

MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

AMONG

THE OAKLAND BASE REUSE AUTHORITY,
THE OAKLAND REDEVELOPMENT AGENCY,
THE CITY OF OAKLAND, A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS CITY COUNCIL, AND
THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT COMMISSIONERS

DATED: July 8, 2003

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MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

This MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE, dated for reference purposes as of July 8, 2003 (the "Execution Date"), is entered into by and among the Oakland Base Reuse Authority, created pursuant to a Joint Powers Agreement among the City of Oakland, Alameda County and the City of Oakland's Redevelopment Agency ("OBRA"), the Oakland Redevelopment Agency ("ORA"), the City of Oakland, a municipal corporation, acting by and through its City Council (the "City Council") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port").

WHEREAS, the City Council, ORA, OBRA and the Port (collectively, the "Parties") have worked cooperatively to assure the successful conveyance and redevelopment of the Oakland Army Base from the United States Department of the Army to OBRA, and from OBRA to ORA and the Port, on terms and conditions that are in furtherance of the goals, objectives and fiduciary obligations of all Parties; and

WHEREAS, all Parties have approved and adopted a Term Sheet (as defined herein) under which the Oakland Army Base conveyance and redevelopment program will be achieved in furtherance of the goals and objectives of all Parties, and in material compliance with all legal and fiduciary obligations applicable to each Party, including but not limited to those (1) set forth in the Seaport and Bay Plan (as defined herein) approved by the San Francisco Bay Conservation and Development Commission and (2) applicable to trustees of submerged and tidal lands. The Port and the City Council acknowledge their fiduciary obligations as trustees of the State of California public trust, and confirm that the terms and conditions of this MOA, including without limitation achieving a Qualified Land Exchange Approval, are materially consistent with those fiduciary obligations;

WHEREAS, the Term Sheet contemplates that the Parties will enter into this binding Memorandum of Agreement, which is consistent with the Term Sheet;

WHEREAS, this MOA shall become effective on the date (the "Effective Date") that all Parties have agreed upon the form and substance of all Exhibits and Schedules to this MOA and legal counsel for all Parties have agreed that this MOA is legally sufficient.

NOW, THEREFORE, for the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions; Matters of Construction; Recitals

1.1 Defined Terms.

(a) Definitions. Capitalized terms used in this MOA shall have the following meanings when used in this MOA:

- (1) “Allocation Proportion” means fifty percent (50%) is allocated to the City and fifty percent (50%) is allocated to the Port.
- (2) “Army” means the United States of America, acting through the Secretary of the Army, Department of the Army, and any successor department, agency or instrumentality.
- (3) “Army Agreement” means the Economic Development Conveyance Memorandum of Agreement dated September 27, 2002, among the Army, OBRA, and ORA, for the conveyance of approximately 364 acres of the former OARB, attached hereto as Exhibit A.
- (4) “Army Reserve” means the United States Army Reserve.
- (5) “Army Reserve Agreement” means the legally binding Agreement that may be entered into among the City, the Port, the Army Reserve and EBMUD covering the transfer to the City and the Port of the Army Reserve Properties and certain other matters related to the Army Reserve Properties and adjacent property, to be attached hereto as Exhibit B if completed and executed.
- (6) “Army Reserve Properties” means the East Maritime Army Reserve Property and the West Maritime Army Reserve Property. Property owned by the Army Reserve and adjacent to the Army Reserve Properties is intended to be conveyed to EBMUD, but for purposes of this MOA such property is excluded from the definition of Army Reserve Properties.
- (7) “BCDC” means the San Francisco Bay Conservation and Development Commission and any successor department, agency or instrumentality.
- (8) “BCDC Seaport and Bay Plan” means the San Francisco Bay Area Seaport Plan adopted by BCDC and the Metropolitan Transportation Commission and the San Francisco Bay Plan adopted by BCDC, both as amended by BCDC Resolution No. 00-10 on January 29, 2001.
- (9) “Berth 21 Submerged/Upland Property” means the approximately 47-acre mostly submerged land area and approximately 21-acre upland area, as more specifically described on Schedule 1.1 (9).
- (10) “BRAC” means the Defense Base Closure and Realignment Act of 1990, Part A of Title XXIX of Public Law 101-510, 10 U.S.C. § 2687, as amended.
- (11) “CalTrans” means the California Department of Transportation.
- (12) “CalTrans I-880 Settlement” means a legally binding settlement agreement that will be entered into among the Parties, CalTrans and the Federal Highway Administration, which (as proposed by the Parties) will cause the conveyance of certain property

in fee from CalTrans to the Port and certain surface easements from CalTrans to the Port and to the City, as well as the conveyance in fee of certain properties from the Port to CalTrans, subject to certain retained easements and other rights in favor of the Port and the City but free of any reversionary interests in favor of the United States government. Attached hereto as Exhibit U is the current draft of the CalTrans I-880 Settlement. Section 1.3 below sets forth the relationship between this MOA and the CalTrans I-880 Settlement. When the CalTrans I-880 Settlement is completed and executed, it will be attached hereto as Exhibit U in lieu of the current draft.

(13) “CalTrans Port Entry Property” means CalTrans Parcels 1, 1A, 2 and 2A, as more specifically described on Schedule 1.1(13). Under the CalTrans I-880 Settlement Agreement, the Port will receive surface easements over Parcels 1A, 2 and 2A and fee title to Parcel 1, free of any reversionary interests in favor of the United States government.

(14) “Cash-Out Remedy Property” means (A) at the option of the City, (i) all of the West Maritime Property or (ii) the West Maritime Property excluding the portion known as the “Baldwin Yard,” and (B) if the City elects to include it, (i) all of the West Maritime Army Reserve Property, or (ii) the West Maritime Army Reserve Property excluding the portion of the Subaru Lot that comprises a portion of the West Maritime Army Reserve Property, all as more specifically described in Schedule 1.1(14).

(15) “CEQA” means the California Environmental Quality Act, as amended, California Public Resources Code §§ 21000 *et seq.*

(16) “City” means ORA, OBRA and the City of Oakland, acting by and through its City Council, collectively.

(17) “City Cash-Out Remedy” means the City’s right to elect to transfer the Cash-Out Remedy Property to the Port under certain circumstances, on the terms and conditions, including but not limited to the consideration to be paid by the Port, set forth in Section 8.4.

(18) “City Council” is defined in the preamble.

(19) “City Council Ordinance” means an ordinance enacted by the City Council in the form attached hereto as Exhibit T, pursuant to which the City Council takes the actions required of the City Council to (A) delete the West Maritime Property, the West Maritime Army Reserve Property and the West Maritime Submerged Property from the Port Area, (B) accept the Port’s relinquishment and transfer of control of the West Maritime Submerged Property and (C) include the East Maritime Property, the East Maritime Army Reserve Property and the CalTrans Port Entry Property and other property over which the Port has easement, lease or other property rights under the CalTrans I-880 Settlement within the Port Area (the Berth 21 Submerged/Upland Property is already within the Port Area), in all cases subject to the relevant terms of this MOA and the East Maritime Trust Agreement, including without limitation (i) the Port’s easements over the West Maritime Property in accordance with Section 3.3 and (ii) deferral of such alteration until expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date); provided that, the alterations of the Port Area as to (x)

the Army Reserve Properties (including Parcel 2A of the CalTrans Port Entry Property) and the property and property rights subject to the CalTrans I-880 Settlement (including Parcels 1, 1A and 2 of the CalTrans Port Entry Property) will be effective upon enactment of the later of the City Council Ordinance and the Port Ordinance and (y) the West Maritime Submerged Property, and the City Council's acceptance of the Port's relinquishment and transfer of control of the West Maritime Submerged Property, will be effective upon completion by the Port of the Port Fill Project associated with the West Maritime Submerged Property, or as otherwise agreed by the Port and ORA. As set forth in Section 3.5(d)(2), the City Council at its election may enact a subsequent ordinance to delete the Port Sliver Properties from the Port Area and accept the Port's relinquishment and transfer of control of the Port Sliver Properties within the time frames set forth in Section 3.5(d), subject to the easements in favor of the Port specified in Section 3.5(d). (The Port Ordinance referenced in Section 1.1(a)(70) constitutes the only action required of the Port to effect this deletion and relinquishment and transfer of control. If the City Council does not enact the subsequent ordinance, then (as set forth in Section 3.5(d)(1)), the Port Sliver Properties will remain within the Port Area).

(20) "Covenant to Restrict Use of Property" means the Covenant to Restrict Use of Property that is attached as Exhibit D to the DTSC Consent Agreement, or in a form otherwise agreed by OBRA, the Port, DTSC and the Army.

(21) "DTSC" means the State of California, Environmental Protection Agency, Department of Toxic Substances Control.

(22) "DTSC Consent Agreement" means the Consent Agreement dated May 16, 2003, among OBRA, ORA and DTSC pursuant to which the RAP and the RMP will be implemented, attached hereto as Exhibit C.

(23) "East Maritime Army Reserve Property" means approximately 11.5 acres of real property within the OARB used by the Army Reserve, in the vicinity of the East Maritime Property, to be transferred to the Port under the Army Reserve Agreement, as more specifically described on Schedule 1.1(23).

(24) "East Maritime Property" means the portion of the EDC Property as more specifically described on Schedule 1.1(24).

(25) "East Maritime Quitclaim Deed" means the Quitclaim Deed from OBRA to the Port in the form attached hereto as Exhibit O, pursuant to which the City quitclaims its right, title and interest in the East Maritime Property to the Port.

(26) "East Maritime Trust Agreement" means the East Maritime Trust Agreement among the City, the Port and the East Maritime Trustee, in the form attached hereto as Exhibit D, pursuant to which the East Maritime Trustee will hold the East Maritime Quitclaim Deed in trust. The East Maritime Trust Agreement provides for (A) the East Maritime Trustee to receive the East Maritime Quitclaim Deed from Escrow on the OARB Transfer Date, with irrevocable instructions that such Deed will be effective, deemed delivered and may be recorded only upon expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date),

notwithstanding failure to achieve a Land Exchange Approval or Qualified Land Exchange Approval, termination of this MOA or any other matter whatsoever, (B) maintenance of the East Maritime Property during the Trust Period, including without limitation compliance with laws governing stormwater discharge and (C) recordation of such deed, proration of rents, taxes and other proratable items, issuance of a title insurance policy and payment of title insurance premiums, transfer taxes and other closing costs.

(27) “East Maritime Trustee” means the Port Attorney, as trustee under the East Maritime Trust Agreement.

(28) “EBMUD” means the East Bay Municipal Utility District.

(29) “EBST” means the Environmental Baseline Survey for Transfer for Oakland Army Base, dated December 2002 and prepared by MWH Americas, Inc.

(30) “EDC Property” means approximately 364 acres of the former OARB and all appurtenant buildings, rights-of-way, beneficial easements and utilities thereto, to be conveyed to OBRA pursuant to the Army Agreement, as more specifically described on Schedule 1.1(30).

(31) “EIR” means the Oakland Army Base Redevelopment Plan Environmental Impact Report certified by the Oakland Planning Commission on July 31, 2002. The Parties expressly agree that the EIR does not unreasonably discriminate against any Party and is enforceable as and to the extent required by the California Environmental Quality Act.

(32) “Environmental Condition” means any condition existing on, at or originating from, real or personal property that constitutes (A) a Release of any Hazardous Materials on, at or from such real or personal property, and/or (B) a violation of applicable Environmental Laws.

(33) “Environmental Laws” means any and all laws, orders, constitutional provisions, ordinances, regulations, statutes, codes or treaties issued by any Governmental Authority, and any principle of common law or judicial or administrative interpretation thereof, relating to Hazardous Materials, the abatement of pollution, protection or restoration of the environment, or the ensuring of public health and safety from environmental hazards, specifically including, but not limited to, those relating to the exposure to, use, Release, threatened Release, emission, presence, storage, treatment, disposal, generation, transportation, distribution, manufacture, processing, handling, management or control of Hazardous Materials, previously, presently, or hereafter in effect. To be included as an Environmental Law under this MOA, any law, ordinance, regulation, statute or code adopted by a Party must be of general application and not unreasonably discriminate against another Party.

(34) “Environmental Services” means the activities to be performed pursuant to the ESCA.

(35) “ESCA” means the Environmental Services Cooperative Agreement executed September 27, 2002 and effective September 30, 2002 between the Army and OBRA, attached hereto as Exhibit E, that covers matters relating to the Army’s reimbursement of certain costs and expenses associated with the environmental remediation of the EDC Property.

(36) “ESCA Funds” means all funds to be provided by the Army pursuant to the ESCA.

(37) “Escrow” means that certain escrow the parties have established with First American Title Guaranty Company, 1531 Harrison Street, Oakland, California 94612, Attn: Neils Povlsen, Escrow No. 159883.

(38) “Escrow Holder” means First American Title Guaranty Company.

(39) “Execution Date” is defined in the preamble to this MOA.

(40) “Gateway Development Area” means the West Maritime Property, Port Sliver Properties (if the City elects to delete them from the Port Area, as referenced in Section 1.1(19)), West Maritime Army Reserve Property, as more specifically described in Schedule 1.1(40) and other property and property rights acquired by the City under the CalTrans I-880 Settlement.

(41) “Governing Body” means, with respect to a Party, the board, commission or other instrumentality with the applicable decision making authority for the Party.

(42) “Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, department, court, board, commission, or other entity exercising valid executive, legislative, judicial, regulatory or administrative functions of or pertaining to government. As to any Governmental Authority that is a Party, any law, ordinance, regulation, statute or code adopted by that Party must be of general application and not unreasonably discriminate against another Party.

(43) “Hazardous Materials” means all hazardous substances, wastes, extremely hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, special wastes, toxic substances, pollutants, contaminants, petroleum or petroleum derived substances or wastes, and related materials, including but not limited to any such materials defined, listed, identified under or described in any Environmental Laws.

(44) “Homeless Collaborative” means the Alameda County Homeless Base Conversion Collaborative.

(45) “Homeless Collaborative Relocation Property” means the property to be identified by the Port and the City to be used for purposes of relocating the Homeless Collaborative activities.

(46) “Insurance Attachment Point” means the amount designated as the self-insured retention under the cost cap portion of the Insurance Policy.

(47) “Insurance Policy” means the Environmental Cost Cap and Pollution Legal Liability Insurance Policy or Policies to be issued with respect to the EDC Property, meeting the specifications set forth in Schedule 1.1(47).

(48) “Knight Yard Lease” means the new Agreement of Lease between the City and the Port that will replace the Agreement of Sublease between OBRA and the Port dated July 26, 2000, pursuant to which the Port will continue to lease the Knight Yard Property from OBRA, attached hereto as Exhibit F.

(49) “Knight Yard Property” means the portion of the East Maritime Property more specifically described in the Knight Yard Lease.

(50) “Land Exchange Approval” means the final and irrevocable release by the State of California of its public trust interest in all or a portion of the Gateway Development Area and imposition of such public trust interest on all or a portion of the New Trust Parcels.

(51) “Marine Sediments” means the marine sediments adjacent to Outfalls 8 through 11 at the EDC Property, as more specifically described in Schedule 1.1(51).

(52) “Mediator” means a disinterested third party appointed by the Parties in accordance with the provisions of Section 10.2 of this MOA.

(53) “MOA” means this Memorandum of Agreement, as it may be amended, modified or supplemented from time to time.

(54) “Mutual Releases” is defined in Section 6.4.

(55) “MOA Dispute” means any claim, controversy, dispute, alleged breach or other similar action by or among any of the Parties arising out of the Parties’ rights and obligations created by this MOA. Unless expressly provided otherwise in this MOA, MOA Disputes are subject to the resolution procedures set forth in Article 10. If this MOA expressly provides that the failure of the Parties to agree is not an MOA Dispute and is not subject to Article 10, then the Parties’ only obligations are to negotiate in good faith for the period indicated in the pertinent Section of this MOA, without any further rights or obligations unless the Parties agree otherwise in writing.

(56) “New RAP Site” means any site that is elevated to the status of RAP Site after the Execution Date pursuant to the terms of the RAP and RMP.

(57) “New Trust Parcels” means the portions of the East Maritime Property on which the State of California’s public trust interest is imposed as the result of a Land Exchange Approval.

(58) “OARB” means the Oakland Army Base, located in the City of Oakland, Alameda County, California.

(59) “OARB Final Redevelopment Plan” means the Final Redevelopment Plan for the EDC Property, approved by the ORA Governing Body on July 11, 2000, attached hereto as Exhibit G.

(60) “OARB Final Reuse Plan” means the Final Reuse Plan for the EDC Property approved by the OBRA Governing Body on July 31, 2002, attached hereto as Exhibit H.

(61) “OARB Redevelopment Project Area” means that certain real property more specifically described on Schedule 1.1(61).

(62) “OARB Transfer Agreements” is defined in Section 8.3(a)(2).

(63) “OARB Transfer Date” means the date on which the EDC Property is transferred by the Army to OBRA.

(64) “OBRA” is defined in the Preamble to this MOA.

(65) “ORA” is defined in the preamble to this MOA.

(66) “Parties” is defined in the preamble to this MOA.

(67) “Port” is defined in the preamble to this MOA.

(68) “Port Area” means the Port Area as defined in Section 725 of the Charter of the City of Oakland.

(69) “Port Fill Project” means the project that may be completed by the Port pursuant to which the Port will cover the Marine Sediments and thereby address potential impacts to aquatic communities from the Marine Sediments, as part of the fill of approximately twenty six (26) acres of net solid fill (approximately two (2) acres to be removed and approximately twenty-eight (28) acres to be filled, plus approximately six and one-half (6.5) acres net of pile supported wharf structures to be removed), in order to provide additional terminal capacity and create two (2) berths in the Oakland Outer Harbor.

(70) “Port Ordinance” means an ordinance enacted by the Port in the form attached hereto as Exhibit K, pursuant to which the Port takes the actions required of the Port to (A) delete the Port Sliver Properties, the West Maritime Property, the West Maritime Army Reserve Property and the West Maritime Submerged Property from the Port Area, (B) relinquish and transfer control to the City Council of the Port Sliver Properties and the West Maritime Submerged Property and (C) include the East Maritime Property, the East Maritime Army Reserve Property, the CalTrans Port Entry Property and other property over which the Port

has easement, lease or other property rights under the CalTrans I-880 Settlement within the Port Area (the Berth 21 Submerged/Upland Property is already within the Port Area), in all cases subject to the relevant terms of this MOA and the Port Sliver Properties Trust Agreement, including without limitation (i) the City Council's right to decline to delete from the Port Area, accept the Port's relinquishment and transfer of control of, and accept title to, the Port Sliver Properties in accordance with Section 3.5(d)(1), (ii) the Port's the easements specified over the Port Sliver Properties specified in Section 3.5(d)(2) and over the West Maritime Property in accordance with Section 3.3(a), (iii) deferral of such alteration until expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date); provided that, the alterations of the Port Area as to (x) the Army Reserve Properties (including Parcel 2A of the CalTrans Port Entry Property) and property and property rights subject to the CalTrans I-880 Settlement (including Parcels 1, 1A and 2 of the CalTrans Port Entry Property) will be effective as of the enactment of the later of the City Council Ordinance and the Port Ordinance, (y) the Port Sliver Properties, and the Port's relinquishment and transfer of control of the Port Sliver Properties, shall be effective only in accordance with Sections 3.5(a) and 3.5(d), and (z) the West Maritime Submerged Property will be effective upon completion by the Port of the Port Fill Project associated with the West Maritime Submerged Property, or as otherwise agreed by the Port and ORA.

(71) "Port Quitclaim Deed" means the Quitclaim Deed from the Port to the Army covering the Port's reversionary interest in the property specified therein, attached hereto as Exhibit I, deposited by the Port into Escrow on September 26, 2002.

(72) "Port Sliver Properties" means two "sliver" parcels consisting of approximately 2.5 acres in the Berth 10 area and approximately 12.3 acres north of the "Triangle" area, as more specifically described on Schedule 1.1(72).

(73) "Port Sliver Properties Quitclaim Deed" means the Quitclaim Deed from the Port to the City Council in the form attached hereto as Exhibit V, pursuant to which the Port quitclaims its right, title and interest in the Port Sliver Properties to the City Council.

(74) "Port Sliver Properties Trust Agreement" means the Port Sliver Properties Trust Agreement among the City Council, the Port and the Port Sliver Properties Trustee in the form attached hereto as Exhibit J, pursuant to which the Port Sliver Properties Trustee will hold the Port Sliver Properties Quitclaim Deed in trust. The Port Sliver Properties Trust Agreement provides for (A) the Port Sliver Properties Trustee to receive the Port Sliver Properties Quitclaim Deed from Escrow on the OARB Transfer Date, with irrevocable instructions that such Deed will be effective, deemed delivered and may be recorded only upon expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date), notwithstanding failure to receive a Land Exchange Approval or Qualified Land Exchange Approval, termination of this MOA or any other matter whatsoever, (B) maintenance of the Port Sliver Properties during the Trust Period, including without limitation compliance with laws governing stormwater discharge and (C) recordation of such deed, proration of rents, taxes and other proratable items, issuance of a title insurance policy and payment of title insurance premiums, transfer taxes and other closing costs.

(75) “Port Sliver Properties Trustee” means the City Attorney of the City of Oakland, as trustee under the Port Sliver Properties Trust Agreement.

(76) “Qualified Land Exchange Approval” means a Land Exchange Approval that (A) provides for the release of the State of California’s actual or potential public trust interest in at least eighty (80) acres of the Gateway Development Area, either by exchange or because the State of California agrees such acreage is not subject to the public trust interest and (B) does not result in the disallowance of more than Four Million Dollars (\$4,000,000) in value of the consideration to be paid by the Port under Sections 2.2(a), (c) and (d) and 3.7(b) of this MOA.

(77) “RAP” means the final Remediation Action Plan dated September 27, 2002 prepared by Erler & Kalinowski, Inc. for OBRA and DTSC, addressing remediation of certain environmental contamination at the EDC Property, attached hereto as Exhibit L.

(78) “RAP Sites” means the seven (7) specific sites located at the EDC Property identified in the RAP as sites requiring remediation of environmental contamination.

(79) “Redevelopment MOU” means the Memorandum of Understanding dated September 27, 2002 between ORA and the Port relating to jurisdiction over the Port Area within the OARB Redevelopment Project Area.

(80) “Regulatory Requirements” means the requirements applicable to the environmental remediation of the EDC Property and related areas of the OARB under the DTSC Consent Agreement, the RAP, the RMP, the ESCA and under the California Regional Water Quality Control Board, San Francisco Bay Region for petroleum impacted locations (applicable to Environmental Conditions at the EDC Property as of the OARB Transfer Date).

(81) “Reinvestment Period” means the seven (7) year period of time commencing with the OARB Transfer Date.

(82) “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment or out of any property, including the movement or continued movement of any materials through or in the air, soil, surface water, ground water or property.

(83) “Remediation Account” means an interest bearing bank account, with a financial institution approved by the Port and ORA, to hold the funds contributed by the Parties to pay for unfunded environmental remediation costs, plus interest on the amounts deposited, in accordance with Section 5.3 of this MOA.

(84) “Remediation Account Manager” means a team of two non-lawyer individuals, one appointed by the City and one appointed by the Port, to act in that capacity from time to time. The initial Remediation Account Manager team consists of Andrew Clark-Clough for the City and Diane Heinze for the Port.

(85) “RMP” means the final Risk Management Plan dated September 27, 2002 prepared by Erler & Kalinowski, Inc. for OBRA and DTSC, setting forth the procedures for addressing environmental conditions at the EDC Property as they are identified, attached hereto as Exhibit M.

(86) “SLC” means the California State Lands Commission and any successor department, agency or instrumentality.

(87) “Subaru Lot” means the approximately 19.15-acre area located north of West Grand Avenue, of which approximately 2.51 acres are included as part of the East Maritime Army Reserve Property and approximately 16.64 acres are included as part of the West Maritime Army Reserve Property, as more specifically described on Schedule 1.1(87).

(88) “Term Sheet” means the Oakland Army Base – Revised Term Sheet – City - Port Agreement dated September 24, 2002, approved by the Port on September 17, 2002 by Resolution 02317 and approved in its final form by the Port on September 27, 2002 by Resolution 02347, approved by the City Council on September 24, 2002 by Resolution 02-80, approved by ORA on September 24, 2002 by Resolution 02-80 and approved by OBRA on October 28, 2002 by Resolution 2002-23.

(89) “Transaction Costs” means the reasonable out-of-pocket transaction costs incurred by any Party for the transfer of the EDC Property and other transactions provided for by this MOA, excluding in the case of each Party (A) its own costs and expenses for staff and internal overhead and (B) both in-house and outside legal counsel; provided, that time spent by nonlegal Port and City staff in assisting with the survey work specified in Section 1.2(g) will be included in Transaction Costs so long as the activities conducted by Port and City staff are included on a work scope or work plan approved by both the City and the Port. Transaction Costs shall include, but not be limited to, survey, environmental and consulting costs associated with the transfer of the EDC Property, master utilities and infrastructure planning and development costs, costs associated with the Land Exchange Approval (including but not limited to appraisal and survey), and costs associated with the EIR, excluding litigation costs and expenses associated with the defense of the EIR.

(90) “Trust Agreements” means the East Maritime Trust Agreement and the Port Sliver Properties Trust Agreement.

(91) “Trust Period” means the period of three (3) years commencing with the OARB Transfer Date, during which the East Maritime Quitclaim Deed and the Port Sliver Properties Quitclaim Deed are held in trust pursuant to the Trust Agreements, provided, that the three (3) year period shall be extended for up to two (2) additional years in accordance with Section 2.2(c)(2).

(92) “West Maritime Army Reserve Property” means approximately 16.64 acres of property located within and adjacent to the OARB used by the Army Reserve, in

the vicinity of the West Maritime Property, to be transferred to ORA under the Army Reserve Agreement, as more specifically described on Schedule 1.1(92).

(93) “West Maritime Lease” means the new Agreement of Lease between the City and the Port that will replace the Sublease between OBRA and the Port dated July 26, 2000, pursuant to which the West Maritime Lease Property (as defined in Section 3.3(a), which excludes the West Maritime Submerged Property) will continue to be leased by the City to the Port during the Trust Period for no consideration, in the form attached hereto as Exhibit N.

(94) “West Maritime Property” means the portion of the EDC Property as more specifically described on Schedule 1.1(94).

(95) “West Maritime Submerged Property” means approximately one (1) acre of submerged land that is part of the West Maritime Property adjacent to the Berth 21 Submerged/Upland Property, as more specifically described on Schedule 1.1(95).

(96) “Work Plan” means the summary work plan and schedule for completion of the remediation required under the Regulatory Requirements attached hereto as Schedule 1.1(96), as it may be amended from time to time pursuant to the mutual agreement of the Parties.

1.2 Certain Matters of Construction.

(a) Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter.

(b) The term “including” shall not be limiting or exclusive, unless specifically indicated to the contrary.

(c) All references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations.

(d) All references to any instruments or agreements shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

(e) The words “herein,” “hereof,” and “hereunder” or other words of similar import refer to this MOA as a whole, including the Exhibits and Schedules hereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this MOA.

(f) References to “days” mean calendar days.

(g) The Schedules to this MOA refer to legal descriptions which will be created by John Monaghan of Towill, Inc. The Port has retained Towill, Inc. (and has specified that John Monaghan perform the contracted services) to work with Port and City staff (and

possibly other contract personnel) to prepare ALTA surveys for that purpose pursuant to the work scope attached hereto as Schedule 1.2(g), which includes a time frame for completion of the legal descriptions. Upon approval by all Parties (which will be evidenced by the Party's initials on the survey), the surveys will be attached to this MOA. In the meantime, the Parties have attached hereto a series of Plat Maps as Riders 1 to ____, which will identify the various properties pending completion of the surveys, and which will be superseded by the surveys when the surveys are approved and attached.

1.3 CalTrans I-880 Settlement.

As of the Effective Date, the Parties are still negotiating the CalTrans I-880 Settlement with CalTrans and the Federal Highway Administration. The Parties acknowledge the vital importance to the Port of the rights given to the Port over the CalTrans Port Entry Property in the draft Settlement attached hereto as Exhibit U, since the Port's ability to develop its planned joint intermodal terminal (which will enable the Port to meet the throughput requirements of the BCDC Seaport and Bay Plan and to implement the OARB Final Reuse Plan) is contingent on such rights. The Parties will diligently pursue a settlement that is materially consistent with the draft Settlement attached hereto as Exhibit U, and each Party will exercise commercially reasonable effort to achieve such a settlement as soon as reasonably practicable.

2. Initial EDC Property Conveyance Matters

2.1 Property Transfers.

On the OARB Transfer Date, the Parties shall cause the following transfers to be made through Escrow as follows:

(a) City Deposits into Escrow. At least ten (10) days before the OARB Transfer Date, the City shall have deposited, and shall have used commercially reasonable efforts to cause the Army to have deposited, the following documents and funds into Escrow:

(1) A duly executed Quitclaim Deed in recordable form from the Army to OBRA covering the EDC Property, as defined in the Army Agreement, in the form of Exhibit E attached to the Army Agreement;

(2) A duly executed Utilities Easement in recordable form from the Army to OBRA, which will be binding on, and inure to the benefit of, successors and assigns, in a form acceptable to the Army and to all Parties;

(3) A duly executed Covenant to Restrict Use of Property, in accordance with the DTSC Consent Agreement;

(4) The duly executed East Maritime Quitclaim Deed in recordable form, substantially in the form attached hereto as Exhibit O;

(5) A duly executed deed in recordable form from OBRA to the Port in substantially the form attached hereto as Exhibit P covering the Berth 21 Submerged/Upland Property;

(6) A duly executed deed in recordable form from OBRA to the Port in substantially the form attached hereto as Exhibit Q covering the West Maritime Submerged Property, subject to the City's reversionary right in Section 3.4 below;

(7) If desired by the City, a duly executed deed in recordable form from OBRA to ORA in substantially the form attached hereto as Exhibit R covering the West Maritime Property;

(8) Escrow instructions consistent with this MOA and specifically covering title insurance requirements (which shall include a requirement that each Party pay for monetary liens created by it or on its behalf, excluding non-delinquent liens for real estate taxes, that affect property such Party is transferring or will transfer), payment of title insurance premiums by the insured party, payment of transfer taxes by the transferor, payment of escrow fees to be split equally between the City and the Port (meaning fifty percent (50%) paid by the City and fifty percent (50%) paid by the Port), payment of recording charges by the party requesting recordation and other matters acceptable to the Parties, and the funds, if any, required by those instructions to be deposited into Escrow by or on behalf of the City;

(9) Two counterpart copies of a Mutual Release substantially in the form attached hereto as Exhibit S, duly executed by ORA, OBRA and the City Council;

(10) A certificate duly executed by the City confirming that the representations and warranties made by the City in Section 9.2 are true, accurate and complete as of OARB Transfer Date; and

(11) Such additional documents (including transfer tax affidavits, state and federal non-foreign certifications, Natural Hazard Disclosure Statements and the like) as may be reasonably necessary for consummation of the transactions contemplated in this MOA in accordance with the terms of this MOA.

(b) Port Deposits Into Escrow. At least ten (10) days before the OARB Transfer Date, the Port shall have deposited the following documents and funds into Escrow:

(1) The duly executed Port Quitclaim Deed in recordable form, substantially in the form attached hereto as Exhibit I;

(2) The duly executed Port Sliver Properties Quitclaim Deed in recordable form, substantially in the form attached hereto as Exhibit V;

(3) Escrow instructions consistent with this MOA and specifically covering title insurance requirements (which shall include a requirement that each Party pay for monetary liens created by it or on its behalf, excluding non-delinquent liens for real estate taxes, that affect property such Party is transferring or will transfer), payment of title insurance

premiums by the insured party, payment of transfer taxes by the transferor, payment of escrow fees to be split equally between the City and the Port (meaning fifty percent (50%) paid by the City and fifty percent (50%) paid by the Port), payment of recording charges by the party requesting recordation and other matters acceptable to the Parties, and the funds, if any, required by those instructions to be deposited into Escrow by or on behalf of the Port;

(4) Two counterpart copies of a Mutual Release substantially in the form attached hereto as Exhibit S, duly executed by the Port;

(5) A Certificate duly executed by the Port confirming that the representations and warranties made by the Port in Section 9.3 are true, accurate and complete as of the OARB Transfer Date; and

(6) Such additional documents (including transfer tax affidavits, state and federal non-foreign certifications, Natural Hazard Disclosure Statements and the like) as may be reasonably necessary for consummation of the transactions contemplated in this MOA in accordance with the terms of this MOA.

(c) Actions by Escrow Holder. The Escrow Holder shall confirm due execution and delivery of the documents set forth in Section 2.1(a) and (b) above. At least five (5) days before the OARB Transfer Date, the Escrow Holder will prepare an Estimated Settlement Sheet and shall promptly circulate it to the Parties and obtain the Parties' consent to it. On the OARB Transfer Date, and upon telephonic confirmation from a representative of each Party to proceed, as specified in the escrow instructions, the Escrow Holder shall:

(1) Record in the Official Records of Alameda County, in the following order:

(A) The Port Quitclaim Deed from the Port to the Army covering the Port's reversionary right specified in Section 2.1(b)(1);

(B) The Quitclaim Deed from the Army to OBRA specified in Section 2.1(a)(1);

(C) The Utilities Easement from the Army to OBRA specified in Section 2.1(a)(2);

(D) The Covenant to Restrict Use of Property specified in Section 2.1(a)(3);

(E) The deed from OBRA to the Port covering the Berth 21 Submerged/Upland Property specified in Section 2.1(a)(5);

(F) The deed from OBRA to the Port covering the West Maritime Submerged Property specified in Section 2.1(a)(6); and

(G) If applicable, the deed from OBRA to ORA covering the West Maritime Property specified in Section 2.1(a)(7).

(2) Deliver the following documents to the Party specified:

(A) The East Maritime Quitclaim Deed from OBRA to the Port to the East Maritime Trustee to hold under the East Maritime Trust Agreement;

(B) The Port Sliver Properties Quitclaim Deed from the Port to the City Council to the Port Sliver Properties Trustee to hold under the Port Sliver Properties Trust Agreement;

(C) To each Party, fully executed counterparts of the Mutual Release;

(D) Conformed copies of all documents recorded, and a Settlement Statement signed by the Escrow Holder consistent with the approved Estimated Settlement Statement, to each Party (OBRA will deliver conformed copies to the Army under separate cover);

(E) Two (2) duplicate originals of the title insurance policy requested by each Party to that Party; and

(F) To the Port, the City's down date certificate specified in Section 2.1(a)(10) and to the City, the Port's down date certificate specified in Section 2.1(b)(5).

2.2 Consideration.

(a) Contribution to Transaction Costs. The City and the Port each shall pay fifty percent (50%) of the Transaction Costs. On or before the OARB Transfer Date, each Party shall provide to the other Parties an itemized list of its Transaction Costs paid as of March 31, 2003. In addition, on each anniversary of the OARB Transfer Date, each Party shall provide to the other Parties an itemized list of its Transaction Costs paid from and after April 1 of the immediately preceding year to and including March 31 of the year in question, until all activities contemplated by this MOA have been completed. Within forty-five (45) days after such completion, each Party shall provide to the other Party an itemized list of its Transaction Costs paid from and after the preceding April 1 to and including the date of such completion. The itemized list will include reasonable supporting documentation, such as paid invoices, and may include only Transaction Costs actually paid during the period covered, *i.e.* a Party cannot include Transaction Costs to be incurred in the future, nor Transaction Costs paid in prior periods which were not included in the itemized list covering that period. Unless any Party objects to another Party's itemized list of Transaction Costs within thirty (30) days of such Party's receipt of the list, on (1) the sixtieth (60th) day after the OARB Transfer Date, (2) on the sixtieth (60th) day after each anniversary of the OARB Transfer Date and (3) on the sixtieth (60th) day after the exchange of the final itemized list of Transaction Costs, the Party with lower aggregate Transaction Costs shall reimburse the other Party to the extent necessary so

that each Party has paid fifty percent (50%) of the Transaction Costs paid during the period in question. In the event either Party objects to any costs or expenses on the other Party's itemized list of Transaction Costs, the issues raised in the objection shall be an MOA Dispute subject to Article 10, provided that to the extent there are Transaction Costs on any such list that are not disputed, the Party with lower aggregate undisputed Transaction Costs shall reimburse the other Party for its share of undisputed Transaction Costs. From and after the Execution Date, the City, on the one hand, and the Port, on the other hand, will deliver to each other proposed work scopes for each task intended to qualify as a Transaction Cost, in sufficient time so that the other Party or Parties may review and comment on the proposed work scope. If agreement cannot be reached on the work scope prior to the date the task is scheduled to commence, then the disagreement shall be an MOA Dispute subject to Article 10. Failure to seek agreement on a proposed work scope will prevent the task from qualifying as a Transaction Cost.

(b) Payment for Army Reserve Properties.

(1) The City and the Port shall use commercially reasonable efforts to (A) enter into the Army Reserve Agreement and (B) fully relocate the Army Reserve from the Army Reserve Properties on or before expiration of the Trust Period (or such longer period to which the City and Port mutually agree in writing).

(2) If the Parties, EBMUD and the Army Reserve enter into the Army Reserve Agreement, then for and in consideration of the transfer by the Army Reserve to the City and the Port of the Army Reserve Properties pursuant to the Army Reserve Agreement, the City and the Port shall pay their respective pro rata shares of (A) the consideration due to the Army Reserve for the transfer of the Army Reserve Properties and (B) all costs and expenses associated with the due diligence conducted on the replacement facilities selected by the Army Reserve (excluding in the case of each Party its own costs and expenses for staff and internal overhead and in-house and outside legal counsel, unless otherwise agreed in writing by the Parties). Such pro rata shares shall be based on the acreage of the Army Reserve Properties transferred to each of the City and the Port. In addition, the City shall pay all costs and expenses associated with the due diligence conducted for the West Maritime Army Reserve Property and the Port shall pay all costs and expenses associated with the due diligence conducted for the East Maritime Army Reserve Property. The City and the Port will cooperate with each other in seeking federal or other third party funds to cover such costs and expenses.

(3) If EBMUD does not agree to a joint transaction among the Parties, EBMUD and the Army Reserve covering the Army Reserve Properties and adjacent properties, and the Army Reserve agrees to separate transactions with the City and the Port, the City shall pay its own costs and expenses associated with the acquisition of the West Maritime Army Reserve Property, as well as any adjacent property, and the Port shall pay its own costs and expenses associated with the acquisition of the East Maritime Army Reserve Property, as well as any adjacent property. However, subject to Section 2.2(b)(5) as to the Subaru Lot, if the costs of acquiring the West Maritime Army Reserve Property or the East Maritime Reserve Property cannot reasonably be allocated between such Properties (as, for instance, if the consideration due the Army Reserve is to construct alternate facilities for the Army Reserve), then the allocation of costs set forth in Section 2.2(b)(2) will govern. If EBMUD does not agree to such joint

transaction, but the Army Reserve does not agree to separate transactions, then the allocation of costs set forth in Section 2.2(b)(2) also will govern.

(4) Notwithstanding the foregoing, the City or the Port may discontinue negotiations seeking a joint transaction by providing written notice to the other. However, even if separate transactions are pursued, and again subject to Section 2.2(b)(5) as to the Subaru Lot, if the costs of acquiring the West Maritime Army Reserve Property or the East Maritime Reserve Property cannot reasonably be allocated between such Properties, then the allocation of costs set forth in Section 2.2(b)(2) will govern.

(5) In the event the City and the Port reach agreement with the Army Reserve on separate transactions to acquire portions of the Army Reserve Property, and the City acquires the Subaru Lot as part of its transaction with the Army Reserve, the City agrees that upon the Port's request it will transfer to the Port the 2.51-acre portion of the Subaru Lot that is included within the East Maritime Army Reserve Property, for consideration equal to (A) the per acre price paid by the City to the Army Reserve for the Subaru Lot plus (B) a proportionate share of the reasonable costs and expenses associated with the City's acquisition of the portion of the Army Reserve Property acquired by the City from the Army Reserve in the separate transaction. The City and the Port will each inform the other Party of the status of its negotiations with the Army Reserve, and the City will inform the Port of its acquisition costs, in each case on a timely basis. Subject to the first sentence of this Section 2.2(b)(5), the City will not seek to acquire that portion of the Army Reserve Property designated for the Port in this MOA, and the Port will not seek to acquire that portion of the Army Reserve Property designated for the City in this MOA.

(c) Payments by Port.

(1) The Port shall pay the City for the Knight Yard Property a purchase price equal to One Million Dollars (\$1,000,000) per year for thirty (30) years, payable annually in advance on each anniversary date of the OARB Transfer Date, beginning on the third anniversary of the OARB Transfer Date. Lease payments in accordance with the Knight Yard Lease shall be made by the Port to the City during the Trust Period, and the Port shall receive a credit against such purchase price equal to such Knight Yard Lease payments made during the Trust Period. The credit shall offset one-half of each purchase price payment until the entire credit is fully expended. Upon the mutual agreement of the City and the Port, the Port may prepay the purchase price obligation at any time after the eighth anniversary of the OARB Transfer Date by making one or more payments to the City, such number of payments to be as mutually agreed by the Parties, equal to the net present value of the remaining balance owed by the Port to the City as of the prepayment date, using a discount rate of six percent (6%) per annum. The Parties acknowledge and agree that: (A) the Knight Yard Property is not subject to the public trust since it is located east of the Maritime Street trust boundary; (B) transfer of the Knight Yard Property to the Port via a conventional Public Benefit Conveyance would have involved a federal reversionary interest that the SLC indicated it would not accept as part of a Qualified Land Exchange; and (C) the payment price and terms for the Knight Yard represent fair market value for this property.

(2) If the Port, due to supervening statutory constraints or operation of law, is unable to make the full Knight Yard payment as set forth in Section 2.2(c)(1), then the Port shall perform one or more of undertakings set forth below in this Section 2.2(c)(2), the value of which shall be equivalent to the difference between the value of the Knight Yard payments to be made pursuant to Section 2.2(c)(1) and the value of the Knight Yard payments actually made in accordance with Section 2.2(c)(1), if any. The City shall select the undertaking(s) set forth below in subsections (A) through (D) that shall be performed by the Port and the Parties shall negotiate the value of each undertaking and the timing of the performance of the undertaking. For purposes of this Section 2.2(c)(2), "value" means the net present value of the relevant cash flow or expenditure. Such undertakings include, but shall not be limited to:

(A) Port assumption of 100% of the cost of the relocation of the Homeless Collaborative, rather than 50%, as set forth in Section 3.7;

(B) Port contribution to the development of a public park in the Gateway Development Area designed and developed by the City;

(i)

(C) The extension of the Trust Period by up to two (2) additional years to a total of four (4) or five (5) years with concomitant extension of all duties, rights and obligations connected with the Trust Period as set forth in this MOA; and

(D) Port funding of other State public trust consistent projects within or outside of OARB.

In the event the Parties cannot reach resolution of any matter relating to this Section 2.2(c)(2), the matter shall be an MOA Dispute and shall be resolved using the dispute resolution provisions of Article 10.

(d) Community Trust Contribution. If a Community Trust Fund is established by the City on or before the end of the Trust Period, at the time the Community Trust Fund is fully funded (whether such funding occurs before or after the end of the Trust Period), the Port shall pay fifty percent (50%) of the funds contributed to the Community Trust Fund, up to a maximum contribution from the Port of Two Million Dollars (\$2,000,000). Subject to the final sentence of this Section 2.2(d), the developer(s) of the Gateway Development Area, or the City, will contribute the balance of the funding. If no Community Trust Fund is so established on or before the end of the Trust Period, or subject to the last sentence of this Section 2.2(d)), if it is not funded within one (1) year after the end of the Trust Period, the Port shall have no obligation to pay the contribution described herein. If the Community Trust Fund is established on or before the end of the Trust Period, and the City exercises the City Cash-Out Remedy, the Port shall be obligated to pay an aggregate of Four Million Dollars (\$4,000,000) into the Community Trust Fund as the Port and non-Port contributions to such Fund. If and to the extent required by the SLC, funds contributed by the Port to the Community Trust Fund shall be spent and accounted for in the manner required for funds encumbered by the State public trust.

3. Property Use and Proceeds; Subsequent Conveyances

3.1 Land Exchange Cooperative Process.

Each of the Parties hereby undertakes and agrees to cooperate fully and to use its commercially reasonable efforts, to the extent consistent with the Port's and City Council's fiduciary obligation as trustees of the State public trust, to cause the State of California to irrevocably release its actual or potential public trust interest in at least eighty (80) acres of the Gateway Development Area and impose a public trust interest on the New Trust Parcels, including but not limited to the implementation of the actions described on Schedule 3.1 hereto in accordance with the timetable set forth on such Schedule. In the event the City does not comply with the provisions of this Section 3.1, and a Qualified Land Exchange Approval is not achieved by the end of the Trust Period (or such longer period to which the City and the Port mutually agree in writing), the City will not have the right to elect the City Cash-Out Remedy pursuant to Section 3.3(c)(1).

3.2 East Maritime Property.

(a) Trust Period. The City will be the owner of and generally shall have full and complete responsibility for the East Maritime Property during the Trust Period, including liability for claims, losses and damages accruing during the Trust Period. Title to the East Maritime Property, including but not limited to the Knight Yard Property, shall be transferred to the Port on the third anniversary of the OARB Transfer Date pursuant to the East Maritime Trust Agreement.

(b) Tenant Activities. During the Trust Period, as between the Port and the City, the City shall have responsibility for any tenants or other users of the East Maritime Property other than the Port, including but not limited to all matters associated with (1) the condition of the East Maritime Property and improvements thereon, (2) the coordination of tenant or user operations or uses with activities associated with implementing the Regulatory Requirements, and (3) lease terminations and the departure of all tenants other than the Port on or before the third anniversary of the OARB Transfer Date, except in all cases unless otherwise agreed to by the Parties in writing.

(c) Rents and Other Proceeds. During the Trust Period, the City or its agent(s) shall manage the East Maritime Property and shall control the renting and handling thereof, and shall collect and handle any and all rents, earnings and proceeds thereof, subject to the reinvestment obligations identified in Article 4 of this MOA.

3.3 West Maritime Property.

(a) Port Lease. During the Trust Period, the Port shall continue to lease from the City those portions of the West Maritime Property (excluding the West Maritime Submerged Property), and all improvements thereon, that the Port subleases from OBRA as of the Effective Date (the "West Maritime Lease Property"), pursuant to the terms of the West Maritime Lease. The Port shall be allowed, in accordance with the terms of the West Maritime Lease, to perform the construction activities described below and to sublease the West

Maritime Lease Property and all improvements located thereon to such persons or entities as determined by the Port, and shall collect and handle any and all rents, earnings, and proceeds thereof. The Port shall cooperate with the City and provide access and similar rights to allow for the remediation of the West Maritime Property in accordance with Regulatory Requirements, subject to the Port's subleases and other occupancy agreements. Likewise, to the extent the West Maritime Property is not under lease to the Port, and after expiration of the West Maritime Lease, the City will grant to the Port necessary construction easements (including easements for staging and placement of fill) to enable the Port to complete the fill and other activities contemplated for the Berth 21 Submerged/Upland Property and to coordinate with the City's construction and redevelopment program.

(b) Tenant Activities. During the Trust Period, as between the Port and the City, the Port shall have responsibility for any subtenants or other users of the West Maritime Lease Property, including but not limited to all matters associated with (1) the condition of the West Maritime Lease Property and improvements thereon, (2) the coordination of tenant or user operations or uses with activities associated with implementing the Regulatory Requirements, and (3) lease terminations and the departure of all subtenants on or before the third anniversary of the OARB Transfer Date, except in all cases unless otherwise agreed to by the Parties in writing.

(c) Land Exchange Approval. If a Qualified Land Exchange Approval is not achieved as of the end of the Trust Period (or such longer period to which the Port and City mutually agree), then (i) none of the Parties shall have any further obligation under this MOA to cause the State of California to release any public trust interest and there will be no exchange by the State of California of its public trust interest in all or a portion of the Gateway Development Area and imposition of such public trust interest on all or a portion of the New Trust Parcels and (ii) except as provided in Section 3.1, the City may elect one of the following options, in its sole and absolute discretion; provided, however, that the City in its sole and absolute discretion may accelerate its election to no earlier than the commencement of the second year of the Trust Period if it believes a Qualified Land Exchange Approval is unlikely to be achieved by the expiration of the Trust Period:

(1) The City will agree to transfer to the Port fee simple title to the Cash-Out Remedy Property (by the City Council and the Port adopting the necessary ordinances to include such Property within the Port Area and the City quitclaiming the Cash-Out Remedy Property to the Port) pursuant to the City Cash-Out Remedy; or

(2) The City will enter into a Joint Development Agreement with the Port on terms and conditions the City and the Port determine to be mutually acceptable, which provides for use and development of all of the West Maritime Property; or

(3) The City will enter an alternative agreement with the Port to nevertheless implement the transactions contemplated by this MOA on the terms and conditions set forth herein or on alternative terms and conditions the City and the Port determine to be mutually acceptable, which alternative terms and conditions may include:

(A) the Port and the City agreeing to accept a Land Exchange Approval that is not a Qualified Land Exchange Approval;

(B) sale by the City to the Port of that portion of the Gateway Development Area east of Maritime Street and/or the Baldwin Yard on the same terms and conditions as set forth in Section 8.4(d);

(C) restructuring by the Parties of the Port share of OARB infrastructure and remediation costs as otherwise set forth in this MOA to reflect the actual percentage of OARB then within the State public trust; and

(D) Port funding of other projects consistent with the State public trust within or outside of OARB.

(d) City Election. The City shall make its initial election by written notice to the Port delivered no later than three hundred sixty (360) days after expiration of the Trust Period (or such longer period to which the Port and City mutually agree in writing), provided, that if the City elects the option described in Section 3.3(c)(2) or (3), and if mutually acceptable terms and conditions for the option elected have not been agreed to by the Parties at the time the City makes its initial election, then the City may also elect to extend the election period for the option described in Section 3.3(c)(1) for an additional one hundred eighty (180) days (by noting such extension in its initial election notice). The Parties acknowledge and agree that if the City wishes to elect either of the options described Section 3.3(c)(2) or (3), that the City must advise the Port and the Parties must begin negotiations before the date on which the City must deliver its initial election notice. The Parties will negotiate in good faith toward achievement of a Joint Development Agreement if the City elects the option described in Section 3.3(c)(2) or toward achievement of an alternative agreement if the City elects the option described in Section 3.3(c)(3)). In the event the City makes the election set forth in Section 3.3(c) (2) or (3), and also elects to extend the election period for the City Cash-Out Remedy and the Parties have not agreed on mutually acceptable terms and conditions within the one hundred eighty (180) day period after the City's initial election notice, then the City's sole right shall be to exercise the City Cash-Out Remedy. The City must make its election by written notice to the Port before the expiration of the one hundred eighty (180) day extension period specified above. If the City fails to exercise its option within the period set forth above (extended with respect to the City Cash-Out Remedy election as set forth in this Section 3.3(d)), then it shall be deemed to have accepted the West Maritime Property in its then condition. The City's and the Port's failure to mutually agree on a Joint Development Agreement under Section 3.3(c)(2), or on alternative terms and conditions under Section 3.3(c)(3), is not an MOA Dispute and is not subject to resolution under Section 10.

3.4 West Maritime Submerged Property.

Subject to recordation of the deed in accordance with Section 2.1(c)(1)(E), the Port shall be considered the owner of and shall have full and complete responsibility for the West Maritime Submerged Property from and after the OARB Transfer Date, including liability for claims, losses and damages accruing during its period of ownership. The Port intends to pursue the

completion of the Port Fill Project on or before the end of calendar year 2008, but reserves the right to determine in its sole and absolute discretion whether to complete the Port Fill Project and the schedule for such completion.

3.5 Port Sliver Properties.

(a) Trust Period. The Port shall be considered the owner of and shall have full and complete responsibility for the Port Sliver Properties during the Trust Period, including liability for claims, losses and damages accruing during its period of ownership. Subject to Section 3.5(d), the Port Sliver Properties will be deleted from the Port Area, and control of the Port Sliver Properties will be transferred to the City Council, on the third anniversary of the OARB Transfer Date pursuant to the Port Sliver Properties Trust Agreement.

(b) Rents and Other Proceeds. During the Trust Period, the Port or its agent(s) shall manage the Port Sliver Properties and shall control the renting and handling thereof, and shall collect and handle any and all rents, earnings and proceeds thereof.

(c) Environmental Investigation. During the Trust Period, the City and the Port will mutually agree to the scope of an environmental investigation of the Port Sliver Properties and to a consultant to conduct such investigation, and the City and the Port will each pay fifty percent (50%) of the costs and expenses associated with such investigation (excluding in the case of each Party its own costs and expenses for staff and internal overhead and in-house and outside legal counsel, unless otherwise agreed by the Parties in writing). If the Parties mutually agree in writing, the Parties will seek to have such investigation conducted with the oversight of a Governmental Authority. Any and all information obtained or developed during the environmental investigation shall be provided to the City and the Port.

(d) City Alternatives. Based on the results of the environmental investigation described in Section 3.5(c), the City Council may elect one of the following options, in its sole and absolute discretion, by written notice to the Port within ninety (90) days after a Qualified Land Exchange Approval is achieved, or if no Qualified Land Exchange Approval is achieved by the end of the Trust Period, within ninety (90) days after the City elects one of the options described in Section 3.3(c). If the City Council fails to exercise an option under this Section 3.5(d) within the applicable period (including any extension as described in Section 3.3(d)), then the City Council shall be deemed to have elected the option described in Section 3.5(d)(1) below:

(1) decline to alter the Port Area to exclude, and decline to accept the Port's relinquishment and transfer of control of, the Port Sliver Properties, in which case (A) title to and jurisdiction over the Port Sliver Properties shall remain in the Port and (B) the Port shall instead deliver to the City, within sixty (60) days after the City Council notifies the Port that it declines to alter the Port Area and accept the Port's relinquishment and transfer of control, for no consideration, a permanent easement to the surface rights of the Port Sliver Properties for parking, landscaping, and structures, to the extent consistent with the State public trust, which easement shall include, but not be limited to, the right to convey easement interests to third parties for terms not to exceed sixty-six (66) years, pursuant to ground or surface lease

arrangements and (C) the City and the Port shall share responsibility for environmental remediation obligations associated with the Port Sliver Properties as set forth in Sections 6.1 and 6.2.

(2) alter the Port Area to delete the Port Sliver Properties from the Port Area and accept the Port's relinquishment and transfer of control of the Port Sliver Properties in accordance with Section 3.5(a), in which case (A) the City shall accept the Port's retention of necessary construction easements (including easements for staging and placement of fill) to enable the Port to complete the fill and other activities contemplated for the Berth 21 Submerged/Upland Property and to coordinate with the City's construction and redevelopment program, provided, that the Port's use of the areas of the Port Sliver Properties covered by such construction easements must be consistent with and must not unreasonably interfere with the City's development plans, (B) the City will accept the Port Sliver Properties "as is" and the City and the Port will have responsibility for environmental remediation obligations for the Port Sliver Properties as set forth in Sections 6.1 and 6.2, and (C) the City will release the Port from all claims, losses, liabilities, and expenses arising from or in connection with the Port Sliver Properties, other than as expressly set forth in this MOA, and will defend, indemnify and hold the Port harmless from any third party claims, losses, liabilities and expenses (including, without limitation, reasonable attorney's and consultant's fees and costs) arising from or in connection with the Port Sliver Properties. An "as is" transfer means that the Port is not making any warranties or representations whatsoever regarding physical condition, size, suitability for the City's intended use, suitability for development, the availability of approvals or entitlements, the availability of utilities and services, the availability of water, geologic conditions, soils conditions or any other matter whatsoever related to the Port Sliver Properties, and has no obligations as to the Port Sliver Properties after alteration of the Port Area and relinquishment and transfer of control under this Section 3.5(d)(2), other than as expressly set forth in this MOA, and the City is relying solely on its own analysis in accepting the Port Sliver Properties.

3.6 Knight Yard Property.

During the Trust Period, the Port shall continue to lease the Knight Yard Property and all improvements thereon from the City pursuant to the Knight Yard Lease.

3.7 Homeless Relocation.

(a) Identification of Property. The City and the Port shall use commercially reasonable efforts to (1) identify and agree upon the Homeless Collaborative Relocation Property, (2) enter into a binding agreement with the Homeless Collaborative specifying the terms and conditions of the Homeless Collaborative relocation, and (3) fully relocate the Homeless Collaborative off of the East Maritime Property within the Trust Period (or such longer period to which the City and Port mutually agree in writing). The Homeless Collaborative Relocation Property may be within or outside the boundaries of the OARB (but if within the boundaries of the OARB, then only within the West Maritime Property, unless the Port in its sole and absolute discretion agrees otherwise in writing). If the Homeless Collaborative Relocation Property is within the boundaries of the EDC Property, then the use thereof shall be limited to industrial/commercial uses and shall not include residential or, if

located on land subject to the State public trust, any other uses inconsistent with the State public trust.

(b) Cost Allocation. Except as provided in Section 2.2(c)(2), the City and the Port shall each pay fifty percent (50%) of all costs and expenses (excluding in the case of each Party its own costs and expenses for staff and internal overhead and in-house and outside legal counsel, unless otherwise agreed by the Parties in writing) associated with the relocation of the Homeless Collaborative activities in accordance with this MOA, including but not limited to the costs and expenses associated with the acquisition of real property, either within or outside the boundaries of the OARB, that will constitute the Homeless Collaborative Relocation Property. In the event the Homeless Collaborative Relocation Property is located within any portion of the OARB transferred to the City or the Port, including but not limited to the Army Reserve Property, such costs shall include the appraised value of the Homeless Collaborative Relocation Property; provided, however, that if such costs result from the breach by either Party of its obligations under Section 3.7(a), or of its obligations under a binding agreement with the Homeless Collaborative entered into in accordance with Section 3.7(a)(2), then such costs shall be solely the responsibility of the breaching Party. To the extent the Homeless Collaborative occupies any portion of the EDC Property before or after expiration of the Trust Period, such costs shall include the fair market rental value of such property, to the extent the Party owning such property is not then receiving fair market rental value from the Homeless Collaborative and the Homeless Collaborative agrees that the below-market rent is credited against the Homeless Collaborative accommodation. The City and the Port shall mutually agree on the method, timing, appraisal assumptions and other matters related to the determination of the appraised values required in this Section 3.7(b); failure to agree shall be an MOA Dispute subject to Article 10.

(c) No-Cost Leases. Subject to Section 3.7(b), if and to the extent that the Port in its sole and absolute discretion determines that it will not interfere with the Port's reuse of the East Maritime Property and will otherwise be consistent with the Port's State public trust use of the East Maritime Property, the Port will to that extent assume and continue for no more than two (2) years after the expiration of the Trust Period (or such shorter period, if the Homeless Collaborative is relocated prior to the end of such two (2) year period), any no cost or other leases and related written agreements entered into between the City and the Homeless Collaborative that relate to the East Maritime Property and were approved by the Port in writing.

(d) Employment Development Programs. The Port will participate in good faith in any employment development programs administered by the Homeless Collaborative.

4. Reinvestment Obligations

4.1 Proceeds to City.

All cash proceeds received by the City during the Reinvestment Period from (a) any payments by the Port pursuant to Section 2.2(a) for Transaction Costs, (b) rents and other proceeds from the East Maritime Property, (c) the payment by the Port for the Knight Yard Property, including but not limited to the lease payments to the City pursuant to the Knight Yard Lease, and (d) the payment by the Port to the City for the West Maritime Property if the City

exercises the City Cash-Out Remedy, shall be used by the City solely for reinvestment and redevelopment of the EDC Property in accordance with the Army Agreement.

4.2 Proceeds to Port.

The Parties agree that no cash or other proceeds received by the Port shall be subject to the reinvestment obligation referenced in Section 4.1 and the Port shall not be required to use such cash or other proceeds for reinvestment or redevelopment of the EDC Property, so long as the Port makes the payment described in Section 2.2(c)(1). The City will advocate to the Army that the Port should not be subject to such reinvestment obligation due to the consideration being paid by the Port for the Knight Yard Property, as well as the other consideration specified in Section 2.2 or otherwise in this MOA. The Port will have the right to participate in the City's negotiations with the Army that involve application of the reinvestment obligation.

5. Remediation of EDC Property

5.1 DTSC Consent Agreement.

(a) RAP and RMP. The EDC Property shall be remediated to the extent required by the DTSC Consent Agreement in accordance with its terms and with the other Regulatory Requirements. The information contained in the RAP, the RMP, the EBST and the other documents specified in Schedule 5.1(a) shall be deemed to provide baseline information regarding the pre-existing Environmental Conditions and other environmental matters at the EDC Property as of the OARB Transfer Date. Pre-existing Environmental Conditions on the EDC Property shall be addressed as set forth in this Section 5.1. Funding for such remediation shall be provided by the Army, the City, the Port and proceeds of the Insurance Policy, as set forth in Sections 5.2, 5.3 and 5.4 below. Any Party retaining a contractor to perform environmental remediation in accordance with this MOA shall require the contractor to carry commercial general liability insurance with limits of at least three million dollars (\$3,000,000.00) and pollution liability insurance with limits of at least two million dollars (\$2,000,000.00). Any Party retaining a contractor to perform work other than environmental remediation shall require the contractor to carry insurance appropriate for the work to be performed, in the reasonable business discretion of the Party retaining the contractor. Such insurance policies shall name all Parties as additional insureds. Each Party will use commercially reasonable efforts to pursue claims against any contractor it retains.

(b) City Responsibilities. The City shall be responsible for the following:

(1) complying with the terms of the ESCA, DTSC Consent Agreement, RAP, RMP and other related agreements associated with the transfer of the EDC Property

(2) subject to Sections 5.1(c)(1) and (4), complying with and implementing all remedial activities required under the Regulatory Requirements on the West Maritime Property, unless the City exercises the City Cash-Out Remedy, in which case the City shall be responsible for such remedial activities required during the period before the Port's acquisition;

(3) complying with and implementing all remedial activities required under the Regulatory Requirements at the RAP Sites that are located on the East Maritime Property; and

(4) complying with and implementing the remedial activities under the Regulatory Requirements at the East Maritime Property, including without limitation remedial activities that are addressed by the RMP (which in turn will include without limitation remedial activities at any New RAP Sites located at the East Maritime Property), to the extent such activities are required to be conducted in accordance with the Regulatory Requirements during the Trust Period.

(c) Port Responsibilities. As provided herein, the Port shall be responsible for the following:

(1) complying with and implementing all remedial activities required under the Regulatory Requirements on the Berth 21 Submerged/Upland Property and with respect to the Marine Sediments (whether through completion of the Port Fill Project or otherwise);

(2) complying with and implementing all remedial activities under the Regulatory Requirements on that portion of the West Maritime Property included in the Cash-Out Remedy Property in the event the City elects the City Cash-Out Remedy, including but not limited to remedial activities at RAP Sites or New RAP Sites located on that portion of the West Maritime Property included in the Cash-Out Remedy Property to the extent such activities have not been conducted at the time the Port acquires that portion of the West Maritime Property included in the Cash-Out Remedy Property and the City was not otherwise required under the Regulatory Requirements to conduct such activities before the Port's acquisition;

(3) complying with and implementing the remedial activities required under the Regulatory Requirements at the East Maritime Property that are addressed by the RMP that have not been conducted, and were not required to be conducted under the Regulatory Requirements, by the end of the Trust Period, including but not limited to remedial activities at New RAP Sites; and

(4) complying with and implementing all remedial activities required under the Regulatory Requirements at the West Maritime Submerged Property, to the extent such activities are required to be conducted during the period such property is owned by the Port.

(d) Priority RAP Activities. The City and the Port each shall implement the remediation of the RAP Sites on the property for which it is responsible in accordance, respectively, with Sections 5.1(b) and 5.1(c) above. The City and Port each shall use reasonable efforts to complete the remediation (excluding long-term monitoring or similar activities) of the RAP Sites for which it is responsible on or prior to expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date), or on such other date as is agreed to in writing by the Parties, and each Party shall cooperate with the other and use reasonable efforts to achieve such goal. If, despite the Parties' reasonable efforts, they have been unable to complete the remediation of the RAP Sites on or prior to expiration of the Trust

Period in accordance with the preceding sentence, then in any event each Party shall complete remediation (excluding long-term monitoring or similar activities) of the RAP Sites for which it is responsible no later than the fifth anniversary of the OARB Transfer Date unless a later date for such completion has been agreed to in writing by DTSC and the Parties. Each Party agrees to reasonably cooperate to avoid interfering with the other Party's operations or tenants during the course of such activities.

(e) DTSC Consent Agreement Assignment. The Port acknowledges that it is obligated to comply with all requirements of the DTSC Consent Agreement with respect to (1) the West Maritime Submerged Property, the Berth 21 Submerged/Upland Property (to the extent covered by the DTSC Consent Agreement), and the Marine Sediments as of the OARB Transfer Date (assuming such property is transferred to the Port on that date), (2) the East Maritime Property as of the end of the Trust Period (assuming such property is transferred to the Port on such date) and (3) if the City exercises the City Cash-Out Remedy, the portion of the West Maritime Property that is included in the Cash-Out Remedy Property as of the date of such property is transferred to the Port. The City and Port shall cooperate and use commercially reasonable efforts to effect an assignment of DTSC Consent Agreement rights and obligations to the Port and assumption by the Port of all such rights and obligations with respect to the East Maritime Property, the West Maritime Submerged Property, the Berth 21 Submerged/Upland Property (to the extent covered by the DTSC Consent Agreement), and the Marine Sediments, or to effect a modification to the DTSC Consent Agreement to accomplish such assignment and assumption, in each case as of the date on which such property is transferred to the Port. If the City exercises the City Cash-Out Remedy, the Parties shall work to effect such assignment and assumption with respect to all such properties and the portion of the Cash-Out Remedy Property covered by the DTSC Consent Agreement, in each case as of the date on which each such property is transferred to the Port. To the extent DTSC does not approve such assignment or other modification, the Port shall (and the Port and the City shall execute a modification of this MOA or other agreement under which the Port formally agrees to) take full responsibility for complying with the DTSC Consent Agreement for all portions of the property for which such assignment or other modification is sought but not approved, in each case as of the date on which such property is transferred to the Port, including but not limited to responsibility for any and all fines, penalties or other sanctions resulting from any failure by the Port to comply with applicable requirements of the DTSC Consent Agreement with respect to the West Maritime Submerged Property, the Berth 21 Submerged/Upland Property, and the Marine Sediments, and, after the date of transfer to the Port, the East Maritime Property, and, if applicable, the Cash-Out Remedy Property.

(f) Implementation of DTSC Consent Agreement and Other Regulatory Requirements. Whether or not the DTSC Consent Agreement is assigned or modified as contemplated by the Parties, as between the City and the Port, (1) the City shall take lead responsibility for all contacts with DTSC (and other regulatory agencies, as appropriate) with regard to activities that are the City's responsibilities under this MOA, and (2) the Port shall take lead responsibility for all contacts with DTSC (and other regulatory agencies, as appropriate) with regard to activities that are the Port's responsibilities under this MOA, unless, in either case, as otherwise mutually agreed in the Work Plan. Such lead responsibility by a Party shall include without limitation the Party having leadership responsibility with respect to DTSC and any other regulatory agency with jurisdiction over the activities for which

the Party is responsible under this MOA, and further, the Party having principal responsibility for all communications with such agencies with regard to the activities for which it is responsible. Neither Party may engage in substantive communications with DTSC or other regulatory agencies with jurisdiction over the activities for which the other Party is, at the time of the communication, responsible under this MOA without first obtaining the other Party's approval. Furthermore, each Party shall immediately notify the other Party of any communications from DTSC, or other regulatory agencies, to such Party with regard to matters for which the other Party is, at the time of the communication, responsible. Finally, as between the Port and the City, a Party is deemed the responsible party under this Section 5.1(f) only during the period the Party owns the properties in question.

5.2 Allocation of ESCA Funds.

(a) General. The Parties acknowledge and agree that an underlying assumption of this Agreement is that the Army shall provide ESCA Funds totaling Thirteen Million Dollars (\$13,000,000) for the remediation of the EDC Property and payment of the Insurance Policy premiums in accordance with the terms and conditions of the ESCA, and further, that the Army has demolished Building 1. The City shall follow the procedures set forth in the ESCA and use its reasonable business efforts and pursue commercially reasonable legal remedies to obtain payment and/or reimbursement from the Army for environmental remediation activities.

(b) ESCA Funding Requests. The ESCA provides procedures by which the City shall request advance payments of ESCA Funds. The City and Port shall regularly confer and cooperate in determining when payment requests to the Army shall be made, the portion of Environmental Services to be funded for the period of funding requested, and the amount of ESCA Funds to be requested for such portion of Environmental Services. All requests for ESCA Funds will be based on invoices from third party service providers payable on a thirty (30) day cycle, and will comprise only costs that are allowed to be credited in meeting the Insurance Attachment Point under the cost cap portion of the Insurance Policy (or that all Parties otherwise agree in advance and in writing are costs authorized by the ESCA, such as reporting requirements under the Technical Specifications and Requirements Statement attached to the ESCA). Requests for ESCA Funds will not be made on the basis of estimates of future costs to be incurred (unless the Parties otherwise agree). The ESCA Funds received will be used to pay only the invoices for which a particular request was made (unless the Parties otherwise agree). The City shall submit a draft request form for ESCA Funds to the Port for Port review and comment no later than fifteen (15) days before such request is to be submitted to the Army. The Port shall have ten (10) days from the time it receives the form to provide comments, including funding requests, on such form to the City. Any issues raised by the Port with respect to a request for ESCA Funds that are not resolved by Port and City representatives shall be an MOA Dispute subject to Article 10.

(c) Insurance Policy. The Parties anticipate that, on the OARB Transfer Date, five million dollars (\$5,000,000.00) of ESCA Funds will be made available; provided that, the Army may be willing to advance ESCA Funds prior to the OARB Transfer Date in order to "lock in" the coverage to be provided by the Insurance Policy as of the OARB Transfer Date. The Parties must mutually agree to the amount and uses of, and all other terms

and conditions affecting, the advance, and any advance received must be applied only for the purpose for which the advance was designated. If an advance is made but the EDC Property is not transferred, or other conditions apply that require OBRA to return the advance to the Army but permit the issuer of the Insurance Policy to retain a portion of the advance, then the Party causing such conditions shall pay the amount retained by the issuer, or if no Party caused such conditions, then such amount shall be paid in the Allocation Proportion. The ESCA Funds shall first be used to pay the premium required to purchase the Insurance Policy (which the Parties anticipate to be approximately three and one-half million dollars (\$3,500,000.00), less any advance, and any remaining balance of ESCA Funds will be used to begin to implement the Work Plan as set forth in Section 5.3(f). The Insurance Policy that is purchased shall meet the specifications set forth on Exhibit 1.1(45).

(d) Priority RAP Activities. The Parties anticipate that all remaining ESCA Funds after the purchase of the Insurance Policy and other uses set forth in Section 5.2(c) shall first be used to complete the remediation of the RAP Sites, and/or to reimburse the City and the Port for the implementation and/or completion of the remediation of the RAP Sites.

(e) RMP Activities. Remaining ESCA Funds after purchase of the Insurance Policy and other uses set forth in Section 5.2(c) and full payment of all costs and expenses associated with the RAP Sites, including but not limited to all reimbursements due to the City or the Port, shall be used to complete, and/or to reimburse the City and the Port for the implementation and/or completion of, the activities required by the RMP. Notwithstanding Section 5.2(d) and the preceding sentence, however, the Parties agree and acknowledge that to the extent certain RMP activities occur in accordance with the Work Plan before the remediation of all RAP Sites is completed, either because the activities are required by the DTSC Consent Agreement, RAP or RMP, are necessary to accommodate redevelopment, or are otherwise necessary to comply with Regulatory Requirements, then ESCA Funds for those RMP or other compliance activities may be used before remediation of all RAP Sites is completed.

(f) Work Plan and Schedule. The Work Plan will be implemented in conjunction with and in a manner that is consistent with the general remediation schedule required by Section 3.3 of the DTSC Consent Agreement. Implementation of the Work Plan over the five (5) year period after the OARB Transfer Date will take into account, among other relevant considerations, (1) savings achievable through economies of scale and efficient mobilization, (2) savings and revenue enhancements achievable by tying remediation to redevelopment and by deferring remediation until required for redevelopment (*e.g.*, potentially deferring investigation until after demolition in order to reduce costs, or deferring demolition of improvements capable of producing revenues), (3) shifting liability through lump sum contracts and other arrangements, (4) the development of milestones that allow reasonable time for the City and the Port to meet all deadlines imposed by the Regulatory Requirements, and (5) redevelopment activities, to the extent then known. The Parties acknowledge that the factors specified in clauses (1) through (5) may conflict. Implementation of the Work Plan will achieve a reasonable balancing of these factors, but priority will be given to meeting the deadlines imposed by Regulatory Requirements. The Parties will review the Work Plan on a regular basis, but no less often than every six (6) months, and will make reasonable adjustments based on changed circumstances and new events within thirty (30) days after each

such review. The Parties' failure to agree on adjustments to the Work Plan will be an MOA Dispute subject to Article 10.

5.3 Unfunded Remediation Costs.

(a) Generally. The Parties acknowledge and agree that there will likely be a shortfall between the ESCA Funds available to cover the costs and expenses associated with the remediation of the EDC Property in accordance with the Regulatory Requirements and the Insurance Attachment Point. The Parties further acknowledge and agree that the anticipated shortfall in funding as of the Execution Date is not expected to exceed eleven million two hundred thousand dollars (\$11,200,000). It is also possible that the costs and expenses associated with the remediation of the EDC Property in accordance with the Regulatory Requirements may exceed the ESCA Funds and proceeds from the Insurance Policy even after the Insurance Attachment Point is reached, or may not be covered by the ESCA Funds or the Insurance Policy.

(b) Allocation. The unfunded remediation costs, as described in Section 5.3(a), necessary to fulfill the Regulatory Requirements shall be allocated to the City and the Port in accordance with the Allocation Proportion; provided that, unfunded remediation costs for abatement of asbestos or lead based paint in connection with building demolition shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party undertaking the demolition, and provided further, that remediation costs associated with Marine Sediments shall be the responsibility of the Port in accordance with Section 5.5.

(c) Allocation Procedure. The Remediation Account Manager shall notify the Parties in writing when twelve million five hundred thousand dollars (\$12,500,000) of the ESCA Funds have been expended (including any amounts subject to outstanding funding requests under Army Grants Officer review). Within thirty (30) days after receipt of such notice from the Remediation Account Manager, the Parties shall deposit in the aggregate one million dollars (\$1,000,000) in the Remediation Account in accordance with the Allocation Proportion (*i.e.*, five hundred thousand dollars (\$500,000) from the Port and five hundred thousand dollars (\$500,000) from OBRA, ORA and the City Council collectively). Each Party may draw from the Remediation Account to fulfill its remediation obligations as set forth in Section 5.1, consistent with the draw procedures set forth in Section 5.3(d). The Remediation Account Manager shall notify the Parties in writing each time the Remediation Account balance falls below two hundred fifty thousand dollars (\$250,000). Within thirty (30) days after receipt of such notice from the Remediation Account Manager, the Remediation Account shall be funded by the Parties in aggregate one million dollar (\$1,000,000) increments in accordance with the Allocation Proportion. Such incremental payments shall continue until the aggregate amount paid for environmental remediation from ESCA Funds and from Remediation Account funds equals the Insurance Attachment Point, and thereafter if required under Section 5.3(a).

(d) Remediation Account Draws. Any Party seeking to withdraw funds from the Remediation Account shall make a request to the Remediation Account Manager specifying in sufficient detail the amount of funds requested, including reasonable itemization

of costs, and rationale of how the funds will be used to comply with the obligations set forth in Section 5.1. The Parties anticipate that draws generally will be based on invoices from third party service providers payable on a thirty (30) day cycle, and will comprise only costs that are unfunded remediation costs as described in Section 5.3(a), subject to the exceptions provided in Section 5.3(b). Draws will not be made on the basis of estimates of future costs to be incurred. Therefore, the draw request will include an invoice in sufficient detail to determine the service provider and the services performed. A copy of the draw request shall be sent at the same time to each Party not seeking the funds. The Parties not seeking the funds shall have fifteen (15) days after receiving the request to notify the Party seeking the funds and the Remediation Account Manager that the information provided in the request is insufficient or the requested funds are otherwise not necessary to fulfill the obligations set forth in Section 5.1. The Party seeking the funds shall have ten (10) days after receiving such notification to confer with the other Parties and provide the necessary information or justify the requested use of the funds. If during or at the end of such ten (10) day period the Parties agree on the funds to be drawn from the Remediation Account, the Parties shall notify the Remediation Account Manager immediately after such agreement, and the Remediation Account Manager shall pay the disputed withdrawal request in accordance with the agreement reached by the Parties. If the Parties cannot agree, the dispute will be an MOA Dispute subject to Article 10. Notwithstanding such disagreement, the Party seeking the funds may request that the Remediation Account Manager disburse the funds requested; provided, however, that, if after resolution of an MOA Dispute, it is determined that some or all of the funds requested are disallowed, then within fifteen (15) days after such determination, the receiving Party shall reimburse the Remediation Account for such disallowed amounts plus interest thereon at an annual rate of six percent (6%).

(e) Allocation Accounting. The Port and ORA shall establish the Remediation Account and will require the Remediation Account Manager to provide a statement on a monthly basis that reflects the account balance, the cumulative contributions to the Account by each Party and specific draws on the Remediation Account. At the time the Insurance Attachment Point is reached, and subsequently as of the date the Remediation Account terminates, the Parties, with the assistance of the Remediation Account Manager, shall reconcile the Remediation Account to ensure that each Party's contribution to the Remediation Account was consistent with the Allocation Proportion. If a Party underfunded its Allocation Proportion of the Remediation Account, it shall reimburse the Party that overfunded the Remediation Account in an amount that reconciles the cumulative Remediation Account contributions with the Allocation Proportion.

(f) Demonstration of Financial Assurance for Conveyance. The Parties acknowledge and agree that the DTSC Consent Agreement requires financial assurances acceptable to DTSC for the unfunded remediation costs. The City and the Port shall cooperate in submitting to DTSC a financial assurance demonstration in accordance with the Allocation Proportion, meaning under which the City demonstrates financial capabilities of funding fifty percent (50%) of the anticipated remediation funding gap, and the Port demonstrates financial capabilities of funding the remaining fifty percent (50%) of the remediation funding gap. The City and the Port agree to fully cooperate in securing DTSC approval of a financial assurance demonstration that is dependent on the Allocation Proportion between the City and the Port of unfunded environmental liabilities, as may be required by DTSC on or before the OARB

Transfer Date; provided, however, that neither the City nor the Port agree herein to any modifications to the DTSC Consent Agreement that would amend the RAP or RMP.

5.4 Insurance Policy.

(a) Insurance Attachment Point. Prior to the date the Attachment Point is reached, the Parties shall jointly submit reports executed by the Port and by OBRA or ORA to the Insurance Policy provider, as required under the Insurance Policy, specifying allowable costs incurred during the reporting period. Each Party will promptly notify each other Party in writing of any responses it receives from the Insurance Policy provider. The notification will include a copy of any written responses from the Insurance Policy provider. The Parties shall confer when any Party believes that eighty-five percent (85%) of the Insurance Attachment Point has been reached. The Parties shall reasonably cooperate and confer with the Insurance Policy provider to reconcile the status of the self-insured retention and allowable costs under the Insurance Policy.

(b) Cost Cap Insurance Policy Claims. After the date the Attachment Point is reached, each Party shall be entitled to make claims under the cost cap portion of the Insurance Policy to fulfill its obligations as set forth in Section 5.1. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time the claim is submitted to the Insurance Policy provider. The Parties shall reasonably cooperate with respect to claims submitted to the Insurance Policy provider. The Party making the claim shall be responsible for its costs, legal or otherwise, in pursuing any claim. Each Party shall advance the cost of remediation in accordance with its obligations under Section 5.1, and benefit from any reimbursement from claims paid. Each Party will promptly notify each other Party in writing of the response received from the Insurance Policy provider in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by the Insurance Policy provider. In the event any remediation costs that are properly incurred and reported by a Party to fulfill its obligations under Section 5.1 are not reimbursed by the Insurance Policy provider, the Party making the claim may submit the claim to the other Parties and to the Remediation Account Manager and it shall be paid from the Remediation Account or, if the funds in the Remediation Account have been depleted, will be shared by the Parties in accordance with the Allocation Proportion using the procedures set forth in Section 5.3(c).

(c) Excess Remediation Costs. If environmental remediation costs exceed the limit of the cost cap portion of the Insurance Policy, and/or if there are environmental remediation costs properly incurred and reported by any Party to fulfill its obligations under Section 5.1 that are not covered by the cost cap portion of the Insurance Policy, such excess environmental remediation costs shall be allocated and shared in accordance with the Allocation Proportion using the Remediation Account procedures set forth in Section 5.3(c).

(d) Liability Claims Under Insurance Policy. Each Party shall be entitled to make claims under the liability portion of the Insurance Policy in the event such Party incurs a loss resulting from a pollution incident associated with the EDC Property. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time the claim is submitted to the Insurance Policy provider. The Parties shall reasonably cooperate with

respect to claims submitted to the Insurance Policy provider. The Party making the claim shall (1) be responsible for payment of any deductible associated with the claim and its costs, legal or otherwise, in pursuing any claim, and (2) benefit from any reimbursement from claims paid, and bear the risk that the Insurance Policy provider will not fully reimburse such Party for all or any portion of the claim. Each Party will promptly notify each other Party in writing of the response received from the Insurance Policy provider in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by the Insurance Policy provider.

(e) Disputes Regarding Insurance Claims. In the event any Party disputes a claim under the Insurance Policy made by another Party, the disputing Party shall notify the other Parties in writing of the basis for the dispute. If the Parties cannot resolve the dispute within thirty (30) days of the notice (or such shorter period as is expressly provided in this MOA), it shall be an MOA Dispute subject to Article 10.

(f) Insurance Policy Term and Limits. The Parties shall confer when twenty million dollars (\$20,000,000) of the cost cap limits have been paid by the Insurance Policy provider. In the alternative, if an option to increase limits can be negotiated up front in the policy, the Parties will confer within one hundred twenty (120) days before the option expires. If at such time there is a reasonable possibility that required activities necessary to comply with the Regulatory Requirements will in the aggregate exceed the cost cap limits, the Parties shall determine in good faith whether an increase in cost cap limits is appropriate. The Parties shall further confer one year before the end of the Insurance Policy term to determine in good faith whether an extension of the term is appropriate. If the Parties cannot agree on whether an increase in limits and/or extension of the term is appropriate, regardless of how much of the policy proceeds have been paid out by that date, the dispute will be an MOA Dispute subject to Article 10. To the extent the Parties agree that an increase in limits and/or extension of the term is appropriate or it is otherwise so determined as a result of an MOA Dispute resolution, the cost of any increased premium shall be allocated in accordance with the Allocation Proportion.

5.5 Marine Sediments.

As among the Parties, the Port shall have full and complete responsibility for any and all remediation activities required to address the impacts to Marine Sediments to the extent the Marine Sediments are required to be addressed to achieve regulatory closure in accordance with the Regulatory Requirements. Notwithstanding anything in this MOA to the contrary, the Allocation Proportion shall not apply to funding for activities associated with the Port Fill Project, including but not limited to remediation of the Marine Sediments, and all such funding shall be provided by the Port or third parties. The City shall not be required to provide any funding for the Port Fill Project or the remediation of the Marine Sediments, and no ESCA Funds, funds from the Remediation Account, or proceeds from claims under the Insurance Policy shall be used for the Port Fill Project or the remediation of the Marine Sediments. The Parties acknowledge and agree that it is anticipated completion of the Port Fill Project will satisfy the Regulatory Requirements applicable to the Marine Sediments, but the Port's obligations will not be satisfied by the Port Fill Project in the event the Port Fill Project does not fully achieve regulatory closure in accordance with the Regulatory Requirements. The City will reasonably

cooperate at the expense of the Port with any efforts the Port undertakes to recover remediation costs relating to the Marine Sediments from third parties. However, the restriction in this Section 5.5 on the use of ESCA Funds, funds from the Remediation Account, or proceeds from claims under the Insurance Policy, does not extend to the use of such funds to remediate RAP or RMP Sites, underground storage tanks or other Environmental Conditions on the Berth 21 Submerged/Upland Property, or West Maritime Submerged Property, that are required to be addressed under the DTSC Consent Agreement or other Regulatory Requirements, regardless of whether or not the Port undertakes the Port Fill Project.

6. Other Environmental Matters

6.1 Pre-Existing Environmental Conditions.

(a) EDC Property. To the extent required pursuant to the Regulatory Requirements, Environmental Conditions existing as of the OARB Transfer Date at the EDC Property shall be addressed in accordance with Section 5.

(b) Army Reserve Properties. In the event the environmental remediation funding to be provided by the Army Reserve for the Army Reserve Properties is not sufficient to cover all costs and expenses associated with the remediation of Environmental Conditions existing as of the date of transfer of the Army Reserve Properties, to the extent required by any Governmental Authority, with respect to (A) the West Maritime Army Reserve Property, as among the Parties, the City shall be responsible for all excess costs and expenses associated with the environmental remediation of such property, or (B) the East Maritime Army Reserve Property, as among the Parties, the Port shall be responsible for all excess costs and expenses associated with the environmental remediation of such property.

(c) Port Sliver Properties. The results of the environmental investigation described in Section 3.5(c) shall be deemed to provide baseline information regarding the pre-existing Environmental Conditions at the Port Sliver Properties. Environmental Conditions on or emanating from the Port Sliver Properties that are identified in such environmental investigation, as among the Parties, shall be the responsibility of:

(1) the Port, to the extent such Environmental Conditions (A) exist on the OARB Transfer Date, (B) arise, are addressed, or are discovered during the Trust Period, and (C) are required by any Governmental Authority to be remediated; or

(2) the Port, in the event the City declines to accept title to the Port Sliver Properties pursuant to Section 3.5(d)(1), to the extent such Environmental Conditions (A) exist on the OARB Transfer Date, and (B) are required by any Governmental Authority to be remediated; or

(3) the City, in the event the City accepts title to the Port Sliver Properties in accordance with Section 3.5(a), to the extent such Environmental Conditions (A) exist on the OARB Transfer Date, (B) arise or are discovered after the end of the Trust Period, and (C) are required by any Governmental Authority to be remediated, and promptly following the City's request the Port shall assign to the City all of its transferable claims, rights or demands

against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the City with respect to the Environmental Conditions at the Port Sliver Properties, and shall cooperate with the City to enable the City (at the City's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable.

(d) Berth 21 Submerged/Upland Property. Environmental Conditions on or emanating from the Berth 21 Submerged/Upland Property that exist on the OARB Transfer Date and are not required to be addressed pursuant to Regulatory Requirements shall be the responsibility of the Port.

6.2 Allocation of Responsibility for "New" Environmental Conditions.

(a) East Maritime Property. Environmental Conditions on or emanating from the East Maritime Property, excluding the Knight Yard Property, shall be the responsibility of:

(1) the City, to the extent such Environmental Conditions (A) result from the use or operation of such properties during the Trust Period, and (B) are required by any Governmental Authority, during the Trust Period, to be remediated; or

(2) the Port, to the extent such Environmental Conditions (A) result from the use or operation of such properties after the end of the Trust Period, or (B) are discovered, arise or are required by any Governmental Authority to be remediated after the end of the Trust Period but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements, whether they result from the use or operation of such property before or after the end of the Trust Period. At the end of the Trust Period, and thereafter promptly following the Port's request, the City shall assign to the Port all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the Port with respect to the Environmental Conditions at the East Maritime Property (excluding the Knight Yard Property), and shall cooperate with the Port to enable the Port (at the Port's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable.

(b) West Maritime Property. Environmental Conditions on or emanating from the West Maritime Property shall be the responsibility of:

(1) the Port, to the extent such Environmental Conditions (A) result from the use or operation of such properties during the Trust Period, and (B) are required by any Governmental Authority, during the Trust Period, to be remediated; or

(2) the City (subject to Section 6.2(b)(3)), to the extent such Environmental Conditions (A) result from the use or operation of such properties after the end of the Trust Period, or (B) are discovered, arise or are required by any Governmental Authority to be remediated after the end of the Trust Period but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements, whether they result from the use

or operation of such property before or after the end of the Trust Period. At the end of the Trust Period, and thereafter promptly following the City's request, the Port shall assign to the City all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the City with respect to the Environmental Conditions at the West Maritime Property, and shall cooperate with the City to enable the City (at the City's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable; or

(3) the Port, if the City exercises the City Cash-Out Remedy, as to the West Maritime Property included in the Cash-Out Remedy Property, to the extent such Environmental Conditions are discovered, arise or are required by any Governmental Authority to be remediated after the end of the Trust Period but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements, whether they result from the use or operation of such property before or after the end of the Trust Period, and all such Environmental Conditions, together with then remaining ESCA funding and Insurance Policy proceeds that are available to remediate such Environmental Conditions, shall be taken into account in determining the fair market value of the Cash-Out Remedy Property in Section 8.4;

(c) Knight Yard Property. Environmental Conditions on or emanating from the Knight Yard Property shall be the responsibility of the Port to the extent such Environmental Conditions (1) result from the use or operation of the Knight Yard Property after the OARB Transfer Date, or (2) are discovered, arise or are required by any Governmental Authority to be remediated after the OARB Transfer Date but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements, whether they result from the use or operation of such property before or after the OARB Transfer Date. At the end of the Trust Period, and thereafter promptly following the Port's request, the City shall assign to the Port all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the Port with respect to the Environmental Conditions at the Knight Yard Property, and shall cooperate with the Port to enable the Port (at the Port's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable.

(d) Berth 21 Submerged/Upland Property. Environmental Conditions on or emanating from the Berth 21 Submerged/Upland Property shall be the responsibility of the Port to the extent such Environmental Conditions are discovered, arise or are required by any Governmental Authority to be remediated after the OARB Transfer Date, but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements, whether they result from the use or operation of such property before or after the OARB Transfer Date. On the OARB Transfer Date, and thereafter promptly following the Port's request, the City shall assign to the Port all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the Port with respect to the Environmental Conditions at the Berth 21 Submerged/Upland Property, and shall cooperate with the Port to enable the Port (at the Port's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable.

(e) West Maritime Submerged Property. Environmental Conditions on or emanating from the West Maritime Submerged Property shall be the responsibility of:

(1) the Port, to the extent such Environmental Conditions (A) result from the use or operation of the West Maritime Submerged Property after the OARB Transfer Date and during the period it is owned by the Port, and (B) are required by any Governmental Authority, during the period the West Maritime Submerged Property is owned by the Port, to be remediated, but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements; or

(2) the City, to the extent such Environmental Conditions are discovered, arise or are required by any Governmental Authority to be remediated after the date the West Maritime Submerged Property is transferred to the City by alterations of the Port Area and relinquishment and transfer of control under the City Council Ordinance and the Port Ordinance, whether they result from the use or operation of such property before or after such transfer, but are not required to be addressed as part of the remediation required pursuant to the Regulatory Requirements. On such transfer date, and thereafter promptly following the City's request, the Port shall assign to the City all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the City with respect to the Environmental Conditions at the West Maritime Submerged Property, and shall cooperate with the City to enable the City (at the City's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable.

(f) Port Sliver Properties. Environmental Conditions on or emanating from the Port Sliver Properties that are not identified in the environmental investigation described in Section 6.1(C) shall be the responsibility of:

(1) the Port, to the extent such Environmental Conditions are required by any Governmental Authority, prior to end of the Trust Period, to be remediated; or

(2) the City, if the City Council accepts the Port Sliver Properties in accordance with Section 3.5(a), to the extent such Environmental Conditions are discovered, arise or are required by any Governmental Authority to be remediated after the end of the Trust Period, whether they result from the use or operation of such property before or after the end of the Trust Period, except as provided in Section 6.2(f)(5). At the end of the Trust Period, and thereafter promptly following the City's request, the Port shall assign to the City Council all of its transferable claims, rights or demands against third parties (excluding insurance carriers) associated with any remediation required to be conducted, or other losses incurred, by the City with respect to the Environmental Conditions at the Port Sliver Properties, and shall cooperate with the City to enable the City (at the City's expense) to obtain the benefit of any claims, rights or demands against third parties (excluding insurance carriers) that are not transferable; or

(3) the Port, if the City Council declines to accept the Port Sliver Properties pursuant to Section 3.5(d)(1), except as set forth in Section 6.2(f)(4) below; or

(4) the City, if the City Council declines to accept the Port Sliver Properties pursuant to Section 3.5(d)(1), to the extent such Environmental Conditions result from non-compliance with applicable Environmental Laws in connection with construction and other activities by the City or a sublessee of the City, or one of their respective agents, pursuant to the easement and/or sublease arrangement contemplated by Section 3.5(d)(1); or

(5) the Port, if the City Council accepts the Port Sliver Properties pursuant to Section 3.5(d)(1), to the extent such Environmental Conditions result from the Port's fill and other activities described in Section 3.5(d)(2).

(g) Army Reserve Properties. Environmental Conditions on or emanating from:

(1) the East Maritime Army Reserve Property shall be the responsibility of the Port, to the extent such Environmental Conditions result from the use or operation of the East Maritime Army Reserve Property after it is transferred to the Port; and

(2) the West Maritime Army Reserve Property shall be the responsibility of the City, to the extent such Environmental Conditions result from the use or operation of the West Maritime Army Reserve Property after it is transferred to the City.

6.3 Exchange of Reports and Filings.

The Parties shall provide to each other copies of any reports or other submissions made to any environmental regulatory agency in connection with the EDC Property or other properties covered by this MOA until all ESCA Funds, Remediation Account Funds and Insurance Policy proceeds are expended, and shall authorize and request DTSC and other state or federal agencies directly to provide any responses to such reports or submissions directly to the other Parties; provided, however, that if all obligations under the DTSC Consent Agreement that relate to the remediation of Marine Sediments are assigned to the Port and the City is released from responsibility and liability for all such obligations, the obligations of the Port pursuant to this Section 6.3 to provide reports and other submissions to the City shall not apply to the Port Fill Project nor to the remediation of Marine Sediments, since no ESCA Funds, funds from the Remediation Account or proceeds from claims under the Insurance Policy may be used for the Port Fill Project or the remediation of Marine Sediments.

6.4 Mutual Releases.

As of the OARB Transfer Date, the Port and the City will execute and exchange mutual releases in the form attached hereto as Exhibit S (the "Mutual Releases"), pursuant to which the Port and City will release each other from any claims the other has or may have with respect to Environmental Conditions existing on or prior to the OARB Transfer Date at the properties covered by this MOA, so that the provisions of this MOA shall be exclusive with respect to the allocation of liability for Environmental Conditions associated with such properties.

6.5 Mitigation Obligations.

The Parties shall each implement feasible mitigation measures identified in the EIR, and acknowledge and agree that no such mitigation measures can be modified without additional CEQA review. The Parties shall negotiate in good faith to reach an agreement with respect to the financial contributions required from the City and the Port for joint mitigation measures in the EIR that are acceptable to each of the Parties participating in such mitigation measures. The Parties shall use good faith efforts to reach such an agreement within one (1) year after the Qualified Land Exchange Approval, or if no Qualified Land Exchange Approval is achieved, then within one (1) year after (a) closing of the City Cash-Out Remedy if the City elects the Cash-Out Remedy or (b) the date the City accepts or is deemed to have accepted the West Maritime Property in its then condition under Section 3.3(c). In the event agreement cannot be reached with respect to such financial contributions within the time period specified, then the matter shall be considered an MOA Dispute subject to Article 10; provided, however, that in the event the Mediator becomes the decision maker with respect to such financial contributions, the standard for resolving such dispute will be a nexus-based analysis of relative contribution by the Parties to the environmental impacts that are identified in the EIR.

6.6 Joint Environmental Management Program.

Within one hundred twenty (120) days after the OARB Transfer Date, the Parties shall develop a mutually acceptable environmental management program to apply to operations at the EDC Property and other properties owned or leased by the Parties that are addressed by this MOA, including but not limited to an inspection program for the Parties' tenants operating at the EDC Property and such related properties, subject to a mutually acceptable joint defense agreement in order to preserve confidentiality. The Parties failure to agree on an environmental management program or a joint defense agreement, within the time frame indicated, will be an MOA Dispute subject to Article 10.

7. EDC Property Development

7.1 Development Restrictions.

All development of the EDC Property, the Army Reserve Properties and adjacent properties, the Port Sliver Properties and property and property rights each Party acquires under the CalTrans I-880 Settlement shall be performed in accordance with applicable requirements of Governmental Authorities, including but not limited to the applicable terms and conditions of:

- (a) the DTSC Consent Agreement, including but not limited to the Covenant to Restrict Use of Property attached as Exhibit D to the DTSC Consent Agreement; and
- (b) the BCDC Seaport and Bay Plan.

7.2 Adoption of Land Use Modifications.

(a) City Approvals. Prior to the OARB Transfer Date, the City Council will enact the City Council Ordinance and deliver a certified copy thereof to the Port. No later than

one (1) year after the OARB Transfer Date, the City Council shall adopt a General Plan Amendment (1) covering the Port's use of the East Maritime Property, the East Maritime Army Reserve Property, the Berth 21 Submerged/Upland Property and property and property rights the Port acquires under the CalTrans I-880 Settlement, (2) in form mutually acceptable to the City and the Port, (3) necessary to conform to the certified EIR, the OARB Final Redevelopment Plan, the OARB Final Reuse Plan, the BCDC Bay and Seaport Plans and the Redevelopment MOU and (4) effective on expiration of the Trust Period (*i.e.*, the third anniversary of the OARB Transfer Date)

(b) Port Approvals. Prior to the OARB Transfer Date, the Port will enact the Port Ordinance and deliver a certified copy thereof to the City Council.

(c) Good Faith Negotiations. The Parties shall negotiate in good faith to achieve agreement on the content and final timing of the approvals described in the second sentence of Section 7.2(a) above.

7.3 Port Electrical Systems.

The Port and the City shall cooperate to develop a mutually acceptable plan for the electrical systems at the EDC Property. At the City's option, exercised in its sole and absolute discretion, the development of the West Maritime Property shall be integrated into the Port's electrical system(s), including the Davis Street Substation, at the City's expense in a fair and cost effective manner, based on actual costs of integrating new development into the Port's electrical utility system(s) and taking into consideration the Port's needs for electricity and its outstanding contractual commitments associated with its electrical utility system(s). However, the Parties' failure to agree on a mutually acceptable plan for electrical systems is not an MOA Dispute and is not subject to Article 10.

7.4 Relocation of Maritime Street.

The Port will accomplish the relocation of Maritime Street, excluding the area known as "Loop Road," as shown on the map attached as Schedule 7.4, at the Port's expense, within the time frame required for the planned redevelopment by the Port and the City, subject to each Party's cooperation in vacating portions of Maritime Street in accordance with Section 7.5(b)(4) and subject to the need for access to enable the City to continue its leasing program; provided that, the Parties shall use commercially reasonable efforts to require all utility facility owners to pay for the cost of utility relocation (and shall mutually agree on allocation of utility relocation costs not paid for in full by facility owners). The Parties shall enter into negotiations and will mutually agree upon the allocation of responsibility for payment (which may include tax increment financing if so determined by ORA, in its sole and absolute discretion) for the final design and funding of the relocation of the area known as the "Loop Road" or an alternative linkage between the relocated Maritime Street and the existing Maritime Street, based on the most cost effective engineering solution given the relevant land use. In the event the Parties cannot reach a resolution of such matters within the time frame required for the Port's redevelopment, they shall be resolved using the dispute resolution provisions of Article 10. The

Mediator will be instructed to consider both the most cost effective engineering solution and the relevant land uses.

7.5 Cooperative Activities.

(a) The City and the Port shall coordinate the development of the EDC Property so that each Party can pursue its development plans in accordance with the timetable chosen by the Party but in a manner that does not unreasonably disrupt the development plans of the other Parties, and the Parties shall develop and implement a mutually acceptable development work plan and schedule. In the event that a Party believes another Party has delayed or disrupted its development of the EDC Property, the matter shall be considered an MOA Dispute and will be subject to mediation in accordance with Article 10.

(b) The City and the Port shall cooperate with each other to obtain all approvals necessary for the development of the EDC Property, including but not limited to the following:

(1) establishing covenants, conditions and restrictions relating to necessary setbacks and other boundary conditions for the portions of the OARB to be transferred to the City and the Port pursuant to this MOA, in each case consistent with the requirements of the BCDC Bay and Seaport Plan;

(2) accommodating bike trail and other public access requirements on Maritime Street, along the southern border of the City development area, and elsewhere in the OARB;

(3) vacating 14th Street and 22nd Street for the benefit of the Port;

(4) vacating Maritime Street after there has been a complete resolution of all Maritime Street issues, including but not limited to relocation of "Loop Road," which resolution provides for adequate access for all City and Port development programs; and

(5) attempting to agree upon an overall utilities and infrastructure plan consistent with this MOA, including Sections 7.3 and 7.4, prior to expiration of the Trust Period, with the City to pay the cost of integrating its new development into the Port's utility system, based on the actual costs of such integration. However, the Parties' failure to agree upon such a plan is not an MOA Dispute and is not subject to Article 10.

8. Effectiveness of MOA; Termination; City Cash-Out Remedy

8.1 Effective Date and Nature of MOA.

The effective date of this MOA shall be the date on which this MOA is executed and delivered by the Governing Bodies of all Parties. The terms and conditions contained in this MOA are, upon execution and delivery by the authorized representatives of all Parties, intended to be binding on the Parties hereto.

8.2 Force Majeure.

(a) No Party shall be liable to the other Parties for its failure to perform hereunder due to any occurrence beyond its reasonable control, including but not limited to acts of God, fires, floods, wars, sabotage, labor disputes or shortages, and/ or an unanticipated conveyance from the Army to a third party, excluding CalTrans, that reduces the acreage available for implementation of the OARB Final Reuse Plan.

(b) The Party whose performance is prevented by any such force majeure occurrence shall (1) notify the other Parties in writing as soon as is reasonably possible after the commencement of such occurrence, setting forth the full particulars in connection with the same; (2) to the extent feasible, remedy such occurrence with all reasonable dispatch; and (3) promptly give written notice to the other Parties of the cessation of such occurrence.

(c) Any dispute over a force majeure event shall be an MOA Dispute subject to Article 10.

8.3 Termination of MOA.

(a) This MOA may be terminated by:

(1) either the City or the Port, if the OARB Transfer Date does not occur by January 1, 2004, unless the reason the OARB Transfer Date has not occurred is the failure by the Army to fulfill one or more of the Closing Requirements designated as (5), (9) or (10) in the Army Agreement, in which case the January 1, 2004 date shall be extended until the earlier of (A) thirty (30) days after the date on which the Army fulfills all such Closing Requirements, or (B) January 1, 2007. (The Parties acknowledge that under the Army Agreement the scheduled OARB Transfer Date is no later than July 31, 2003, but if the OARB Transfer Date does not occur by then, the Army and the City will continue to negotiate for the period set forth in the Army Agreement. During that negotiation period, but not beyond January 1, 2004 unless otherwise agreed by the Parties, the Parties to this MOA will attempt to negotiate a transaction that is as close as reasonably possible to the transaction contemplated in this MOA. Any revised transaction is subject to the approval of all Parties' Governing Bodies, to be effected by an amendment to this MOA, but the failure to approve an alternative transaction is not an MOA Dispute and is not subject to Article 10); or

(2) the Port, if any of (A) the EIR, the ESCA, the Army Agreement, the DTSC Consent Agreement, the RAP/RMP, the Insurance Policy, the OARB Final Redevelopment Plan, the OARB Final Reuse Plan, any of the deeds and easements referenced in Section 2.1, the Master Lease from the Army to OBRA dated June 16, 1999, as amended, and OEA Form 424 (collectively, the "OARB Transfer Agreements") is modified in a material respect from the forms of such documents in existence on the Execution Date of this MOA, (B) the Port determines that such modification(s) are materially adverse, based on reasonable and objective factors, to the Port's interests, (C) the Port exercises this termination right within thirty (30) days of written receipt of notice of such modification(s), and (D) subject to the dispute

resolution provisions of Article 10 if the City disagrees with the Port's determination that the modifications are materially adverse to the Port's interest; or

(3) the City, if the Port fails to enact the land use modifications in accordance with Section 7.2(b); or

(4) the Port, if the City fails to enact the land use modifications in accordance with Section 7.2(a).

(b) If either Party wishes to terminate this MOA pursuant to Section 8.3(a)(1), then such termination will be effective upon delivery of notice. Such termination will not be an MOA Dispute and is not subject to Article 10. If a Party wishes to terminate this MOA pursuant to Section 8.3(a)(2), (3) or (4), such Party must provide written notice to the other Parties at least sixty (60) days prior to the termination date. Such written notice of termination shall be considered notice of an MOA Dispute, and shall be resolved pursuant to the dispute resolution procedures set forth in Article 10.

(c) If the dispute resolution process conducted pursuant to Article 10 results in termination of this MOA, then the Parties shall enter into a Termination Agreement on mutually satisfactory terms and conditions. To the extent the Parties cannot agree, the dispute will be an MOA Dispute subject to Article 10.

8.4 City Cash-Out Remedy.

(a) If the City so elects in accordance with Section 3.3(c), the City shall have the right, exercisable in its sole and absolute discretion, to transfer to the Port fee simple title to the Cash-Out Remedy Property in exchange for the Port's payment of consideration equal to the fair market value of the Cash-Out Remedy Property, calculated in accordance with this Section 8.4, but only if on or before the date of transfer (1) the Port Area has been properly modified to include the entire Cash-Out Remedy Property within the Port Area, (2) the Port is legally entitled to use the entire Cash-Out Remedy Property for maritime purposes and (3) the City has approved General Plan Amendments and other modifications to land use provisions, if any, necessary to permit such use.

(b) In the event the City elects the City Cash-Out Remedy, the Parties shall enter into a mutually satisfactory purchase and sale agreement consistent with this MOA, including standard local real estate transfer provisions, pursuant to which the Port Area boundary is properly modified to include within the Port Area all portions of the Cash-Out Remedy Property. The Port shall accept the Cash-Out Remedy Property and (subject to Section 8.4(a)) shall assume all applicable legal and contractual obligations applicable to the Cash-Out Remedy Property, including but not limited to the City's obligations under the Regulatory Requirements and otherwise pursuant to Section 5.1 of this MOA; provided that, the Port shall assume contractual obligations created by or known to the City only if such obligations were recorded in the Official Records of Alameda County or disclosed in writing by the City to the Port and to the appraisers selected by the Parties in accordance with Section 8.4(d), so that the obligations reasonably could be considered in determining fair market value. As a condition of such assumption, the City, in turn, will to the extent possible, and subject to the consent of the other

parties to such agreements, assign to the Port all of the City's rights arising after the date of the transfer under the DTSC Consent Agreement, the ESCA, the Army Agreement and, to the extent necessary for the Port to receive the full benefit thereof, the Insurance Policies (including without limitation the right to make claims and recover payments), or otherwise take appropriate steps to ensure that the Port receives the benefit of these agreements after the date of the transfer. The Port will pay the purchase price and its share of any prorations or other obligations as follows: Interest only at an annual interest rate of five and one half percent (5.5%) will be payable from the close of escrow on the Cash-Out Remedy Property until seven (7) years after the OARB Transfer Date; thereafter, interest at the annual rate specified above and principal will be paid in level annual installments of interest and principal sufficient to amortize the entire amount due over a term of fifteen (15) years, such installments to commence at the end of the seven (7) year interest only period and to continue to be paid annually until the date that is the twelfth (12th) anniversary of the close of escrow on the Cash-Out Remedy Property, at which time all remaining principal and accrued interest shall be due and payable in full in a lump sum. The Port may prepay all or any of the amount owing without penalty at any time eight (8) years after the OARB Transfer Date.

(c) The funds received by the City from the transfer of that portion of the Cash-Out Remedy Property that is encumbered by the State public trust at the time of transfer shall be used by the City for reinvestment into authorized State public trust uses in accordance with applicable law (including uses outside the boundaries of the OARB, to the extent such uses outside the boundaries of the OARB are authorized under the reinvestment obligations identified in Section 4 of this MOA).

(d) Fair market value for purposes of this Section 8.4 shall be established by an appraisal by a professional appraiser selected by the mutual agreement of the Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, and shall be based on comparable sales of industrial land. The only deductions from the appraised fair market value (other than standard deductions generally applicable in real estate sale transactions) shall be the City's cost of relocation of the Homeless Collaborative and Two Million Dollars (\$2,000,000) as the non-Port contribution to the Community Trust Fund referenced in Section 2.2(d) of this MOA. The appraised fair market value shall take into consideration any obligations assumed by the Port as a result of its acquisition of the Cash-Out Remedy Property (including but not limited to any then known remediation requirements applicable to RAP and RMP sites on the Cash-Out Remedy Property), as well as the availability of ESCA funds and Insurance Policy proceeds to offset those requirements); provided that, the Port will continue to be responsible for its Allocation Proportion of any unfunded known remediation requirements, and therefore such Allocation Proportion will not be considered in determining fair market value. In the event the Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, cannot agree on a professional appraiser within sixty (60) days after the Port receives notice of the City's election, or if either the Port, on the one hand, or ORA, OBRA and the City Council collectively, on the other hand, dispute the fair market value as so determined, then within sixty (60) days after the Port and the City receive the appraiser's report, the Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, will each select an MAI appraiser with at least five (5) years experience in appraising industrial property, to determine the fair market value of the Cash-Out Remedy Property as specified in this MOA. If the two

appraisers cannot agree on the fair market value within thirty (30) days after the second appraiser is appointed, then the appraisers shall prepare formal appraisal reports within sixty (60) days after expiration of the thirty (30) day period and mutually designate a third appraiser, meeting the same criteria specified above (or if they cannot agree within thirty (30) days after the last appraiser completes its report, then the third appraiser shall be chosen using the dispute resolution procedures in Article 10). Within thirty (30) days after appointment, the third appraiser will select either the Port's or the City's appraiser's determination of the fair market value, which shall then govern. The Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, will each pay the costs of its own appraiser, and the costs of any third party appraiser will be paid by the Party or Parties whose appraisal is not selected. Except for potential designation of the third appraiser as specified above, disputes under this Section 8.4 are not MOA Disputes and are not subject to Article 10.

(e) Upon the transfer of the Cash-Out Remedy Property to the Port, and subject to 8.4 (regarding assignment to the Port of, or the City taking other steps to assure that the Port receives the full benefit of, the DTSC Consent Agreement, the ESCA, the Army Agreement and the Insurance Policies), the Port shall assume all obligations with respect to the Cash-Out Remedy Property under the DTSC Consent Agreement, including but not limited to all obligations to provide financial assurance, and shall take commercially reasonable steps at the City's expense to obtain the release of any financial assurance mechanisms provided by the City with respect to such obligations under the DTSC Consent Agreement.

9. Covenants and Representations and Warranties

9.1 Covenants.

(a) Each Party will continue to provide to the other Party all material correspondence received or sent and all other material information compiled relating to the transactions provided for by this MOA, excluding appraisal reports or documents subject to attorney-client or other privilege. Each Party will inform the other Party, in sufficient time to allow the other Party to participate if the other Party so chooses, of substantive conference calls or meetings with the Army, Army Reserve, U.S. Environmental Protection Agency, Homeless Collaborative, BCDC, SLC, the California Attorney General, the Governor's office, DTSC, Regional Water Quality Control Board, CalTrans and other regulatory agencies, and all consultants whose fees and costs are part of the Transaction Costs, to the extent the meetings or conference calls relate to the transactions provided for by this MOA, excluding closed sessions of each Party's Governing Body or meetings subject to attorney-client or other privilege. The foregoing provisions of this Section 9.1(a) will not apply to independent development projects undertaken by any Party, including without limitation the Port Fill Project and any transaction with Costco on the Subaru Lot, except to the extent the Parties seek to establish joint mitigation measures for such projects. No Party will amend any OARB Transfer Document without the prior written consent of the other Parties.

(b) Each Party will use commercially reasonable efforts to satisfy the Closing Requirements in the Army Agreement and all other conditions to be met on its part in order to consummate the transactions contemplated in this MOA.

(c) Each Party will provide full and complete access to the other Party to the portions of the real property covered by this MOA that it owns or for which it has responsibility, to enable the other Party to fulfill its obligations pursuant to this MOA and the Regulatory Requirements, including but not limited to the obligations set forth in Section 5.1, and subject to mutually acceptable reasonable right of entry agreements.

(d) ORA, OBRA and the City Council, on the one hand, and the Port, on the other hand, will use commercially reasonable efforts to enforce agreements with third parties, such as the Army Agreement, the ESCA and the DTSC Consent Agreement, for the benefit not only of itself as a direct contracting party but for the benefit of the other Parties to this MOA who are not contracting parties to the third party agreement.

9.2 City's Representation and Warranties.

The City makes the following representations and warranties as of the Effective Date, the OARB Transfer Date and the date the Trust Period expires, with the understanding that each such representation and warranty is material and is being relied upon by the Port in entering into this MOA.

(a) The execution, delivery and performance of (1) this MOA and (2) all other documents to be delivered by or on behalf of the City in connection with this MOA, have been duly and validly authorized by all necessary action and proceedings on the part of the City, and no further action or authorization is necessary on the part of the City in order to consummate the transactions contemplated herein. To the actual knowledge of the City, this MOA and the other documents executed by the City in connection with this MOA are legal, valid and binding obligations of the City, enforceable in accordance with their respective terms.

(b) Except as set forth in Schedule 9.2(b), to the actual knowledge of the City, there is no pending litigation, administrative proceeding, or other legal or governmental action against the City which would prevent the consummation of the transactions in accordance with the terms of this MOA.

(c) There are no material reports, data, surveys, maps, assessments or other documents in the possession or control of the City or its contractors or consultants concerning the environmental or other condition or the EDC Property which have not been delivered or made available to the Port, excluding documents subject to attorney-client or other privilege. No documents subject to attorney-client or other privilege contain materially detrimental information on the environmental or other condition of the EDC Property that is not also disclosed in documents delivered or made available to the Port.

9.3 Port's Representation and Warranties.

The Port makes the following representations and warranties as of the Effective Date, the OARB Transfer Date and the date the Trust Period expires, with the understanding that each such representation and warranty is material and is being relied upon by the City in entering into this MOA.

(a) The execution, delivery and performance of (1) this MOA and (2) all other documents to be delivered by or on behalf of the Port in connection with this MOA have been duly and validly authorized by all necessary action and proceedings on the part of the Port, and no further action or authorization is necessary on the part of Port in order to consummate the transactions contemplated herein. To the actual knowledge of the Port, this MOA and the other documents executed by the Port in connection with this MOA are legal, valid and binding obligations of the Port, enforceable in accordance with their respective terms.

(b) Except as set forth in Schedule 9.3(b), to the Port's actual knowledge, there is no pending litigation, administrative proceeding, or other legal or governmental action against the Port which would prevent the consummation of the transactions in accordance with the terms of this MOA.

(c) There are no material reports, data, surveys, maps, assessments or other documents in the possession or control of the Port or its contractors or consultants concerning the environmental or other condition or the EDC Property which have not been delivered or made available to the City, excluding documents subject to attorney-client or other privilege. No documents subject to the attorney-client or other privilege contain materially detrimental information on the environmental or other condition of the EDC Property that is not also disclosed in documents delivered or made available to the City.

9.4 Survival.

The representations and warranties in Sections 9.2 and 9.3 shall be deemed to be repeated at the consummation of the transactions contemplated in this MOA, shall not be merged into any deed then delivered, and shall survive such consummation.

9.5 Changed Circumstances.

If either Party becomes aware of any fact or circumstances which would render false or misleading a representation or warranty made by such Party, then it shall promptly give written notice of such fact or circumstance to the other Party, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty.

10. Dispute Resolution/Arbitration of Disputes

10.1 Good Faith Negotiation by Parties.

The Parties shall attempt to resolve, through good faith negotiation among themselves, any MOA Dispute subject to this Article 10 for a period of thirty (30) days after the MOA Dispute is raised by any Party in a written notice to the other Parties. Each Party shall be represented in such negotiations by one or more representatives with decision making and settlement authority sufficient to resolve the particular MOA Dispute, subject to approval of the Party's Governing Body, where required.

10.2 Mediation.

Any MOA Dispute that cannot be resolved by the Parties during such thirty (30) day good faith negotiation period shall be submitted to confidential (to the extent permitted by applicable law) mediation in accordance with this Section 10.2.

(a) Any Party may initiate mediation after the good faith negotiation period described in Section 10.1 by providing the other Parties with a notice in writing, which notice shall contain a statement setting forth the nature of the MOA 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.

(b) The Mediator shall be appointed upon the mutual agreement of the City and the Port. In the event the City and the Port cannot agree on a person to act as the Mediator within thirty (30) days after the notice described in Section 10.2(a), then the City and the Port shall request, from a nationally recognized provider of alternate dispute resolution services mutually agreed upon by the City and the Port, a list of ten (10) names of persons with at least five (5) years of experience in resolving disputes similar to the dispute at issue, and otherwise qualified to act as a Mediator. The City and the Port shall then (1) mutually agree upon one of the persons on such list to act as the Mediator, or if they cannot agree within ten (10) days after both parties have received the list, (2) take turns striking names from such list one by one, with the Party who did not initiate the mediation striking the first name, until the name of one person remains, and the remaining person shall act as the Mediator.

(c) Initially, the mediation shall be a nonbinding process in which the Parties shall discuss their MOA Dispute with the Mediator in a good faith attempt to resolve the issues and reach a settlement. If the initial discussions with the Mediator do not result in a resolution, the Mediator will act as a decision maker and render a final, binding decision on the MOA Dispute as set forth in this Section 10.2.

(d) The rules and procedures for the mediation shall be those set forth in this Section 10.2 plus any supplemental rules and procedures established by the Mediator that are not inconsistent with the rules and procedures set forth herein.

(1) The notice described in Section 10.2(a) provided by the Party initiating the Mediation shall be provided to the Mediator. The Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, shall each provide to the Mediator and to each other a written answer to the MOA Dispute described in such notice within fifteen (15) days after the Mediator has been appointed. The Mediator may also require or request a confidential submission for the Mediator's use only.

(2) The Mediator shall schedule an initial meeting with the Parties on a mutually acceptable date within thirty (30) days after he or she has been appointed. At this meeting, the Parties shall discuss the MOA Dispute with the Mediator informally in a good faith attempt to resolve the issues and reach a settlement. If the Mediator believes the informal discussions are productive, the Mediator may continue them for a period of time not to exceed

sixty (60) days from the date of the initial meeting. 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 MOA Dispute, subject to approval of the Party's Governing Body, where required.

(3) If the MOA Dispute has not been resolved through an agreement in principle among the Parties within such sixty (60) day period, the informal discussions will cease. The Mediator shall render a final, binding decision on the MOA Dispute in writing within thirty (30) days after the cessation of informal discussions.

(4) The Mediator shall have the authority to request any information at any time from any Party to the MOA Dispute as he or she shall deem reasonably necessary for resolution, whether during the informal discussions, upon the termination of informal discussions, or during the period the Mediator is making a decision, excluding attorney-client or other privileged information. If any Party refuses to provide any such information, the Mediator shall have the right to draw an adverse inference or make a finding of fact against such Party as a result of any such refusal.

(5) Each Party may provide to the Mediator any information the Party deems reasonably necessary for resolution of the MOA Dispute, at any time, whether during the informal discussions, upon the termination of informal discussions, or during the period the Mediator is making a decision.

(6) The Mediator shall be authorized to engage in *ex parte* contacts with any Party or other person with information relevant to the MOA Dispute at any time until termination of discussions among the Parties and the Mediator. The Mediator shall not engage in any such *ex parte* contacts during the period the Mediator is making a decision. All *ex parte* contacts shall remain confidential to the Mediator, to the extent permitted by applicable law.

(e) The mediation shall be held in such time and place within the City of Oakland or the City and County of San Francisco as may be selected by the Mediator, subject to the consent of the Parties, which consent shall not be unreasonably withheld.

(f) The fees and expenses of the Mediator and any other services of a provider of alternative dispute resolution services shall be shared equally by the Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, so that each side to the MOA Dispute pays one half of such expenses; provided that, the Mediator shall have the right to assess all any part of any expenses to one or more Parties as sanctions. If the Mediator does not assess the expenses of the mediation, and the Parties do not otherwise agree, the expenses of each Party in preparing for and participating in the mediation shall be borne by each such Party.

(g) The final decision of the Mediator reached pursuant to Section 10.2(d)(3) shall be conclusive and binding upon the Parties, and shall be enforceable by any Party in any court of competent jurisdiction.

specified joint mitigations measures, and to allocate the direct and indirect costs of such employees as the Parties mutually agree.

11.2 Amendments.

Subject to applicable law, this MOA may be amended only by an instrument in writing signed by authorized representatives of all of the Parties. Any agreements reached between the Parties arising from or relating to this MOA must be in writing and signed by the Party or Parties to be bound by the agreement.

11.3 Governing Law.

This MOA shall be construed and interpreted in accordance with the laws of the State of California applicable to agreements made and to be performed within such state.

11.4 Specific Performance.

Both Parties hereto recognize that certain obligations under this MOA, including but not limited to those in Articles 2, 3, 5, 6 and 7 and in Section 8.4, are special, unique and of extraordinary character, and if any Party hereafter fails to comply with the obligations and restrictions imposed upon it hereunder, the other Party or Parties will not have an adequate remedy at law. It is agreed that under such circumstances, any Party, in addition to any other rights which it may have, shall be entitled to injunctive relief to enforce any such restrictions and obligations, and that in the event any actual proceedings are brought in equity to enforce any such provision, no Party shall raise as a defense that there is an adequate remedy at law. Nothing in this MOA shall be construed to prohibit any Party from pursuing any other available remedies for any breach or threatened breach, including recovery of damages, subject to the provisions of Article 10 requiring mediation.

11.5 Notices.

All notices, requests, demands, and other communications hereunder shall be in writing and may be sent by first-class mail, fax, Federal Express or other commercial overnight delivery service, courier service or messenger. The date of the actual receipt of such notices, requests, demands, and other communications shall be deemed to be the date of actual delivery. Such communications shall be given as follows:

If to the City Council, OBRA or ORA to:

City of Oakland
1250 Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
Attention: Curtis S. Kidder, Esq., Deputy City Attorney
Telephone: 510-238-6515
Facsimile: 510-238-6500

Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, CA 94607
Attention: Aliza Gallo, Executive Director
Telephone: 510-238-7405
Facsimile: 510-986-2653

Oakland Redevelopment Agency
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612
Attention: Robert Bobb, City Manager/Agency Administrator
Telephone: 510-238-3302
Facsimile: 510-238-2223

with copies to:

Beveridge & Diamond, P.C.
456 Montgomery Street, Suite 1800
San Francisco, CA 94104-1251
Attention: Jennifer L. Hernandez, Esquire
Telephone: 415-262-4001
Facsimile: 415-262-4040

If to the Port to:

Port of Oakland
530 Water Street
Jack London Square
Oakland, CA 94604
Attention: Tay Yoshitani, Executive Director
Telephone: 510-627-1225
Facsimile: 510-839-5104

with copies to:

Port of Oakland
530 Water Street
Jack London Square
Oakland, CA 94604
Attention: David Alexander, Port Attorney
Telephone: 510-627-1340
Facsimile: 510-444-2093

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111
Attention: James C. Fowler, Esquire
Telephone: 415-393-2092
Facsimile: 415-393-2286

11.6 Successors and Assigns.

This MOA shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. This MOA shall not be assignable by any Party hereto without the prior written consent of the other Parties and any attempt to assign this MOA without such consent shall be void and of no effect.

11.7 Severability.

Any provision of this MOA that is prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability without affecting, impairing or invalidating the remaining provisions hereof or the enforceability thereof in such jurisdiction or the validity or enforceability of any provision hereof in any other jurisdiction, unless to enforce the remaining provisions would materially alter the Parties' respective benefits and burdens hereunder.

11.8 Headings.

The captions and other headings contained in this MOA are for convenience only and shall not be considered a part of or affect the construction and interpretation of any provision of this Agreement.

11.9 Counterparts.

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

11.10 Integration.

This MOA, the Exhibits and Schedules hereto, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings of the Parties in connection with the same.

11.11 Waiver.

A waiver by any of the Parties of any provision hereof shall not be effective unless in writing and shall not constitute a waiver by such Party of any other provision hereof or subsequent breach of any provision hereof.

11.12 Interpretation.

All Parties agree that they have participated in the formation of this MOA, and that the rule of construction which provides that any ambiguity shall be construed against the drafter of an instrument shall not apply to the interpretation of this MOA.

11.13 No Third Party Beneficiary Rights.

This MOA is not intended to and shall not be construed to give any person other than the Parties signatory hereto any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

11.14 Time of the Essence.

Time is of the essence with respect to this MOA.

11.15 Further Assurances.

Each Party, at any time on or after consummation of the transactions contemplated in this MOA, shall at its own expense, execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by another Party and shall take any other action consistent with the terms of this MOA that may reasonably be requested by the other Party for the purpose of transferring and confirming to such Party, or reducing to such Party's possession, any or all of the property intended for such Party or otherwise necessary or desirable to carry out the terms of this MOA.

11.16 Commissions, Indemnity.

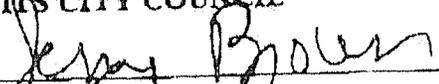
Each Party represents to the other Parties that the representing Party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this MOA. Each Party will defend, indemnify and hold harmless each other Party from and against any claims, losses, liabilities and expenses (including, without limitation, reasonable attorney's and consultant's fees and costs incurred in connection with the same) arising from or in connection with any brokerage commission or finder's fee which the indemnifying Party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying Party.

11.17 CalTrans Allocation.

Prior to the Execution Date, the Port, on the one hand, and OBRA, ORA and the City Council collectively, on the other hand, allocated between them in equal shares a settlement from CalTrans in the aggregate amount of eleven million six hundred thousand dollars (\$11,600,000), plus interest, relating to CalTrans' use of Pier 7 and Burma Road at the OARB. The settlement amount was calculated assuming monthly rent at an agreed upon figure for eight years, discounted to present value. The basis for the allocation was that the Port should receive that portion of the CalTrans payment attributable to the period from June 15, 2002 until three (3) years after the OARB Transfer Date (which was assumed to be April 30, 2003), since that is the term of the no-cost West Maritime Lease from the City to the Port, and the City should receive the balance, as well as any extension payment. For convenience, the Parties assumed a non-discounted monthly payment of one hundred twenty thousand eight hundred thirty three dollars (\$120,833), which is eleven million six hundred thousand dollars (\$11,600,000) divided by ninety-six (96) months, and allocated forty-eight (48) months of payments to the Port and forty-eight (48) months of payments to ORA, OBRA and the City collectively. However, if the actual period of CalTrans' use of Pier 7 and Burma Road is different from the assumptions made in calculating the allocation (because the OARB Transfer Date is other than April 30, 2003, CalTrans terminates its right to use early, or for any other reason), or if any of the other assumptions on which the allocation was based materially change, then the Port, on the one hand, and ORA, OBRA and the City Council collectively, on the other hand, will promptly re-calculate the allocation, using the new facts and the assumed monthly payment of one hundred twenty thousand eight hundred eighty three dollars (\$120,833); provided that, in the event the City exercises the City Cash-Out Remedy and Pier 7 and Burma Road are thereby transferred to the Port, there will be no reallocation of the CalTrans settlement. At the election of the Party or Parties entitled to receive funds under the new allocation, the amount due may be offset against obligations otherwise owing under this MOA.

IN WITNESS WHEREOF, this MOA has been duly executed as of the Execution Date.

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS CITY COUNCIL

By: 

Name: Jerry Brown
Title: Mayor, City of Oakland

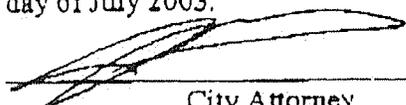
By: 

Name: Ignacio de la Fuente
Title: President, Oakland City Council

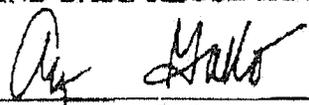
Resolution No.: _____

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE CITY ATTORNEY AND APPROVED BY THE CITY COUNCIL

Approved as to form and legality this 8th day of July 2003.


City Attorney

OAKLAND BASE REUSE AUTHORITY

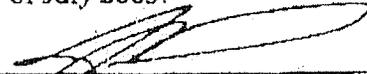
By: 

Name: Aliza Gallo
Title: Executive Director

Resolution No.: _____

THIS AGREEMENT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL IT IS
SIGNED BY THE GENERAL
COUNSEL AND APPROVED BY THE
OBRA GOVERNING BODY

Approved as to form and legality this 8th
day of July 2003.



General Counsel/City Attorney

OAKLAND REDEVELOPMENT AGENCY

By:

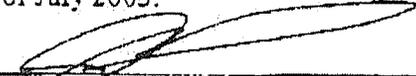


Name: Deborah Edgerly
Title: Interim Agency Administrator

Resolution No.: _____

THIS AGREEMENT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL IT IS
SIGNED BY THE AGENCY COUNSEL
AND APPROVED BY THE AGENCY
BOARD

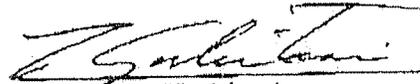
Approved as to form and legality this 8th
day of July 2003.



Agency Counsel/City Attorney

CITY OF OAKLAND, A MUNICIPAL
CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT
COMMISSIONERS

By:

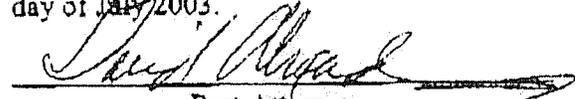


Name: Tay Yoshitani
Title: Executive Director

Resolution No.: U 2317 & 02347

THIS AGREEMENT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL IT IS
SIGNED BY THE PORT ATTORNEY.

Approved as to form and legality this 8th
day of July 2003.


Port Attorney

EXHIBITS AND SCHEDULES TO MEMORANDUM OF AGREEMENT

Exhibits

- A Army Agreement
- B Army Reserve Agreement (to be attached if completed and executed)
- C DTSC Consent Agreement
- D Form of East Maritime Trust Agreement
- E Environmental Services Cooperative Agreement (ESCA)
- F Knight Yard Lease
- G OARB Final Redevelopment Plan
- H OARB Final Reuse Plan
- I Port Quitclaim Deed
- J Form of Port Sliver Properties Trust Agreement
- K Form of Port Ordinance
- L Remedial Action Plan (RAP)
- M Risk Management Plan (RMP)
- N West Maritime Lease
- O Form of East Maritime Quitclaim Deed
- P Form of Deed for Berth 21 Submerged/Upland Property
- Q Form of Deed for West Maritime Submerged Property
- R Form of Deed from OBRA to ORA for West Maritime Property
- S Form of Mutual Release
- T Form of City Council Ordinance
- U Draft CalTrans I-880 Term Settlement Dated June __, 2003 (to be replaced by final Settlement when completed and executed)
- V Form of Port Sliver Properties Quitclaim Deed

Schedules

- 1.1(9) Description of Berth 21 Submerged/Upland Property
- 1.1(14) Description of Cash-Out Remedy Property
- 1.1(23) Description of East Maritime Army Reserve Property
- 1.1(24) Description of East Maritime Property
- 1.1(28) Description of EDC Property
- 1.1(40) Description of Gateway Development Area
- 1.1(47) Description of Environmental Cost Cap and Pollution Legal Liability Insurance Policies
- 1.1(51) Description of Marine Sediments
- 1.1(61) Description of OARB Redevelopment Project Area
- 1.1(72) Description of Port Sliver Properties
- 1.1(87) Description of Subaru Lot
- 1.1(92) Description of West Maritime Army Reserve Property
- 1.1(94) Description of West Maritime Property
- 1.1(95) Description of West Maritime Submerged Property
- 1.1(96) Work Plan

- 1.2(g) Work Scope for Legal Descriptions and Related Tasks
- 3.1 Actions and Timetable for Land Exchange Cooperative Process
- 5.1(a) Documents Establishing Environmental Conditions as of the OARB Transfer Date
- 7.4 Maps Showing Loop Road
- 9.2(b) Litigation Preventing City from Closing
- 9.3(b) Litigation Preventing Port from Closing

Riders ___ to ___ Plat Maps Showing the Properties Referenced in the Schedules to this MOA