMENTARY TRANSFER TAX: Exempt
SURVEY MONUMENT FEE: Exempt

Computed on the consideration or value of property conveyed OR
Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

MAIL TAX STATEMENTS TO:
City of Oakland
c/o City of Oakland,
Real Estate Services Division
250 Frank Oguwa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

QUITCLAIM DEED

The East Bay Municipal Utility District, a public corporation organized and existing under the laws of the State of California (herein called "Grantor"), hereby quitclaims to City of Oakland, a municipal corporation (herein called "Grantee") all rights, interest and title to: 1) the Grant of Non-Exclusive Easement recorded in the Alameda County Recorders Office on February 16, 1996 as Document Number 96038774, and 2) the Easement for Electric Power or Communication Facility recorded in the Alameda County Recorders Office on March 18, 1996 as Document Number 96066993.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this _____ day of _____, 201__.

"GRANTOR"

EAST BAY MUNICIPAL UTILITY DISTRICT,

By: _____
Alexander R. Conte, General Manager

Approved as to form and legality:

By: _____
Assistant General Counsel

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY
City of Oakland

AND WHEN RECORDED MAIL TO:
City of Oakland
Real Estate Services Division
250 Frank Ogawa Plaza, 4th floor
Oakland CA 94612
Attention: Real Estate Manager

CERTIFICATE OF ACCEPTANCE

The City of Oakland, a municipal corporation (herein called "Grantee") hereby accepts the grant and conveyance from the East Bay Municipal Utility District, a public corporation organized and existing under the laws of the State of California (herein collectively called "Grantor") of the simple interest in that certain real property in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit A (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

By accepting this Grant Deed, Grantee covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the Property, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees in the Property. The foregoing covenants shall run with the land. The foregoing provisions shall be binding upon and shall obligate Grantee and any subcontracting party or parties, or other transferees under this Agreement. The restrictive covenants contained herein shall remain in full force and effect without limitations as to time.

IN WITNESS WHEREOF, Grantee has executed this Certificate of Acceptance this _____
day of _____, 201__.

"GRANTEE"

CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Deputy City Attorney

EXHIBIT G

RIGHT OF ENTRY AGREEMENT FOR CITY OF OAKLAND

This Right of Entry Agreement ("Right of Entry") is made as of June __, 2012 ("Effective Date") by and between The EAST BAY MUNICIPAL UTILITY DISTRICT, a Municipal Utility District created pursuant to Municipal Utility District Act ("EBMUD") and the City of Oakland, a municipal corporation ("City").

RECITALS

This Right of Entry is made with respect to the following facts:

EBMUD is the owner of record of the real property shown on Exhibit A (the "Property"), in the City of Oakland, County of Alameda, State of California.

The City desires ingress and egress to and from EBMUD's Property for the demolition, deconstruction, construction and demobilization necessary for making certain improvements as contemplated in Section 1.c. of the Memorandum of Agreement between the City, EBMUD and CCIG Oakland Global, LLC ("CCIG"), relating to the former Oakland Army Base, including without limitation, site preparation, grading, and staging.

Subject to the terms and conditions of this Right of Entry, EBMUD agrees to grant to City the right to enter its Property for the construction and demobilization of such improvements.

AGREEMENT

In consideration of the mutual covenants and undertakings described hereinafter, EBMUD and City agree as follows:

EBMUD hereby grants to City, its employees, invitees, contractors and agents, and its successor-in-interest or assigns and its employees, invitees, contractors and agents the right to enter upon the Property between _____ and _____ [INSERT BOTH TIME AND DATE ONCE KNOWN], for the purpose of ingress and egress by regular, commercial and construction vehicles and traffic during the staging, installation, construction and demobilization of rail and roadway improvements (collectively called "Work"). City understands and acknowledges the Property is subject to agreements with the United States Department of the Army and the State of California Department of Toxic Substances Control that impose on the Property restrictions, protocols and management practices for subsurface sampling, excavation and construction related activities. City's invitees, contractors and agents acknowledge they understand and will abide by the requirements and obligations set forth in the agreements referenced above.

City understands that this Right of Entry shall not in any way whatsoever grant or convey any permanent easement or other interest in the Property to City.

City will require City's invitees, contractors and agents that enter onto the Property to procure and keep in force for the term of this Right of Entry, at no cost and/or expense to EBMUD, the policies of insurance described in this paragraph, with companies doing business in California and acceptable to City. City will upon demand provide EBMUD with a Certificate of Insurance to represent that such coverage is in place. The insurance will at a minimum include Commercial General Liability insurance, including but not limited to, Personal Injury, and Broad Form Property Damage. The policy will contain a severability of interest clause or cross liability clause or the equivalent thereof. The policy will be endorsed as follows: "East Bay Municipal Utility District, its board members, directors, officers, agents, and employees, as additional insured."

Coverage afforded on behalf of EBMUD will be primary insurance and any other insurance available to EBMUD under any other policies will be excess insurance (over the insurance required by this agreement).

Insurance coverage will include the following:

Commercial General Liability Insurance:	\$2,000,000.00
Worker's Compensation Insurance Amounts:	\$1,000,000.00
Business Automobile Liability Amounts:	\$1,000,000.00

Except for any negligence on the part of EBMUD, City hereby agrees to defend, indemnify and hold harmless EBMUD, and its Board members, officers and employees, from and against any claims, actions, causes of actions, losses, expenses (including reasonable attorneys' fees and costs), or liability (collectively called "Actions") for injury or damage to any person or property occurring on the Property, caused by the acts or omissions of City or City's employees, agents and/or contractors while performing the Work authorized by this Right of Entry during the term of the Right of Entry. City shall use all reasonable efforts to perform the Work without interfering with the operation or use of the property by EBMUD, EBMUD lessees, or EBMUD's contractors or causing any damage to any improvements on the Property, and all Work shall be reasonably coordinated with EBMUD or EBMUD departments using the Property.

All property damaged by the City in the performance of the Work authorized by this Right of Entry will be restored by City to a condition reasonably similar to its condition prior to such damage, or paid for by City, at City's option.

If there are any disputes relating to or arising from this Right of Entry, the Dispute Resolution provisions of the Memorandum of Agreement between the City, EBMUD and CCIIG relating to the former Oakland Army Base shall be followed prior to commencing any legal action.

This Agreement shall be effective as of the date first written above.

EAST BAY MUNICIPAL UTILITY DISTRICT:

By _____
Alexander R. Coats, General Manager

_____ Date

Approved as to form:

Assistant General Counsel

CITY OF OAKLAND:

By _____
Deanna Santana, City Administrator

_____ Date

Approved as to form and legality:

City Attorney

EXHIBIT A

Legal Description and Drawing of Affected Property To Be Inserted