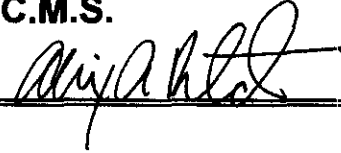


OAKLAND CITY COUNCIL
79769

RESOLUTION No. _____ C.M.S.

OFFICE OF THE CITY CLERK
OAKLAND

2006 FEB 16 PM 9:03



RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE THE OAKLAND ARMY BASE TITLE SETTLEMENT AND EXCHANGE AGREEMENT; APPROVING A PAYMENT METHOD FROM THE PORT OF OAKLAND TO THE REDEVELOPMENT AGENCY FOR A PORTION OF THE OAKLAND ARMY BASE COMMONLY KNOWN AS THE KNIGHT YARD; AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AMENDMENTS TO THE JULY 8, 2003 MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

WHEREAS, the Oakland Base Reuse Authority ("OBRA"), the City of Oakland ("City"), the Oakland Redevelopment Agency ("Agency") and the Port of Oakland ("Port") entered into a Memorandum of Agreement for Oakland Army Base (the "City-Port MOA") on July 8, 2003; and

WHEREAS, the City-Port MOA provides for the Agency, OBRA and the Port to convey certain parcels of Army Base property and adjacent property owned by the Port to each other; and

WHEREAS, a significant portion of the Agency's Gateway Development Area ("GDA") on the former Oakland Army Base, which is comprised of lands that were historically tide or submerged lands, may be subject to the public "tidelands" trust, within the jurisdiction of the State Lands Commission; and

WHEREAS, trust lands cannot be alienated into private ownership, and uses of trust lands are generally restricted to maritime- and other water-related uses; and

WHEREAS, the existence of state public trust claims in the GDA property inhibits its economic development potential and would preclude the uses contemplated in the Oakland Army Base Redevelopment Plan and the Final Oakland Army Base Reuse Plan; and

WHEREAS, the City-Port MOA requires the Agency, OBRA and the Port to seek state approval of an exchange of public trust designations on their respective areas and execute an agreement with the State Lands Commission ("Exchange Agreement"); and

WHEREAS, Pursuant to Council Resolution No. 78461, Agency Resolution No. 2004-19 and OBRA Resolution No. 2004-01, Agency staff and OBRA staff have taken

necessary actions to support a public trust land exchange at the Oakland Army Base, including securing the passage and enactment of state enabling legislation (the Oakland Army Base Exchange Act of 2005) ("Exchange Act") and negotiating a draft Exchange Agreement with the Port and the State Lands Commission; and

WHEREAS, the Exchange Agreement will authorize conveyances to and from the State of California that would confirm the trust portions of the Port Development Area and the waterfront portion of the GDA, and would terminate the trust on the remainder of the GDA; and

WHEREAS, the City-Port MOA anticipates this trust exchange, and provides for a series of conveyances of property on or adjacent to the former Oakland Army Base among the Agency, the Port, and OBRA, implementing the Oakland Army Base Redevelopment Plan and the Final Oakland Army Base Reuse Plan; and

WHEREAS, the City-Port MOA provides for the sale of the Knight Yard property (a 20-acre portion of the former Army Base) to the Port for \$30 million, to be paid to the Agency in \$1 million increments each year for 30 years, the present value of which is approximately \$12,419,000; and

WHEREAS, the City-Port MOA also provides for alternative payment structures of equivalent value in anticipation of legal objections by the State to the initial structure; and

WHEREAS, the State Lands Commission has objected to the Knight Yard payment described above, and so Agency, OBRA and Port staffs have arranged for an alternative payment, described as follows in net present values:

- ◆ Port to reimburse OBRA's share of Homeless Collaborative relocation cost in the amount of \$5.4 million
- ◆ Port to contribute \$3 million to the development of the Gateway Development Area Shoreline Park.
- ◆ Port to pay \$4.019 million for public trust related expenditures.

WHEREAS, the proposed forms of payment are consistent with those already provided for in the MOA;

WHEREAS, City staff has requested that the City Council approve this method and these forms of payment from the Port for the Knight Yard property to resolve the legal objections of the State; and

WHEREAS, the Exchange Act, the Exchange Agreement and the passage of time require several revisions to the City-Port MOA before the exchange can occur, including (1) changing the transaction structure so as to simplify it and allow for the lands to be conveyed to and from the State; (2) eliminating the "cash out remedy" provided in the MOA, as required by the enabling legislation; (3) providing certain

safeguards to each of the Oakland Parties in the event that the trust exchange is not completed by August 6, 2006; (4) revising the MOA provisions relating to consideration for the Knight Yard to reflect the agreement reached with the Port and State Lands; and other minor revisions to the City-Port MOA necessary to implement the Exchange Act; and

WHEREAS, City staff has requested that the City Administrator be authorized to negotiate and execute the necessary amendments to the City-Port MOA; and

WHEREAS, City staff has requested that the City Administrator be authorized to negotiate and execute the proposed Exchange Agreement; and

WHEREAS, the Exchange Agreement is in settlement of a title and boundary dispute and is therefore exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.11; and

WHEREAS, on July 31, 2002, the City Planning Commission, on behalf of the City of Oakland as the Lead Agency, certified the OARB Area Redevelopment Plan Environmental Impact Report ("EIR") and subsequently filed a Notice of Determination; and

WHEREAS, the Redevelopment Agency, as a Responsible Agency, approved the EIR on October 29, 2002, and subsequently filed a Notice of Determination; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA") have been satisfied with the completion and certification of the EIR; now, therefore, be it

RESOLVED: That the City Administrator is authorized to negotiate and enter into the Exchange Agreement in substantially the same form as the draft Exchange Agreement attached hereto as Exhibit A; and be it

FURTHER RESOLVED: That the City Council hereby approves and authorizes staff to negotiate and enter into an agreement with the State Lands Commission regarding the following method and forms of payment from the Port of Oakland for a portion of the Oakland Army Base commonly known as the Knight Yard (net present values as of August 6, 2006): (1) Reimbursement of OBRA's share of Homeless Collaborative relocation cost in the amount of \$5.4 million; and (2) Contribution of \$3 million to the development of the Gateway Development Area Shoreline Park; (3) Payment of \$4.019 million for public trust related expenditures; and

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and enter into necessary amendments to the July 8, 2003 Memorandum of Agreement for Oakland Army Base Among the City of Oakland, the Oakland Base Reuse Authority, the Oakland Redevelopment Agency and the Port of Oakland;

FURTHER RESOLVED: That the Exchange Agreement and the amendments to the City-Port MOA shall be reviewed and approved as to form and legality by City Attorney prior to execution; and be it

FURTHER RESOLVED: That the City has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15061(b)(1) (statutory exemption) of the CEQA Guidelines; and be it

FURTHER RESOLVED: That the City, as a Lead Agency, finds and determines, that prior to taking action approving this action, that (a) this Resolution complies with CEQA; (b) the City relies upon the previously certified EIR for this action; and (c) none of the requirements in CEQA Guidelines sections 15162, requiring further environmental review, have occurred and thus no Subsequent or Supplemental EIR is required for this action; and be it

FURTHER RESOLVED: That on a separate and independent basis, the Exchange Agreement is in settlement of a title and boundary dispute and is therefore exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.11; and be it

FURTHER RESOLVED: That staff is directed to cause to be filed a Notice of Determination and/or Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the record before the City relating to this matter includes, without limitation, the following:

1. The Final Reuse Plan and Redevelopment Plan (and amendments), including all accompanying maps and papers;
2. All final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, Agency and OBRA, including without limitation the Draft and Final EIR and supporting final technical studies and appendices, and all related/supporting final materials, and all final notices relating to the OARB Redevelopment EIR, Final Reuse Plan, Redevelopment Plan (and amendments), and this action, and attendant hearings;
3. All oral and written evidence received by the Agency, City Council, City Planning Commission and OBRA during the public hearings on the EIR, Final Reuse Plan, Redevelopment Plan (and amendments), and this action, and all written evidence received by relevant City, Agency and OBRA Staff before and during said public hearings; and
4. All matters of common knowledge and all official enactments and acts of the City, Agency and OBRA, such as (a) the General Plan; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations and Oakland Fire Code; (c) Oakland Planning Code; (d) other

applicable City and OBRA policies and regulations, and (e) all applicable state and federal laws, rules and regulation, including those of the Bay Conservation and Development Commission; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland California.; (b) Community & Economic Development Agency, Base Reuse Unit, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland California; and (c) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the Agency decision.

IN COUNCIL, OAKLAND, CALIFORNIA, ON MARCH 7, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG AND
~~PRESIDENT DE LA FUENTE~~ 6

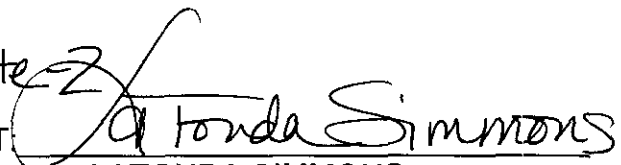
NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- Reid, DeLaFuente

ATTEST



LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland

Exhibit A

Draft Exchange Agreement

Recorded at the Request of and

When Recorded Mail to:

Title Unit

**California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202**

STATE OF CALIFORNIA

OFFICIAL BUSINESS:

Document entitled to free

Recordation Pursuant to

Government Code Section 27383

NO TAX DUE

[Space Above for Recorder's Use]

APN's

SLC No.

AD No.

**OAKLAND ARMY BASE
TITLE SETTLEMENT AND EXCHANGE AGREEMENT**

Instructions to the Alameda County Recorder

Please index this document as follows:

Grantor

Grantee

Exhibit in which property is described

This **OAKLAND ARMY BASE TITLE SETTLEMENT AND EXCHANGE AGREEMENT** (“Agreement”) is dated for reference as of _____, 2006. The parties to the Agreement are the State of California, acting by and through the State Lands Commission (“State”); the City of Oakland, a municipal corporation, acting by and through its City Council (“City”); the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“Port”); the City of Oakland, a municipal corporation, as a trustee pursuant to Chapter 657, Statutes of 1911, as amended, and Chapter 664, Statutes of 2005, acting by and through its Board of Port Commissioners (“Port/Trustee”); the Oakland Base Reuse Authority, a joint powers agency (“OBRA”); the Oakland Redevelopment Agency, a redevelopment agency (“ORA”); and the Oakland Redevelopment Agency, a redevelopment agency, as a trustee pursuant to Chapter 657, Statutes of 1911 and Chapter 664, Statutes of 2005 (“ORA/Trustee”). The City, Port, Port/Trustee, OBRA, ORA and ORA/Trustee are referred to collectively in this Agreement as the “Oakland Parties.” All of the parties to this Agreement, including the State, are referred to collectively as the “Parties.” The Agreement is entered pursuant to Chapter 664, Statutes of 2005, entitled the “Oakland Army Base Public Trust Exchange Act” (“Exchange Act”).

RECITALS

A. This Agreement concerns four parcels of real property located within the former Oakland Army Base (“OARB”), referred to in this Agreement as the “Public Trust Parcels.” The Public Trust Parcels, consisting of Parcels E, F, G and H, are described in **Exhibit A** and are shown for reference purposes only in **Exhibit C**.

B. This Agreement also concerns four parcels of real property located within and adjacent to the former OARB referred to in this Agreement as the “Trust Termination Parcels.” The Trust Termination Parcels, consisting of Parcels A, B, C and D are described in **Exhibit B** and are shown for reference purposes only in **Exhibit C**.

C. The Public Trust Parcels and the Trust Termination Parcels together are a part of the land within “OARB Redevelopment Property.” The OARB Redevelopment Property is shown for reference in **Exhibit C**. For purposes of this Agreement, the term “OARB Redevelopment Property” shall include the same land described in the definition of that term in the Exchange Act.

D. Upon its admission to the Union on September 9, 1850, the State of California, by

virtue of its sovereignty, received in trust for purposes of commerce, navigation and fisheries (the “Public Trust”), all right, title and interest in tide and submerged lands within its boundaries waterward of the ordinary high water mark.

E. The OARB Redevelopment Property includes lands that were tide and submerged lands subject to the Public Trust at the time California became a state.

F. The land title to tide and submerged lands within the OARB Redevelopment Property falls within several categories:

1. North of the 1862 Oakland City Charter line (established by Section 2 of Chapter 294 of the Statutes of 1862), lands within the OARB Redevelopment Property were conveyed into private ownership by the State of California, acting by and through its Board of Tide Land Commissioners, pursuant to Chapter 388 of the Statutes of 1869-1870. These lands were filled prior to 1980 and are agreed to be free of the Public Trust by application of the decision of the California Supreme Court in City of Berkeley v. Superior Court (1980) 26 Cal. 3d 515.

2. The remaining tide and submerged lands within the OARB Redevelopment Property were granted to the Town of Oakland and later to the City of Oakland through a series of statutory grants. These grants were Chapter 107 of the Statutes of 1852 (“Town Grant”) and Chapter 657 of the Statutes of 1911 (“1911 Grant”), both as amended. The grants conveyed all the right, title and interest of the State of California held by virtue of its sovereignty in and to certain tide and submerged lands therein described, to be forever held in trust by the City and its successors.

3. The grants were modified by the Exchange Act, which grants to OBRA, subject to the Public Trust and the Town and 1911 Grants, all of the State’s sovereign interest in those portions of the OARB Redevelopment Property held by OBRA. The Exchange Act further authorizes the conveyance of any OARB trust lands (as defined in the Exchange Act) by and among OBRA, ORA, the City and the Port, with State Lands Commission (“Commission”) approval, to be held by the acquiring entity subject to the Public Trust and the Town and 1911 Grants. The terms and conditions imposed on the grant of lands under the Town and 1911 Grants and the terms and conditions of the Exchange Act, are referred to herein as the “Granted Lands Trust.”

G. The location and title to tide and submerged lands within OARB Redevelopment Property are subject to legal and factual uncertainties that could result in lengthy and expensive land title and boundary litigation. The factors causing the uncertainties include, but are not limited to:

1. Legal questions concerning an 1852 transfer of tidelands along the Oakland waterfront to a private party by the Town of Oakland;

2. The effect of subsequent litigation and court decisions concerning that transfer; and

3. The validity of a 1910 boundary line agreement entered into by the City and a private party purporting to establish the waterward boundary of lands transferred by the Town of Oakland to a private party in 1852 at what is now the eastern line of Maritime Street.

H. Through a series of acquisitions and condemnation actions beginning in 1941, the United States obtained title to the lands that became OARB. The United States acquired the portion of the OARB west of the eastern line of Maritime Street through several condemnation actions, which culminated in a stipulated final judgment in 1952 in United States v. 72 Acres of Land, N.D. Cal. Nos. 21758-L, 21930-L and 22084-L. There are questions regarding the effect of this judgment on the existence of the Public Trust and the Granted Lands Trust within the OARB Redevelopment Property, adding further to the legal uncertainty.

I. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of P.L. 101-510), the OARB was designated for closure in 1995. OBRA was created in 1995 and is the legally recognized local reuse authority for the OARB under the base closure process. In 1999, the OARB was closed and OBRA assumed management and control of most of the base. On August 7, 2003, the United States transferred title to portions of the OARB to OBRA as a no-cost economic development conveyance (“EDC Property”), for the purpose of employment generation and economic development of the property. The OARB Redevelopment Property includes the EDC Property. The deed was recorded August 8, 2003, as Instrument No. 2003466370, *Official Records of Alameda County*. Documents recorded with the transfer are protective of Public Trust and Granted Lands Trust title within the EDC Property and promote entry into this Agreement. Also, on July 8, 2003, the City, OBRA, ORA and the Port entered into a Memorandum of Understanding (“OARB MOA”), which also supports the entry into and completion of this Agreement and its associated deeds.

J. To address hazardous substances on the EDC Property, OBRA commissioned, and the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”) approved in 2002, the “Final Remedial Action Plan, Oakland Army Base, Oakland,

California” and “Final Risk Management Plan, Oakland Army Base, Oakland, California” (together, “RAP/RMP”). The RAP/RMP sets forth cleanup obligations and standards and established risk management protocols for the EDC Property. In 2003, OBRA, ORA and DTSC entered into the “Consent Agreement between Oakland Base Reuse Authority, City of Oakland by and through the Oakland Redevelopment Agency and State of California...” as amended on _____ (“Consent Agreement”). The Consent Agreement provides for a schedule for implementing the RAP/RMP. Also in 2003, the parties to the Consent Agreement entered into a “Covenant to Restrict Use of Property, Environmental Restriction, Former Oakland Army Base, Oakland California” (“Covenant to Restrict Use of Property”), establishing use limitations to ensure that future use and development of the EDC Property are consistent with the protection of human health and the environment.

K. Prior to the transfer of the EDC Property from the Army to OBRA, the Army issued a Finding of Suitability for Early Transfer (“FOSET”) pursuant to Section 120(h)(3)(C) of the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) (42 U.S.C. Section 9620(h)(3)(C)) and U.S. Department of Defense guidance (1998). In the FOSET, the Army determined that the Covenant to Restrict Use of Property, the RAP/RMP and the schedule for undertaking actions as provided in the Consent Agreement together assure the protection of human health and the environment and the completion of necessary response actions. The United States also found that there are adequate funds available to ensure completion of the remediation. Based on these findings and additional financial assurances from Oakland Parties to ensure completion of the remediation, the Governor, in accordance with Section 120(h)(3)(C) of CERCLA, concurred with the Army that the EDC Property was suitable for early transfer and deferred the covenant required by Section 120(h)(3)(B) of CERCLA.

L. There are sufficient protections in place to ensure that the remaining remedial actions affecting the Public Trust Parcels will be completed consistent with the timeframe and standards set forth in the RAP/RMP and Consent Agreement. The Army {United States?} has contributed \$13 million towards remediation (“ESCA funds”), of which approximately \$8.4 million remains. A \$3.5 million portion of the ESCA funds was used to obtain an environmental insurance policy, in which the State is listed as an additional named insured, which will provide coverage for remediation costs in excess of approximately \$21 million, to a cap of \$30 million in coverage. Remediation costs are not expected to exceed the policy amount. The Oakland Parties have committed to providing the up-to-\$11.5 million needed to bridge the gap between the available

ESCA funds and the insurance attachment point, if the cost of remediation exceeds the amount of available ESCA funds. The financial assurances of the Oakland Parties are reflected in Oakland Base Reuse Authority Resolution No. 2003-13, Port of Oakland Resolution No. 03150, Oakland City Council Resolution No. 77857 and Oakland Redevelopment Agency Resolution No. 2003-29. In addition, the Consent Agreement contains enforcement mechanisms, including penalty provisions, which will further ensure substantial compliance with the remediation schedule.

M. In anticipation of the transfer of the EDC Property to OBRA, the Oakland Parties worked on a reuse and redevelopment plan. In 2000, the City Council approved and adopted the Oakland Army Base Area Redevelopment Plan for the Oakland Army Base Area Redevelopment Project ("Redevelopment Plan"), pursuant to the Community Redevelopment Law (Part I, commencing with Section 33000 of Division 24 of the Health and Safety Code). The redevelopment project area includes the OARB Redevelopment Property. In 2002, OBRA adopted a plan entitled "Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base, adopted July 31, 2002" ("Reuse Plan"). The Reuse Plan encompasses the OARB Redevelopment Property and was designed to maximize Public Trust and Granted Lands Trust benefits by identifying the optimal configuration of lands suitable for purposes of those Trusts, given current and anticipated Port needs, potential waterfront recreational opportunities, and to accomplish these objectives in a manner that minimizes bay fill.

N. The Reuse Plan creates two areas: a "Port Development Area" that will be subject to the Public Trust and the Granted Lands Trust and is anticipated to be developed by the Port for Port-related uses consistent with the Public Trust and the Granted Lands Trust and a "Gateway Development Area" that will be redeveloped primarily with uses which are not consistent with the Public Trust and the Granted Lands Trust. ORA will succeed to OBRA's interest in the Gateway Development Area portion of the OARB Redevelopment Property.

O. The Port Development Area is comprised of approximately 235 acres adjacent to the Port's existing Oakland Outer Harbor terminals. By quitclaim deeds recorded August 8, 2003, as Instrument Nos. _____, 2003466373 and 2003466374, Official Records of Alameda County, OBRA has transferred to the Port approximately 20 acres of EDC Property that is presently filled and approximately 50 acres of EDC Property that is presently submerged all within the Port Development Area west of the eastern line of Maritime Street. Most of the lands in the proposed Port Development Area are located in the portion of the OARB Redevelopment Property

east of Maritime Street and are presently in the record ownership of OBRA.

P. The acquisition of all of the Port Development Area lands will allow the Port to consolidate and reconfigure its existing terminals, expand its cargo capacity, create a new larger and more productive intermodal rail terminal and construct its proposed Berth 21 project. These contemplated projects are among the Port's plans in furtherance of the Granted Lands Trust and the Public Trust ("Port Development Projects"). The Port Development Projects are intended to allow the Port to achieve the year 2020 cargo throughput demand forecasts set forth in the San Francisco Bay Area Seaport Plan administered by the Bay Conservation and Development Authority ("BCDC"). The Port has estimated that, as a result of the increased capacity and more efficient design of port facilities made possible by the development of the Port Development Area, overall cargo throughput at the Port's maritime facilities could be increased by approximately 500,000 metric tons, exceeding the throughput demand forecasts contained in the Seaport Plan and conferring a substantial benefit on the region and the state. With the recording of this Agreement and its associated deeds, all of the lands within the Port Development Area that are subject to this Agreement will be added to or confirmed in the Public Trust and the Granted Lands Trust.

Q. The Gateway Development Area is situated adjacent to the San Francisco-Oakland Bay Bridge ("Bay Bridge") touchdown in Oakland at the point of entry to Oakland and the East Bay. A portion of the Gateway Development Area contains waterfront land, comprising Piers 7, 8 and 9. OBRA, ORA and the City have proposed the development of a high-quality destination open-space park that would encompass the entire existing waterfront within the Gateway Development Area. Development of this park would open this previously inaccessible waterfront land to the public for recreational purposes and would directly connect with lands currently held by the federal government to the west of the OARB Redevelopment Property anticipated for use in the future as a shoreline regional park. Upon recording of this Agreement and the deeds implementing it, these waterfront lands (with the exception of Parcel H) will be owned by ORA/Trustee subject to the Public Trust and the Granted Lands Trust. Parcel H will be owned by the Port/Trustee subject to the Public Trust and Granted Lands Trust and may be transferred, subject to the Public Trust and the Granted Lands Trust, to ORA/Trustee once no longer needed for the Berth 21 Project, as more fully outlined in this Agreement.

R. Parcel H of the Public Trust Parcels described in **Exhibit A** is an approximately 0.229-acre parcel of land within the proposed park area which is presently in the record ownership of

the Port. Parcel H is needed for the construction of the Port's Berth 21 Project, but will not be needed by the Port following construction of the project. Upon recording of this Agreement and the deeds implementing it, Parcel H will be owned by the Port/Trustee subject to the Public Trust and the Granted Lands Trust. Consistent with Section 6 of the Exchange Act, this Agreement approves and authorizes the future conveyance, after completion of construction of the Port's Berth 21 project, of Parcel H to ORA/Trustee, also subject to the Public Trust and the Granted Lands Trust. Parcel H is anticipated to be used for a public park. The transfer document between the Port/Trustee and ORA/Trustee shall be in a form approved by the Executive Officer of the State.

S. The remaining lands held by OBRA in the Gateway Development Area consist of filled lands between the waterfront and the Interstate 80 corridor at the Bay Bridge touchdown and filled lands north of the Interstate 80 corridor. Upon recording of this Agreement and the deeds implementing it, these lands will be owned by ORA free from the Public Trust and the Granted Lands Trust.

T. There are several parcels of land within the boundaries of OARB that are not presently owned in fee by any of the Oakland Parties. These parcels ("OARB Adjacent Parcels") are described in Section 2(o) of the Exchange Act and are shown for reference on **Exhibit C**. The Exchange Act authorizes the State to include any of the OARB Adjacent Parcels in the exchange if the State determines that the inclusion of these lands would be substantially consistent with the configuration of trust lands shown in the diagram in Section 16 of the Act and would otherwise comply with the Act. Those portions of the OARB Adjacent Parcels within the Gateway Development Area and north of the 1862 Charter Line are presently free of the Public Trust and Granted Lands Trust for the reasons set forth in Recital F-1 above. This Agreement authorizes the resolution of the Public Trust and Granted Lands Trust status of other portions of the OARB Adjacent Parcels in a subsequent exchange.

U. The Port is now actively seeking to acquire certain interests in the OARB Adjacent Parcels as defined in Section 2(o) of the Exchange Act. These parcels are presently in the record ownership of the United States and occupied by the Army Reserves, are located east of Maritime Street and are essential for the Port to acquire in order for the Port to meet the year 2020 cargo throughput demand forecasts in the San Francisco Bay Area Seaport Plan.

V. As described in Recitals G and H, the factual and legal circumstances relating to the

Oakland Army Base Redevelopment Property have created uncertainties as to the nature and extent of Public Trust and Granted Lands Trust title interests in the OARB Redevelopment Property. These legal uncertainties, including trial litigation and possible appeals from trial court rulings necessary to resolve them, would delay development of the OARB Redevelopment Property for years, to the detriment of its use for Public Trust and Granted Lands Trust purposes and to the detriment of proprietary purposes separate from both of those Trusts.

W. The lands east of Maritime Street within the Port Development Area are needed to expand the Port's terminal and transportation capacity and meet BCDC's 2020 cargo throughput demand forecasts. The lands west of the eastern line of Maritime Street within the Gateway Development Area are not needed to meet these forecasts. The waterfront portion of these lands is better suited for park and recreational purposes and the landward portion is no longer needed for purposes of either the Public Trust or the Granted Lands Trust. A land exchange and boundary settlement is needed to confirm the State's sovereign interest in lands within the OARB Redevelopment Property and to place the Public Trust and the Granted Lands Trust on the lands of greatest value to the trusts.

X. Through the Exchange Act, the California Legislature authorized the settlement of public trust land title questions within the OARB Redevelopment Property, to the benefit of the Public Trust and the Granted Lands Trust. To implement this settlement, the Legislature approved an exchange of lands within the OARB Redevelopment Property that would result in a configuration of trust lands substantially similar to that shown on the diagram of Section 16 of the Exchange Act, subject to certain requirements set forth in the Act. The Act authorizes the Commission to carry out the exchange, to establish appropriate procedures for doing so, to make certain findings and to establish certain conditions before approving the exchange. This Agreement sets forth the procedures for and the terms of the exchange pursuant to the Exchange Act. The findings made through this Agreement are in accordance with the direction of the Legislature contained in the Act.

Y. The exchange authorized by this Agreement will substantially benefit the Public Trust and the Granted Lands Trust and will not result in substantial interference with the uses and purposes of either Trust. The Public Trust Parcels reflect a configuration of trust lands that is most advantageous to the Public Trust and to the Granted Lands Trust in light of all relevant considerations, including but not limited to the Port Development Area projects; public access; other present and anticipated future port needs; port ancillary uses; and future transportation needs. The

exchange will place or confirm in the Public Trust and the Granted Lands Trust all of the lands within the OARB Redevelopment Property that are immediately adjacent to the waterfront, as well as certain interior lands that are useful to the Public Trust and to the Granted Lands Trust, together totaling approximately 165 acres. The exchange will also result in Public Trust and Granted Lands Trust title on approximately 55 acres of lands that are presently submerged.

Z. The exchange will terminate any Public Trust or Granted Lands Trust title in approximately 130 acres south of the 1862 Charter Line. With the exception of Parcel A of the Trust Termination Parcels described in Exhibit B, the lands in which the Public Trust and the Granted Lands Trust will be terminated have been filled and reclaimed. As described below, Parcel A described in Exhibit B will be filled as part of the Port's Berth 21 project.

AA. The Port's Berth 21 project is part of a highly beneficial program of harbor development that will require the filling with solid earth of approximately 28 acres of land waterward of the present line of mean high tide. The land to be filled includes a strip of approximately 0.84 acres of land in the record ownership of the Port that is located in the Gateway Development Area and referred to in subdivision (q) of Section 3 the Exchange Act. This strip of land consists of Parcel A of the Trust Termination Lands described in Exhibit B. Reclamation of Parcel A is necessary to construct the Berth 21 project. However, once filled, Parcel A will not be required for the Berth 21 project or for any other Public Trust or Granted Lands Trust purpose. This Agreement provides that the Public Trust and Granted Lands Trust will not be terminated on Parcel A unless and until the Port has completed its Berth 21 fill activities with respect to that Parcel. At that time, Parcel A will be filled, reclaimed, cut off from navigable waters and no longer needed or required for the promotion of the Public Trust or the Granted Lands Trust.

BB. Parcel D of the Trust Termination Lands described in Exhibit B is comprised of approximately ____ -acres of Port-owned lands in the Gateway Development Area that are landward of and immediately adjacent to Parcel A. Parcel D is needed for the construction of the Berth 21 project, but will not be needed by the Port after the Berth 21 fill activities are complete. This agreement allows the Public Trust and Granted Lands Trust to be terminated on Parcel D after the Berth 21 fill activities are completed, or at such time that the Oakland Parties have determined that the lands are no longer needed for the Berth 21 project, whichever is earlier.

CC. The Parties agree that, to facilitate the completion of the exchange with respect to

Parcels A and D, it may be desirable to allow the Port to transfer Public Trust and Granted Lands Trust responsibilities for those parcels to ORA/Trustee prior to the termination of the Public Trust and Granted Lands Trust on those lands. Consistent with Section 6 of the Exchange Act, this Agreement approves and authorizes said transfer, provided that the Executive Officer of the State first approves the transfer document.

DD. The exchange will provide increased public access to the waterfront. The Pier 7 to 9 waterfront, previously inaccessible to the public, will be impressed with the Public Trust and Granted Lands Trust and is proposed to be developed as a public open space park as part of the redevelopment of the Gateway Development Area. The park will open the waterfront within the Gateway Development Area to the public and will include both pedestrian and bicycle access. The lands will connect with lands currently owned by the United States adjoining the western boundary of the OARB Redevelopment Property, which the State contends are public trust lands and which are proposed to be transferred by the United States to the East Bay Regional Park District for use as a shoreline regional park. Trails within the two parks will connect with a proposed extension of the San Francisco Bay Trail, linking them with the Emeryville shoreline to the north and the Oakland waterfront to the south. This Agreement includes provisions to ensure that development of the Gateway Development Area includes permanent vehicular, bicycle and pedestrian access to the park area and to the adjoining future regional park site, via Burma Road or an equivalent access corridor and that interim public access is provided to the extent feasible consistent with the requirements of public health and safety, the Caltrans Pier 7 easement and Port Berth 21 construction activities.

EE. Access to the Port Development Area is presently provided by Maritime Street. In accordance with OARB MOA, the Oakland Parties may agree to relocate the portion of Maritime Street which is shown on Schedule 7.4 of the OARB MOA. Any relocation of Maritime Street will provide for adequate vehicular, pedestrian and bicycle access to and through the Port Development Area, consistent with the beneficial use of those lands. Public access to the Port terminals and waterfront within the Port Development Area is not required and would be inconsistent with the beneficial use of those lands during any time that they are an operating port facility.

FF. In accordance with appropriate resolutions adopted by the governing body of each of the Oakland Parties, each of the Oakland Parties has executed an amendment to the OARB MOA to eliminate the concept of the "City Cash-Out Remedy" as defined in Section 1.1(a)(17) 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 OARB MOA, effective upon the execution of this Agreement by all parties.

GG. In the interest of settlement, the parties have conducted independent studies and evaluations of the title evidence, the principles of law and the merits of their legal positions. An evaluation and study completed by the State has shown that the economic value of the asserted sovereign interests in the Trust Termination Parcels is less than or equal to the economic value of land or interests in land to be received in the Public Trust Parcels obtained through this Agreement.

HH. The land title transfers provided for in this Agreement will be accomplished through the following recorded conveyances. Through these conveyances, the Public Trust Parcels will be owned by the Port/Trustee or ORA/Trustee subject to the Public Trust and the Granted Lands Trust. The Trust Termination Parcels will be owned by ORA or the Port free from the Public Trust and the Granted Lands Trust, but prior to termination of the Public Trust and Granted Lands Trust in accordance with this Agreement, Parcels A and D will be owned by the Port subject to such trust. The conveyances are:

i. The Port and OBRA will each quitclaim to the State whatever interests they hold in the Public Trust Parcels and the Trust Termination Parcels, according to which of these two parties now owns record fee title. These conveyances shall include any rights arising by virtue of the Granted Lands Trust.

ii. After accepting the Public Trust Parcels, the State will patent Public Trust Parcels F and G within the Port Development Area to the Port/Trustee, subject to the Public Trust and to the Granted Lands Trust;

iii. After accepting the Public Trust Parcels, the State will patent Public Trust Parcel E within the Gateway Development Area to ORA/Trustee and Public Trust Parcel H within the Gateway Development Area to the Port/Trustee, subject to the Public Trust and to the Granted Lands Trust; and

iv. After accepting the Trust Termination Parcels, the State will patent the Trust Termination Parcels to ORA, free of the Public Trust and the Granted Lands Trust, according to the terms of this Agreement.

II. The Oakland Parties approved this Agreement through Oakland City Council Resolution _____ adopted by the City on _____, Oakland Base Reuse Authority

Resolution _____ adopted by OBRA on _____, Oakland Redevelopment Agency Resolution _____ adopted by ORA on _____ and Port of Oakland Ordinance No. _____ adopted by the Port on _____. The Commission approved this Agreement at its meeting of _____.

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the Parties hereby agree as follows:

1. The Establishment of the Public Trust and the Granted Lands Trust in the Public Trust Parcels and Patent of Them to the Port/Trustee and ORA/Trustee.

The Public Trust and the Granted Lands Trust shall be established in the Public Trust Parcels as follows:

a. Each of Port and OBRA shall remise, release and forever quitclaim to the State all of its right, title and interest in Public Trust Parcels E, F, G and H described in **Exhibit A** according to the terms and conditions of this Agreement and the escrow instructions required to implement it. The conveyance of the Public Trust Parcels shall be in the forms of **Exhibit D** and **Exhibit E** and shall include any right, title and interest of the Port and OBRA arising from the Granted Lands Trust.

b. To implement the Granted Lands Trust, the State shall, following acceptance of the conveyances in subsection (a) immediately above, remise, release and forever quitclaim to the Port/Trustee all of the State's right, title and interest based upon sovereignty in Public Trust Parcels F, G and H described in **Exhibit A** according to the terms and conditions of this Agreement and the escrow instructions required to implement it. The conveyance of the Public Trust Parcels shall be in the form of **Exhibit F** and shall be made subject to the Public Trust and the Granted Lands Trust.

c. To implement the Granted Lands Trust, the State shall, following acceptance of the conveyances in subsection (a) immediately above, remise, release and forever quitclaim to ORA/Trustee all of the State's right, title and interest based upon sovereignty in Public Trust Parcel E described in **Exhibit A** according to the terms and conditions of this Agreement and the escrow instructions required to implement it. The conveyance of the Public Trust Parcel E shall be in the

required to implement it. The conveyance of the Trust Termination Parcel A shall be in the form of **Exhibit K** and shall terminate the Public Trust and the Granted Lands Trust. The conveyance of Parcel A to and from the State may occur as a separate transaction subsequent to the other conveyances authorized by this Agreement.

d. Notwithstanding subsection (a) immediately above, no Oakland Party holding record title to Parcel D of the Trust Termination Parcels shall convey Parcel D to the State under subsection (a) immediately above unless and until the Oakland Parties have provided to the Executive Officer of the Commission written documentation evidencing to the Executive Officer's satisfaction that either (1) the Port has completed construction activities involving Parcel D in connection with the Port's Berth 21 project, or (2) Parcel D is no longer needed for such construction. The approval of said documentation by the Executive Officer shall not be unreasonably withheld. Following the Executive Officer's approval, the Oakland Party holding record title to Parcel D shall remise, release and forever quitclaim to the State all of its right, title and interest in Parcel D, including any right, title and interest arising from the Granted Lands Trust. The State shall, following the acceptance of Parcel D, remise, release and forever quitclaim to ORA all of the State's right, title and interest based upon sovereignty in Parcel D described in **Exhibit B** according to the terms and conditions of this Agreement and the escrow instructions required to implement it. The conveyance of the Trust Termination Parcel A shall be in the form of **Exhibit L** and shall terminate the Public Trust and the Granted Lands Trust. The conveyance of Parcel D to and from the State may occur as a separate transaction subsequent to the other conveyances authorized by this Agreement.

3. State Acceptance of Conveyances from Oakland Parties. The State shall accept from the Oakland Parties the conveyances described in Paragraphs 1 and 2 upon the terms set forth in its Certificate of Acceptance. The acceptance of the Public Trust Parcels shall be in the form of **Exhibit M** and the acceptance of the Trust Termination Parcels shall be in the form of **Exhibit N**.

4. Oakland Party Acceptance of Patents from State. Each Oakland Party shall accept the conveyances from the State of the Public Trust Parcels and the Trust Termination Parcels described in Paragraphs 1 and 2 upon the terms and conditions set forth in a Certificate of Acceptance. The acceptance shall be in the form of **Exhibit O** for the Public Trust Parcels and in the form of **Exhibit P** for the Trust Termination Parcels.

5. Warranties and Indemnities. The Parties to this Agreement acknowledge that, through the conveyances in this Agreement, all warranties or indemnities provided by the United States, including but not limited to all warranties or indemnities provided by the United States pursuant to the Defense Authorization Act of 1993, Pub. L. 102-484 § 330(a)(1), Defense Base Realignment and Closure Act of 1990, Pub. L. 105-510 § 2901 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9620(h)(3) and pertaining to the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum, or petroleum derivative resulting from Department of Defense activities will be transferred along with the conveyances of the Public Trust Parcels and Trust Termination Parcels to the State, the Port, OBRA, ORA, any successor, assignee, transferee, lender, lessee, or grantee of any of the Parties and any other person or entity that acquires ownership or control of the EDC Property. The Parties acknowledge that transfers of the Public Trust Parcels and the Trust Termination Parcels between the Parties do not cause the grantor to lose any warranty or indemnity provided by the United States.

6. State Minerals Reservation. The State excepts from the conveyances made by the State pursuant to this Agreement and reserves unto the State of California, its successors and assigns, forever, all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered in the lands hereafter conveyed to the Port and ORA as Public Trust Parcels pursuant to this Agreement. Such mineral rights shall include, but are not limited to, oil and gas and rights, together with the sole, exclusive and perpetual right to explore for, remove and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assignees, except that, this reservation shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal, or disposal activity, to do either of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successor, assignees or lessees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of the Port or the Port's successors or assigns.

7. Public Access. The Port, , ORA and the City shall ensure that the future layout of streets within the Gateway Development Area and the Port Development Area includes permanent vehicular, bicycle and pedestrian access to the Public Trust lands within those areas and through those lands to the lands adjoining the Gateway Development area on its westerly side and will be consistent with the beneficial use of those lands. Prior to the approval by any Oakland Party of a

plan for the layout of one or more streets, the plan shall be submitted to the Executive Officer of the Commission for his written approval, which shall not be unreasonably withheld. Prior to the development of permanent public access facilities for these areas, the Port, ORA and the City shall provide interim public access to the extent feasible consistent with the requirements of public health and safety, the Caltrans temporary easement over Pier 7 for Bay Bridge construction and Port Berth 21 construction activities.

8. OARB Adjacent Parcels. The Parties contemplate that one or more subsequent exchanges may be necessary to resolve the Public Trust and Granted Lands Trust status of the OARB Adjacent Parcels, which are not presently owned by any of the Oakland Parties. In any subsequent exchange, any portion of the OARB Adjacent Parcels may be added to the Public Trust and the Granted Lands Trust and any portion of the OARB Adjacent Parcels within the Gateway Development Area may be removed from the Public Trust and the Granted Lands Trust, provided (a) the subsequent exchange involving the OARB Adjacent Parcels is authorized in a later exchange agreement approved by the Commission; (b) the Oakland Parties have obtained record fee title to the OARB Adjacent Parcels to be exchanged, or the record owner of fee title in those Parcels is a party to the subsequent exchange agreement; and (c) the Commission finds that (1) following the completion of the subsequent exchange, the cumulative value of all of the OARB Redevelopment Property that has been added to the Public Trust and the Granted Lands Trust by this Agreement and all subsequent exchanges is equal to or greater than the cumulative value of all of the OARB Redevelopment Property that has been removed from the Public Trust and the Granted Lands Trust through this Agreement and all subsequent exchanges involving the OARB Adjacent Parcels; and (2) any other applicable requirements of the Exchange Act have been met.

9. Commission Findings. The Commission, effective upon execution and recordation of this Agreement, makes the following findings as required by the Exchange Act and to comply with Article X, Section 3 of the California Constitution:

(a) The configuration of the lands to be exchanged into the Public Trust and the Granted Lands Trust (i) does not differ significantly from the configuration shown on the diagram in Section 16 of the Exchange Act, (ii) includes all lands within the OARB Redevelopment Property that are waterward of the mean high tide at the time of the exchange, with the exception of Parcel A and (iii) consists of lands suitable to be impressed with the Public Trust and the Granted Lands Trust;

(b) The final layout of streets in the Gateway Development Area and the Port Development Area will provide public vehicular, pedestrian and bicycle access to the Public Trust Parcels within those areas and through those areas to the lands adjoining the Gateway Development Area on its westerly side and will be consistent with the beneficial use of those lands;

(c) The value of the lands to be exchanged into the Public Trust and the Granted Lands Trust is equal to or greater than the value of the lands to be exchanged out of the Public Trust or the Granted Lands Trust;

(d) The lands to be taken out of the Public Trust and the Granted Lands Trust have been filled and reclaimed as the result of a highly beneficial program of harbor development; are cut off from access to navigable waters; are no longer needed or required for the promotion of the Public Trust or the Granted Lands Trust; constitute a relatively small portion of the lands originally granted to the City; and the exchange will not result in substantial interference with Public Trust or Granted Lands Trust uses and purposes;

(e) This Agreement is in the best interests of the State of California for the improvement of navigation and commerce; for the enhancement of public access to and along the shoreline and waterfront; and for the protection, preservation and enhancement of Public Trust interests in the remaining tide and submerged lands in the area;

(f) The OARB MOA has been amended to eliminate the concept of the "City Cash-Out Remedy" as defined in Section 1.1(a)(17) 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 OARB MOA, or in any amendment to the OARB MOA;

(g) Each trustee which owns fee title in the lands to be exchanged has approved the exchange;

(h) The Public Trust Lands Parcels have either been remediated consistent with the requirements of the RAP/RMP and Consent Agreement, or, for the portions of the Public Trust Parcels that have not yet been remediated, sufficient protections are in place to ensure that the remedial actions will be completed consistent with the timeframe and standards set forth in the RAP/RMP and Consent Agreement; and

(i) There are no land use covenants or restrictions on the Public Trust Parcels, other than the existing Covenant to Restrict Use of Property, that impede its use for Public Trust or

Granted Lands Trust purposes.

10. Additional findings. The Commission, effective upon execution and recordation of this Agreement, makes the following additional findings:

(a) The parties have a good faith and bona fide dispute as to their respective interests within the Public Trust Parcels and the Trust Termination Parcels. The Agreement is a compromise of the contested issues of law and evidence upon which the dispute is based and is in lieu of the costs, delay and uncertainties of title and boundary litigation and is consistent with and authorized by the requirements of law.

(b) This Agreement is in settlement of a title and boundary dispute and is therefore exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.11 and the Subdivision Map Act pursuant to Government Code section 66412(e).

11. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the parties each agree to accept the conveyance of rights, titles and interests in land referred to in this Agreement and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

12. Further Assurances. So long as authorized by applicable laws to do so, the parties will perform such other acts and execute, acknowledge and deliver all further conveyances and other instruments that may be necessary to fully assure to the other parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

13. Execution Before a Notary Public. All signatures of the parties to this Agreement and all deeds and other conveyances executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Office of the Recorder of the County of Alameda, California.

14. Agreement for Compromise and Settlement. It is expressly understood by the Parties that the provisions set forth in this Agreement have been agreed upon for purposes of compromising and settling the respective disputed interests of the Parties in the Public Trust Parcels and Trust Termination Parcels.

15. No Admission or Effect if Agreement Not Made Effective. In the event this

Agreement does not become effective or becomes effective but is no longer effective in accordance with Section 25, nothing in it shall constitute, or be construed as, an admission by any party hereto or evidence concerning the boundaries, physical character, or character of title or interest in the Public Trust Parcels and the Trust Termination Parcels.

16. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the Public Trust Parcels and the Trust Termination Parcels.

17. Agreement Binding on Successors. All the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors and assigns of the parties.

18. No Third Party Beneficiaries. There are no individual third-party beneficiaries of this Agreement, excepting the public generally.

19. Modification. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the parties to this Agreement.

20. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

21. Headings. The title headings of the sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

22. Escrow.

(a) The parties have agreed to open an escrow with First American Title Company ("Escrow Agent"). As a part of escrow, the Parties shall submit additional mutually agreeable escrow instructions.

(b) State shall deposit the following documents into escrow:

i. A certified copy of the Minute Item for Calendar Item No. ____ of the Commission public hearing on _____, showing the Commission's approval of this Agreement and the Commission's authorization that this Agreement and the patents and certificates of acceptance be executed and delivered to the Escrow Agent on the State's behalf;

iii. Written approvals by the Port/Trustee and ORA/Trustee of the condition of title to the Public Trust Parcels deeded to each as shown in a pro forma title commitment in coverage amounts acceptable to the Port/Trustee and to ORA/Trustee;

iv. A written approval by ORA of the condition of title to Trust Termination Parcels B and C, as shown in a pro forma title commitment in a coverage amount acceptable to ORA;

v. Quitclaim deeds from OBRA and the Port in the forms attached hereto as **Exhibits D and E** transferring to the State their respective rights, titles and interests in the Public Trust Parcels, duly and properly executed by those Parties;

vi. Quitclaim deeds from OBRA and the Port in the forms attached hereto as **Exhibits H and I** transferring to the State all of their respective rights, titles and interests in Trust Termination Parcels B and C, duly and properly executed by those Parties; and

vii. Certificates of acceptance from the Port and ORA in the forms attached hereto as **Exhibits O and P**, accepting conveyances from the State of the Public Trust Parcels and Trust Termination Parcels B and C.

23. Close of Escrow and Recordation. Upon receipt of all documents listed in Paragraph 22 above pertaining to the deposits into escrow, Escrow Agent shall notify the parties of its intention to close escrow and to record this Agreement and all deeds and patents pertaining to that closing, in the manner and subject to the requirements of escrow instructions submitted to the Escrow Agent by the Parties and agreed to by the Escrow Agent.

24. Judicial Confirmation of Validity of Settlement. Any Oakland Party may choose to submit this Agreement to a court of competent jurisdiction to confirm the validity of the Agreement and its associated deeds and patents by a court judgment pursuant to Code of Civil Procedure sections 760.010 through 764.080, inclusive and Section 14 of the Exchange Act. A complaint to do so shall be filed by the Oakland Party within 180 days of recordation by the Escrow Agent of this Agreement pursuant to Paragraph 22. The State and all other Oakland Parties shall cooperate with the Oakland Party filing the complaint in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the settlement embodied in this Agreement and its associated

deeds and patents, each party shall be deemed to have waived any right to appeal from such judgment.

25. Effect of a Judicial Finding of Invalidity. Should a court of competent jurisdiction enter a judgment that becomes final, finding and declaring that this Agreement or any of the conveyances pursuant to it is invalid and should that determination be upheld on final appeal (if one is filed), the parties hereto agree that the Agreement shall no longer be effective for any purpose and that the parties shall re-convey to their respective grantors under this Agreement so as to return the parties to the positions they were in prior to the execution of this Agreement.

26. Agreement Not To Encumber. Upon execution of this Agreement, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests in or to the Public Trust Parcels or the Trust Termination Parcels prior to the recording of this Agreement and its associated deeds.

27. Subsequent Transfers. Following recording of this Agreement and its associated deeds, the title interests held by the Port and ORA in the Public Trust Parcels through the Granted Lands Trust may not be sold or otherwise conveyed or transferred, except to other Oakland Party trustees with Commission approval pursuant to Section 6 of the Exchange Act. By this Agreement and pursuant to Section 6 of the Exchange Act, the State approves and authorizes any future conveyance by the Port/Trustee to ORA/Trustee of the Port/Trustee's title interests in Public Trust Parcel H, subject to the Public Trust and the Granted Lands Trust, by a form of conveyance approved by the Executive Officer of the State. The State further approves and authorizes by this Agreement any future conveyance by the Port to ORA of the Port's title interests in Trust Termination Parcels A and D, or any portion thereof, prior to the termination of the Public Trust and Granted Lands Trust in those lands, by a form of conveyance approved by the Executive Officer of the Commission.

28. Allocation of Costs and Expenses. The Oakland Parties shall pay the expenses and fees of the Escrow Agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents and any associated documents. The Oakland Parties shall also pay expenses and fees associated with any title insurance policy for the Public Trust Parcels and the Trust Termination Parcels. All other fees, costs and expenses of any attorney, engineer or other person employed or retained by a Party in connection with the transactions underlying this Agreement shall be borne by the Party incurring the fee or expense, except as those

Parties may otherwise agree.

29. Notice: Any notice required pursuant to this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or overnight mail, return receipt requested, with postage such other address as the applicable Party may provide. For the convenience of the Parties, notice also may be given by facsimile in addition to one of the above methods, to the telephone numbers listed below.

State:

State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attn: Chief Counsel
Facsimile: 916-574-1855

With copies to:

Office of the Attorney General
State of California
1515 Clay Street, 20th Floor
Oakland, CA 94612
Attn: Supervising Deputy Attorney General, Land Law Section
Facsimile: 510-622-2270

Port and Port/Trustee:

Port of Oakland
530 Water Street
Oakland, CA 94607
Attn: Director of Maritime
Facsimile: 510-835-1641

With copies to:

Port of Oakland
530 Water Street
Oakland, CA 94607
Attn: Port Attorney, Port of Oakland
Facsimile: 510-444-2093

City, OBRA, ORA, or ORA/Trustee:

The City of Oakland

1250 Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
Attn: Alix Rosenthal, Esq., Deputy City Attorney
Facsimile: 510-238-6500

Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, CA 94607-5009
Attention: Executive Director
Facsimile: (510) 238-2936

Oakland Redevelopment Agency
250 Frank H. Ogawa Plaza, Suite 330
Oakland, CA 94612
Attention: _____, Agency Administrator
Facsimile: 510-238-2223

With copies to:

Shute Mihaly & Weinberger
396 Hayes Street
San Francisco, CA 94102
Attn: William J. White
Facsimile: 415-552-5816

30. Effective Date. "The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor..."]This Agreement shall become effective only upon execution by all parties and the Governor. The Agreement shall terminate if not recorded by the earlier of August 31, 2006 or 60 days from entry of any judgment pursuant to Paragraph 24, unless the parties extend that date in writing.

31. Exhibits A through R. **Exhibit A** through **Exhibit R**, inclusive, are attached to this Agreement and are incorporated by reference as parts of it.

To witness this Agreement, a duly authorized officer of each party has executed it below on the date opposite each signature.

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

DATED: _____

By: _____
Paul D. Thayer
Executive Officer

Approved as to form:

Bill Lockyer
Attorney General
State of California

DATED: _____

By: _____
Joseph C. Rusconi
Deputy Attorney General

CITY OF OAKLAND, a municipal
corporation, acting by and through its City
Council

DATED: _____

By: _____
City Administrator

OAKLAND BASE REUSE AUTHORITY

DATED: _____

By: _____
Executive Director

**OAKLAND REDEVELOPMENT
AGENCY**

DATED: _____

By: _____

**OAKLAND REDEVELOPMENT
AGENCY**, a redevelopment agency, acting
as a trustee pursuant to Chapter 657, Statutes
of 1911, as amended, and Chapter 664,
Statutes of 2005

DATED: _____

By: _____

Approved as to form:

DATED: _____

By: _____

City Attorney
Attorneys for City, OBRA, ORA and
ORA/Trustee

THE CITY OF OAKLAND, a municipal
corporation, acting by and through its Board
of Port Commissioners

Dated: _____

Executive Director

THE CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners pursuant to Chapter 657, Statutes of 1911, as amended, and Chapter 664, Statutes of 2005, acting by and through its Board of Port Commissioners

Dated: _____

Executive Director

Approved as to form and legality
this ___ day of _____, 200__.

Port Attorney

Port Ordinance No. _____.

**IN APPROVAL WHEREOF, I,
ARNOLD SCHWARZENEGGER,**
Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this, the _____ day of _____, in the year of our Lord two thousand and six.

ARNOLD SCHWARZENEGGER
Governor, State of California

Attest:

SECRETARY OF STATE

By: _____
Secretary of State