

SECOND AMENDMENT TO
MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

AMONG

THE OAKLAND BASE REUSE AUTHORITY,
THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,
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: June 15, 2006

**SECOND AMENDMENT TO
MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**

This **SECOND AMENDMENT TO THE MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE** ("Second Amendment"), dated June 15, 2006 (the "Execution Date," which is the latest date of execution by a Party as shown at the end of this Second Amendment), is entered into by and among the Oakland Base Reuse Authority, a joint powers authority composed of the City of Oakland and the Redevelopment Agency of the City of Oakland, under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code §6470 *et seq.*) ("OBRA"), the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("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"), and is the second amendment to that Memorandum of Agreement for Oakland Army Base dated July 8, 2003 ("2003 MOA" or "MOA"). The Second Amendment supersedes and replaces the First Amendment, dated April 17, 2006.

WHEREAS, the City Council, ORA, OBRA and the Port (collectively, the "Parties" and each a "Party") desire to achieve the Qualified Land Exchange Approval as defined in Section 1.1(a)(76) of the 2003 MOA;

WHEREAS, the Parties have secured the passage of The Oakland Army Base Public Trust Exchange Act (Chapter 664 of the California Statutes of 2005) ("Exchange Act"), which gives the State Lands Commission the authority to execute a trust exchange agreement with the Parties whereby the public trust is removed from or impressed upon certain parcels at or adjacent to the former Oakland Army Base;

WHEREAS, Section 11(b)(5) of the Exchange Act requires as a condition of the State Land Commission's approval of the exchange that the MOA has been amended to eliminate the concept of the "City Cash-Out Remedy" as defined in Section 1.1(a)(17) of the MOA and as referenced in Sections 2.2(d), 3.3(c)(1), 4.1, 5.1(b)(2), 5.1(c)(2), 5.1(e), 6.2(b)(3), 6.5.8.4, 11.17 and elsewhere in the MOA;

WHEREAS, the Parties have negotiated a draft exchange agreement with the State Lands Commission that includes a simplified transaction structure that differs from that set forth in the MOA, and that meets the requirements of the Qualified Land Exchange Approval ("Exchange Agreement");

WHEREAS, in light of the facts recited above, the Parties desire to amend the 2003 MOA to delete the Cash-Out Remedy concept and make such other changes necessary to assure

a successful Qualified Land Exchange and make the 2003 MOA consistent with the draft Exchange Agreement;

WHEREAS, on April 17, 2006, the Parties signed the First Amendment to the MOA in order to remove the City Cash-Out Remedy prior to the April 17, 2006 hearing at the State Lands Commission on the Exchange Agreement;

WHEREAS, this Second Amendment both (a) supersedes the First Amendment by incorporating removal of the City Cash-Out Remedy which was effected by the First Amendment and (b) makes other such changes necessary to make the 2003 MOA consistent with the Exchange Agreement; and

WHEREAS, this Second Amendment shall become effective on the Execution Date, subject to Section 3, below;

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. **Revisions to 2003 MOA.** The Parties agree to the modifications to the 2003 MOA specified in Attachment A to this Second Amendment, which are incorporated as if fully set forth herein. All such revisions shall be effective as of the Execution Date.

2. **Revised Exhibits and Schedules to 2003 MOA.** The Parties agree to the modifications to the 2003 MOA Schedules and Exhibits as follows: (a) Schedule 1.1(49), Exhibit FF, Exhibit OO, Exhibit VV, Exhibit W, Exhibit X, and Exhibit Y, attached to this Second Amendment in Attachment B, are hereby added and incorporated into the 2003 MOA in their entirety; (b) Schedules 1.1(24A), 1.1(72A), and 1.1(95A), also attached to this Second Amendment in Attachment B, are hereby incorporated into the 2003 MOA in their entirety and hereby supersede the original Schedules 1.1(24), 1.1(72) and 1.1(95), respectively; (c) Exhibits D-1, J-1, K-1 and K-2, O-1, Q-1, T-1, and V-1 attached to this Second Amendment in Attachment B are hereby incorporated into the 2003 MOA in their entirety and hereby supersede the original Exhibits D, J, K, O, Q, T, and V respectively; and (d) Schedule 3.1 is deleted in its entirety. All such modifications shall be effective as of the Execution Date.

3. **City Cash-Out Remedy.** Effective upon full execution and delivery of the Exchange Agreement, but not earlier, the 2003 MOA, as amended by Section 1, Section 2 and Attachment A of this Second Amendment, shall be further modified to eliminate the City Cash-Out Remedy as follows (the strikeouts and additions shown below identify the language in the referenced Sections of the 2003 MOA, as modified by Attachment A, that is modified to satisfy the condition in Section 11(b)(5) of the Exchange Act, and in the event of any inconsistency between the language below and in Attachment A, the language in Attachment A shall prevail except for such strikeouts and additions):

a. Sections 1.1(a)(14), 1.1(a)(17), 3.3(c), 3.3(d), 5.1(c)(2), 6.2(b)(3), and 8.4 shall be eliminated and have no further force and effect, and the phrase "City Cash-Out Remedy" shall be deleted from the heading of Section 8.

b. Section 2.2(d) shall be modified to read as follows: "Community Trust Contribution. If a Community Trust Fund is established by the City on or before August 7, 2006, at the time the Community Trust Fund is fully funded (whether such funding occurs before or after August 7, 2006, but before August 6, 2007), 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). Such funds contributed by the Port shall be placed by the City in a separate City trust account and used by the City for trust-consistent projects only in accordance with Section 8 of the Oakland Army Base Public Trust Exchange Act (Chapter 664 of the California Statutes of 2005). The developer(s) of the Gateway Development Area, or the City, will contribute the balance of the funding into a separate City account. If no Community Trust Fund is so established on or before August 7, 2006, or if it is not funded by August 7, 2007, 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.~~"

c. Section 4.1 shall be modified to read as follows:

"All cash proceeds received by the City during the Reinvestment Period including 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, and (c) payments 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."

d. Section 5.1(b)(2) shall be modified to read as follows:

"(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~~";

e. Section 5.1(e) shall be modified to read as follows:

"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 (to the extent covered by the DTSC Consent Agreement), the Berth 21

Submerged/Upland Property (to the extent covered by the DTSC Consent Agreement), and the Marine Sediments as of the date such properties are transferred to the Port, (2) the East Maritime Property as of the date such property is transferred to the Port or the date the term of the East Maritime Property Lease commences, whichever occurs first and (3) the Knight Yard Property as of the date such property is transferred to the Port ~~and (4) 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 Knight Yard Property, the West Maritime Submerged Property (to the extent covered by the DTSC Consent Agreement), 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, or the date the term of the East Maritime Property Lease commences, whichever occurs first. ~~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, or the date the term of the East Maritime Property Lease commences, whichever occurs first, 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 or the date the term of the East Maritime Property Lease commences, whichever occurs first, the East Maritime Property, and the Knight Yard Property, ~~if applicable, the Cash-Out Remedy Property.~~”

f. Section 6.2(b)(2) shall be modified to read as follows:

“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 termination of the West Maritime Lease, or (B) are discovered, arise or are required by any Governmental Authority to be remediated after the termination of the West Maritime Lease 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 termination of the West Maritime Lease. However, the City shall not be responsible for Environmental Conditions that (A) result from the use or operation of such properties by a Port tenant or licensee whom the Port is obligated to remove under Section 3.3(b) during the period after August 7, 2006 and before actual vacation of the property and (B) are required by any Governmental Authority to be remediated during that period. After termination of the West Maritime Lease or the vacation of such Port tenant or licensee, 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~~"

g. Section 6.5 shall be modified to read as follows:

"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 execution of the Exchange Agreement, ~~or if no Exchange Agreement is executed, 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(e).~~ 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."

h. Section 11.17 shall be modified to read as follows:

"Prior to July 8, 2003, 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."

4. **2003 MOA in Effect.** Except as modified pursuant to this Second Amendment, the 2003 MOA is in full force and effect.

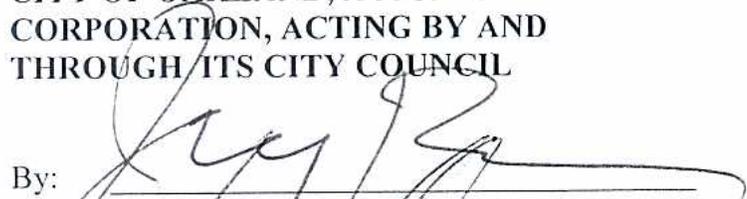
5. **Conflicts.** In the event of a conflict between the terms of this Second Amendment and of the 2003 MOA, the terms of this Second Amendment shall prevail.

[Signatures on the next page.]

IN WITNESS WHEREOF, this Second Amendment has been duly executed by each Party as of the date stated below.

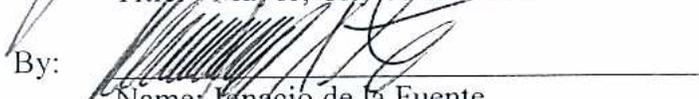
CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS CITY COUNCIL

Dated: 6/14/06

By: 

Name: Jerry Brown
Title: Mayor, City of Oakland

Dated: 6/14/06

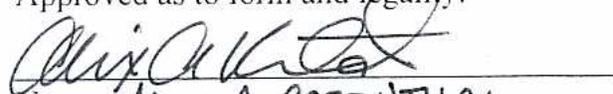
By: 

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

City Resolution No.: 79769 C.M.S.

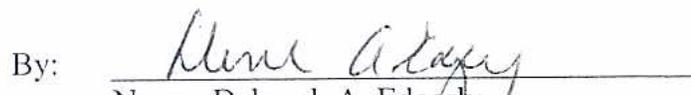
Approved as to form and legality:

Dated: 6/14/06


Name: ALIX A. ROSENTHAL
Title: DEPUTY CITY ATTORNEY

OAKLAND BASE REUSE AUTHORITY

Dated: 6/14/06

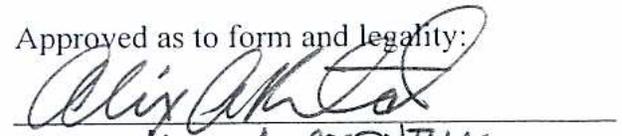
By: 

Name: Deborah A. Edgerly
Title: Executive Director

OBRA Resolution No.: 2006-05

Approved as to form and legality:

Dated: 6/14/06


Name: ALIX A. ROSENTHAL
Title: DEPUTY GENERAL COUNSEL

THE REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND

Dated: 6/14/06

By: Deborah A. Edgerly
Name: Deborah A. Edgerly
Title: Agency Administrator

ORA Resolution No.: 2006-0013 C.M.S.

Approved as to form and legality:

Dated: 6/14/06

Alix A. Rosenthal
Name: ALIX A. ROSENTHAL
Title: DEPUTY AGENCY COUNSEL

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

Dated: 6/15/06

By: Jerry Bridges
Name: Jerry Bridges
Title: Executive Director

Port Resolution No. 06046 and
Port Ordinances No. 3758 and 3897

Approved as to form and legality:

Dated: 6/15/06

Thomas D. Clark
Name: Thomas D. Clark
Title: Assistant Port Attorney

**INDEX OF EXHIBITS TO
SECOND AMENDMENT TO MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**

Attachment A to Second Amendment - Amended and Restated Memorandum of Agreement	
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Exhibit FF	Form of Knight Yard Property Quitclaim Deed Exhibit A - Legal Description
Exhibit J-1	Form of Port Sliver Properties and West Maritime Submerged Property Trust Agreement Amended and Restated
Exhibit K-1	Port Ordinance No. 3758
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Exhibit O-1	Form of East Maritime Quitclaim Deed Exhibit A - Legal Description
Exhibit OO	Form of East Maritime Property Lease Exhibit A - Legal Description Exhibit B - Notice Regarding Hazardous Substances
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Exhibit X	Utilities Operations Agreement
Exhibit Y	Form of Port Sliver Properties Parcel C-2 Lease/Sublease Exhibit A - Legal Description Exhibit B - Notice Regarding Hazardous Substances
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Schedule 1.1 (49)	Legal Description of Knight Yard Property
Schedule 1.1 (72A)	Legal Description of Port Sliver Properties
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