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CITY OF OAKLAND

Agenda Report

TO: Agency Administrator  
FROM: Community and Economic Development Agency & Oakland Base Reuse Authority  
DATE: November 9, 2004  
SUBJECT: **Report And Resolution Authorizing The Agency Administrator To (1) Consent To The Assignment Of The Rights And Obligations Of The Alameda County Homeless Base Conversion Collaborative Under The 1999 Memorandum Of Understanding To The Oakland Army Base Workforce Development Collaborative ("Workforce Collaborative"), (2) Negotiate And Enter Into An Amended And Restated Memorandum Of Understanding With The Workforce Collaborative, With Port Of Oakland, And Oakland Base Reuse Authority, For An Alternate Homeless Accommodation For The Oakland Army Base In An Amount Not To Exceed Five Million Four Hundred Thousand Dollars (\$5,400,000)**

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**SUMMARY**

This report provides a recommendation to the Oakland Redevelopment Agency to approve the Oakland Army Base Alternate Homeless Accommodation and the accompanying resolution as required by federal Base Realignment and Closure (BRAC) law and regulation. The resolution authorizes two actions: the first action authorizes the Agency Administrator to consent to the assignment of the rights and obligations of the Alameda County Homeless Base Conversion Collaborative (ACHBCC), to the replacement organization, the Oakland Army Base Workforce Development Collaborative ("Workforce Collaborative"). These rights and obligations are contained in the May 19, 1999 Memorandum of Understanding by and between the Oakland Base Reuse Authority (OBRA), the Oakland Redevelopment Agency ("Agency" or ORA), and the Alameda County Homeless Base Conversion Collaborative (the "Homeless Collaborative MOU").

The second action authorizes the Agency Administrator to negotiate and enter into an Amended and Restated Memorandum of Understanding ("ARMOU") with the Workforce Collaborative, amending the May 19, 1999, Homeless Collaborative MOU, to include the Port of Oakland (Port) as a party to the ARMOU, and provide an alternate accommodation in an amount not to exceed Ten Million Eight Hundred Thousand Dollars (\$10,800,000). Per the Memorandum of Agreement for the Oakland Army Base between the City of Oakland, Agency, OBRA and the Port, signed July 8, 2003 ("City-Port MOA"), the parties agreed that responsibility for the Alternate Accommodation will be equally shared by the Agency/OBRA and the Port.

Item: \_\_\_\_\_  
CED Committee  
November 9, 2004

The Port is responsible for contributing Five Million Four Hundred Thousand Dollars (\$5,400,000), and the Agency and OBRA are jointly responsible for contributing Five Million Four Hundred Thousand Dollars (\$5,400,000). OBRA will fund this commitment on behalf of the Agency through Economic Development Conveyance (EDC) property proceeds which have been specifically set aside for this obligation.

ORA, OBRA, the Port of Oakland, and the Workforce Collaborative obtained the concurrence of the U. S. Department of Housing and Urban Development (HUD) that the terms and conditions of the proposed ARMOU, which is attached to this report as Attachment 1, satisfy the federal requirement for an alternate homeless accommodation at the Oakland Army Base. The main terms of the ARMOU are: (1) ORA, OBRA and the Port will pay \$10.8 million to the Workforce Collaborative to facilitate the purchase or lease of real property within Alameda County; (2) the Workforce Collaborative will be provided no-cost leases for four buildings at the Oakland Army Base until June 1, 2005; (3) the Workforce Collaborative will release, hold harmless, indemnify and defend the City of Oakland, ORA OBRA and the Port from and against any and all claims, actions or any liability arising pursuant to the ARMOU, and (4) the ARMOU satisfies any and all requirements ORA, OBRA and the Port of Oakland have to the homeless at the Oakland Army Base.

### **FISCAL IMPACT ANALYSIS**

Neither the Agency nor the City of Oakland shall bear fiscal responsibility for the contribution of Five Million Four Hundred Thousand Dollars (\$5,400,000). OBRA will fund this commitment through EDC property proceeds generated at the Oakland Army Base. The United States Department of the Army has authorized the use of EDC proceeds to fund the off-site relocation of the Homeless Collaborative to accommodate the homeless assistance component of the Oakland Army Base Reuse Plan. The OBRA EDC property proceeds set aside for this use are in OBRA's Local Agency Investment Fund account which is administered by the City of Oakland's Treasury Manager. Funds are available within the Oakland Base Reuse Authority's Local Agency Investment Fund Account (LAIF 40-01-008).

As a related but separate transaction, the Port of Oakland will be reimbursing OBRA \$195,000 for its share of the zero cost leases that OBRA has provided to four of the homeless assistance providers as part of the MOU and ARMOU, and the shared responsibilities between the two agencies as described in the City-Port MOA..

### **BACKGROUND**

In May 1999, pursuant to BRAC law and regulation regarding the redevelopment process for closing military installations, OBRA, Agency, and the Alameda County Homeless Base Conversion Collaborative executed a memorandum of understanding pursuant to: (1) OBRA and Agency resolutions, (2) Base Realignment and Closure law, and (3) the July 27, 1998 Oakland Army Base Draft Final Reuse Plan.

The Homeless Collaborative MOU provided five Alameda County non-profit homeless assistance service providers with approximately 264,000 square feet of real property at the Oakland Army Base for a period of 30 years at no-cost along with operating and capital funding in the amount of One Million Dollars (\$1,000,000).

Subsequently, in January 2001 the San Francisco Bay Conservation and Development Commission (BCDC) amended its San Francisco Bay and Seaport Plans and changed its Port Priority Use designations at the Oakland Army Base. The result of these changes was to make the planned homeless accommodation under the 1999 Homeless Collaborative MOU inconsistent with BCDC's Port Priority designation. The Homeless Collaborative MOU contained a provision for negotiating an Alternate Homeless Accommodation should the parties be unable to implement the original accommodation.

Pursuant to Section 3.7 of City-Port MOA, the Port will be a signatory and party to the Amended and Restated MOU between OBRA, ORA and the Workforce Collaborative, and will be responsible for paying a 50 percent share of all the costs of the ARMOU. The Port has participated in the due diligence activities and negotiations associated with entering into the ARMOU. On September 20, 2004, the OBRA Governing Body provided contingent approval of this action, which is discussed in detail below in the Key Issues and Impacts section. On October 19, 2004, the Port of Oakland Board of Port Commissioners passed a resolution approving and authorizing the execution of the proposed Amended and Restated Memorandum of Understanding with the Oakland Army Base Workforce Development Collaborative.

Regarding the Consent to Assignment request of this report, in September 2000, the organizations that were the individual signatories to the 1999 Homeless Collaborative MOU -- the Alameda County Community Food Bank, A Safe Place, Building Opportunities for Self-Sufficiency, Jobs Consortium, and the United Indian Nations -- along with the Citizens for West Oakland Revitalization, re-formed and incorporated into the Oakland Army Base Workforce Development Collaborative (Workforce Collaborative). Staff and the City Attorney's Office have reviewed the Workforce Collaborative Articles of Incorporation, the California Secretary of State's certification of the aforementioned articles, and a certification of corporate good standing, and find the documents to be in good order and true and accurate on their face.

## **KEY ISSUES AND IMPACTS**

### **Consent to Assignment**

On July 26, 2004, the Workforce Collaborative formally requested that OBRA and the Agency's consent to the Workforce Collaborative being assigned the rights and obligations of ACHBCC under the 1999 Homeless Collaborative MOU. In response, OBRA and Port staff requested a report detailing their services and programs at the Oakland Army Base during the period June 1999 to August 2004, and information regarding the Workforce Collaborative future homeless assistance programs.

The OBRA Governing Board, at its September 20, 2004 meeting, authorized staff to negotiate, enter and expend funds in the amount of \$5.4 million, if the Agency also approved the Alternate Accommodation and the following determinations were made: (1) receipt by staff of a written legal opinion from a licensed California attorney representing and warranting that the Workforce Development Collaborative is a legal entity, lawfully constituted, with the legal authority to assume, and a valid legal right to assume, through assignment by ACHBCC, the rights and obligations currently held by ACHBCC under the 1999 Homeless Collaborative MOU, (2) the ACHBCC and the Workforce Collaborative would be required to indemnify, hold harmless and defend the Port of Oakland, City of Oakland, Oakland Redevelopment Agency, and OBRA with regard to the above representations that the Workforce Collaborative may lawfully assume the rights and obligations of the Homeless Collaborative, and (3) acknowledgement from the United States Department of Housing and Urban Development (HUD) that the proposed Alternate Homeless Accommodation was satisfactory to the federal government.

Staff and the City Attorney's Office have reviewed the legal opinion letter from the law firm of Margolin and Biatch in Oakland, California, and are satisfied with the form and content of the letter and the legal opinion provided therein. Furthermore, staff has confirmed with HUD that the Alternate Homeless Accommodation for the Oakland Army Base meets the federal BRAC law requirements.

#### **Alternate Accommodation to the 1999 Homeless Collaborative MOU**

City Staff, in collaboration with Port of Oakland staff, identified three potential alternatives for negotiating an alternate accommodation to satisfy the homeless assistance component of the redevelopment plan for the Oakland Army Base: 1) Build-to-Suit for the Collaborative within the Oakland Redevelopment Agency's West of Maritime Gateway Development Area, 2) Build-to-Suit for the Collaborative at an off-site location, or 3) Relocation payment to facilitate off-site acquisition of real property by the Collaborative.

- Build-to-Suit within the Gateway Development Area

One alternate accommodation option is to construct new facilities for the Homeless Collaborative within the Agency's Gateway Development Area (GDA) as a part of the development project. The new facilities would replace the 264,000 square feet of real property and funding contractually allocated to the Homeless Collaborative under the 1999 Homeless Collaborative MOU. A negotiated agreement on the size of the replacement facility would need to be executed. For purposes of assessing the feasibility and costs, staff assumed a replacement facility size range of 150,000 square feet to 175,000 square feet. Including the loss in land development value that a replacement facility for the Homeless Collaborative would create, the estimated costs for constructing a replacement facility for the Homeless Collaborative within the GDA would be conservatively \$17 million to \$22 million.

- Build-to-Suit at an Off-Site Location

A second alternate accommodation option would be to construct new facilities for the Homeless Collaborative at an off-site location within Alameda County. In calculating an estimate for this second option all of the real property and cost considerations assumed in the first option above would be applicable, except that the variable for securing land at an off-site location would be potentially greater than the costs assumed in the calculations above. Therefore, the estimated costs range of \$17 to \$22 million would be increased by any additional costs associated with securing off-site property.

- Relocation Payment Off-Site Acquisition of Real Property

A third alternate accommodation option is a fund-based accommodation in which a negotiated relocation payment that would be utilized by the Homeless Collaborative to lease or finance the purchase of replacement facilities off of the Army Base property. To explore this alternative, the parties worked with a real estate broker to identify facilities in the greater Oakland area that could accommodate the needs of the Workforce Collaborative, especially the Alameda County Food Bank, which required a 100,000 square foot warehouse and distribution facility.

- Conclusion

After reviewing possible options for the alternate accommodation, the parties agreed that the off-site funding option was the best alternative. ORA, OBRA, and Port staff agree that the most cost-effective alternative would be a relocation payment to facilitate off-site acquisition of real property for the following reasons: the cost of new development of facilities on the Army Base property is expensive; waiting to develop the facilities could create delays to the City and Port's redevelopment efforts; given the favorable real estate market conditions, the parties could control costs and manage the timeline better by acquiring off site facilities; and the Collaborative member agencies' client and program requirements are better served in other locations, due to access, transportation and overall operating costs.

The parties have identified a 100,000 square foot Oakland facility that meets the requirements of the Alameda County Food Bank, which is prepared to finance the relocation and additional acquisition costs associated with the new facility. The option to purchase this facility will expire at the end of the year. The other member organizations also have committed to relocate from the Army Base property by June 2005. If any of the organizations have not vacated the Army Base by June 2005, the parties have accepted that financial penalties will be imposed.

### **Amended and Restated Memorandum of Understanding**

In mid-2004, the parties reached agreement on a term sheet outlining the roles and responsibilities of the parties. This term sheet has guided the development of the proposed ARMOU. The key terms are summarized below:

- ORA, OBRA, the Port of Oakland and the Workforce Collaborative are the parties to the ARMOU;
- ORA, OBRA, the Port of Oakland agree to fund an amount not to exceed \$10.8 million to facilitate the purchase or lease of real property by the Workforce Collaborative members at locations off the Oakland Army Base;
- The ARMOU provides the Workforce Collaborative members with No-Cost Leases to four buildings at the Oakland Army Base until June 1, 2005;
- The \$390,000 in value associated with the No-Cost Leases described above is part of the accommodation in addition to the \$10.8 million payment;
- In the event the Workforce Collaborative members occupy any portion of the four buildings at the Oakland Army Base after June 1, 2005, the amount to be funded by ORA, OBRA, the Port of Oakland shall not exceed \$10.5 million, a \$300,000 reduction;
- In the event the Workforce Collaborative members occupy any portion of the four buildings at the Oakland Army Base after August 1, 2005, the amount to be funded by ORA, OBRA, and the Port of Oakland shall not exceed \$10 million, a further reduction of \$500,000;
- The ARMOU provides a payment schedule for the \$10.8 million, a process for initiating payment, and the division and receipt of payments to the Workforce Collaborative members;
- The ARMOU details how the Workforce Collaborative may use the funds, along with the reporting, auditing and monitoring requirements of ORA and/or its designated agency;
- The ARMOU contains default provisions in the event the Workforce Collaborative fails to meet the requirements of the ARMOU;
- The members of the ARMOU will comply with the City of Oakland's Job Training and Performance Standards to be developed with appropriate City agency; and
- The ARMOU requires the Workforce Collaborative to release, hold harmless, indemnify and defend the City of Oakland, ORA OBRA and the Port, their officials, officers, employees and agents, from and against any and all claims, actions and/or causes of action for damages and costs, including attorneys fees, and/or any other liability arising directly or indirectly from the receipt or use of the funds provided pursuant to the ARMOU.

## **RECOMMENDATION(S) AND RATIONALE**

Staff recommends authorization of the Agency Administrator to consent to the assignment of the rights and obligations of the Alameda County Homeless Base Conversion Collaborative under the May 19, 1999 Memorandum of Understanding, by and between the Oakland Base Reuse Authority, the Oakland Redevelopment Agency, and the Alameda County Homeless Base Conversion Collaborative to the Oakland Army Base Workforce Development Collaborative.

Staff's recommendation is based on the following: (1) Provision K of the 1999 Homeless Collaborative MOU provides for the right, on the part of either party, to assign its rights with the consent of the other party, (2) the party requesting the consent for assignment is a legally created California non-profit corporation that is made up of the same members that currently enjoy and have the contractual rights and obligations provided by the 1999 Homeless Collaborative MOU,

(3) staff has reviewed the operations of the Workforce Collaborative and believes that the services currently provided, and the services to be provided in the future, by the Workforce Collaborative, meet the definition and intent of the homeless assistance component of the Oakland Army Base Final Reuse Plan, and Base Realignment and Closure law, specifically federal regulation 176.30, and (4) the reporting, auditing and repayment requirements contained in the 1999 Homeless Collaborative MOU will, upon approval and authorization by the Agency, be legally assigned and assumed by the Workforce Collaborative, and will provide the Agency, OBRA, and Port of Oakland with a legal method of review, enforcement and remedy in the event of a default or failure by the Workforce Collaborative.

Further, Staff recommends authorizing the Agency Administrator to negotiate and enter into an amendment to the May 19, 1999 Memorandum of Understanding consistent with the terms and conditions of the August 10, 2004, non-binding term sheet between OBRA, ORA, the Port and the Workforce Collaborative.

This recommendation is based on the following: (1) the Agency and OBRA have an existing legal obligation to the Homeless Collaborative under the 1999 MOU; (2) the Agency and OBRA are unable to meet the obligations as they are currently defined under the 1999 Homeless Collaborative MOU based on the amended BCDC Seaport and Bay Plans Port Priority Use determination with respect to the Oakland Army Base property; (3) the Agency and OBRA, and now the Port, are bound by contractual, statutory and regulatory obligations to provide ACHBCC with equivalent real property or funding to meet the homeless assistance component of the Base Reuse process; (4) the relocation payment alternative described above is the most cost-effective alternative; and (5) the Agency, OBRA and the Port have been provided with substantial assurances (including a legal opinion and the indemnification and hold harmless language) that the Workforce Collaborative is a legal entity in good standing, with the authority and valid legal right to assume the rights and obligations of the Homeless Collaborative and will indemnify the City parties.

## **SUSTAINABLE OPPORTUNITIES**

The provisions of homeless assistance services through job training, support services, education, employment services is consistent with the City of Oakland's goal of economic self-sufficiency for all citizens. In addition to meeting the federal base reuse law and regulations, the proposed Alternate Homeless Accommodation helps to ensure that the service providers will continue to provide these services by addressing their facility requirements.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

This report does not include the approval of any specific projects or programs.

**ACTIONS REQUESTED OF THE AGENCY**

The Oakland Redevelopment Agency is requested to accept this report and approve the accompanying resolution.

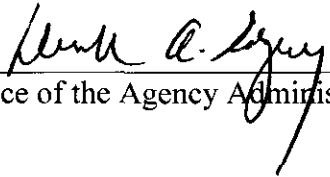
Respectfully submitted,



**CLAUDIA CAPPPIO,**  
Director of Planning, Building Services, Major Projects,  
and OBRA

Prepared By:  
Aliza Gallo, Executive Director,  
Oakland Base Reuse Authority

**APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE**



Office of the Agency Administrator

Attachment:

- Attachment 1: Amended and Restated Memorandum of Understanding by, between and among the Oakland Base Reuse Authority, the Redevelopment Agency of the City of Oakland, the City of Oakland, acting by and through its Board of Port Commissioners, and the Oakland Army Base Workforce Development Collaborative

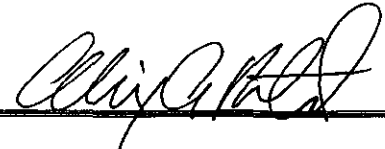


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OAKLAND

2004 OCT 28 PM 8:43

**REDEVELOPMENT AGENCY OF  
THE CITY OF OAKLAND**

RESOLUTION No. \_\_\_\_\_ C.M.S.



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**RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO (1) CONSENT TO THE ASSIGNMENT OF THE RIGHTS AND OBLIGATIONS OF THE ALAMEDA COUNTY HOMELESS BASE CONVERSION COLLABORATIVE TO THE OAKLAND ARMY BASE WORKFORCE DEVELOPMENT COLLABORATIVE (“WORKFORCE COLLABORATIVE”) UNDER THE 1999 MEMORANDUM OF UNDERSTANDING, AND (2) NEGOTIATE AND ENTER INTO AN AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING WITH THE WORKFORCE COLLABORATIVE, PORT OF OAKLAND, AND OAKLAND BASE REUSE AUTHORITY, FOR AN ALTERNATE HOMELESS ACCOMMODATION FOR THE OAKLAND ARMY BASE IN AN AMOUNT NOT TO EXCEED FIVE MILLION FOUR THOUSAND DOLLARS (\$5,400,000).**

**WHEREAS**, the Redevelopment Agency of the City of Oakland (“Agency”), at its meeting of December 15, 1998, passed Resolution No. 98-73 C.M.S. authorizing the Agency Administrator to negotiate and enter into a Memorandum of Understanding (“MOU”) with the Alameda County Homeless Base Conversion Collaborative (“Homeless Collaborative”) for the provision of a homeless accommodation as required by federal base closure statutes and regulations (“federal base closure law”); and

**WHEREAS**, the MOU provides, in part, that the Homeless Collaborative would receive long term leases for the use of certain buildings at the former Oakland Army Base at no cost for the purpose of creating a Work Force Development Campus and a Job Linkages program, and funding in the amount of One Million Dollars (\$1,000,000) for building rehabilitation and program activities; and

**WHEREAS**, the MOU also sets forth a number of contingencies the occurrence of which would require the parties to negotiate an alternative accommodation that provides substantially equivalent buildings and property, or other payment, as set forth in the MOU; and

**WHEREAS**, the Governing Body of the Oakland Base Reuse Authority (“OBRA”), at its meeting of April 9, 2001, passed Resolution No. 2001-06 amending the Draft Final Reuse Plan for the Oakland Army Base to comply with the requirements of the San Francisco Bay Conservation and Development Commission’s Bay Plan and Seaport Plan (“BCDC Plans”); and

**WHEREAS**, in 2001, the San Francisco Bay Conservation and Development Commission (“BCDC”) determined the terms of the MOU that allow the Homeless

Collaborative to lease specified buildings at the former Army Base are inconsistent with the requirements of the BCDC Plans and with the Amended Draft Final Reuse Plan, which provides that the land on which the specified buildings intended for use by the Homeless Collaborative will be developed by the Port of Oakland ("Port") to expand its maritime terminals; and

**WHEREAS**, BCDC's determination has triggered a contingency in the MOU requiring the parties to arrive at an alternative agreement to satisfy the homeless assistance component of the redevelopment plan for the Oakland Army Base; and

**WHEREAS**, the Agency, at its meeting of October 29, 2002, passed Resolution No. 77510 authorizing the Agency Administrator to negotiate and enter into a Memorandum of Agreement with OBRA, City of Oakland and the Port regarding the conveyance and development of the former Army Base ("City-Port MOA"); and

**WHEREAS**, the City-Port MOA requires the Port to be a party to any agreement that provides for alternate terms and conditions to satisfy the homeless assistance component of the redevelopment plan for the Oakland Army Base, and requires the Port to be responsible for paying a 50% share of all the costs associated with any such alternate terms and conditions, and further shall be responsible for executing and binding itself to said terms and conditions; and

**WHEREAS**, the Agency Administrator negotiated the City-Port MOA to include the above terms and executed the agreement on July 8, 2003; and

**WHEREAS**, the members of the Homeless Collaborative have incorporated in the state of California as a nonprofit corporation named the Oakland Army Base Workforce Development Collaborative ("Workforce Collaborative"); and

**WHEREAS**, it is in the best interests of the Agency and the future provision of a homeless accommodation as required by federal base closure law that the rights and obligations of the Homeless Collaborative under the MOU and any ARMOU be assigned to the Workforce Collaborative; and

**WHEREAS**, the Agency Administrator has negotiated the terms of an alternative homeless accommodation with representatives of the Workforce Collaborative, the Port and OBRA and such terms are contained in a draft Amended and Restated Memorandum of Understanding ("ARMOU"); and

**WHEREAS**, the terms of the alternative homeless accommodation include payment to the Workforce Collaborative of Ten Million Eight Hundred Thousand Dollars (\$10,800,000) for the purpose of securing office and warehouse space off of the former Army Base property for the provision of homeless services, subject to certain conditions including the vacating of all OBRA property occupied by Workforce Collaborative members within a specific timeframe; and

**WHEREAS**, the share of the above payment to the Workforce Collaborative attributable to OBRA is available within OBRA's Local Agency Investment Fund Account (LAIF 40-01-008); and

**WHEREAS**, the parties to the ARMOU believe that the ARMOU meets the homeless assistance requirements of federal base closure law, that it replaces the MOU in its entirety, and that the MOU will be, as of the effective date of the ARMOU, of no further force or effect; and

**WHEREAS**, on July 31, 2002, the Oakland Army Base Area Redevelopment Plan Environmental Impact Report (EIR) was certified by the City of Oakland, acting as Lead Agency; and approved by OBRA, acting as a Responsible Agency; and

**WHEREAS**, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA implementing Guidelines, and the City of Oakland's Environmental Review Regulations have been satisfied with the previous certification of the Oakland Army Base Area Redevelopment Plan Environmental Impact Report; now, therefore, be it

**RESOLVED:** That the Agency Administrator is hereby authorized and directed to consent to assignment of all of the rights and obligations of the Homeless Collaborative under the MOU to the Workforce Collaborative; and be it

**FURTHER RESOLVED:** That the Agency Administrator is hereby authorized and directed to execute the ARMOU and any agreements directly related thereto with the Workforce Collaborative, the Port and OBRA upon the terms set forth above; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that this Resolution complies with CEQA, the CEQA Implementing Guidelines and the City of Oakland's Environmental Review Regulations, and the Agency Administrator shall cause to be filed a Notice of Determination.

IN SESSION, OAKLAND, CALIFORNIA, October \_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

CEDA FLOYD  
Secretary to the Redevelopment Agency  
of the City of Oakland

**AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING  
BETWEEN AND AMONG THE OAKLAND BASE REUSE AUTHORITY,  
THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,  
THE CITY OF OAKLAND, ACTING BY AND THROUGH ITS BOARD OF PORT  
COMMISSIONERS, AND THE OAKLAND ARMY BASE WORKFORCE DEVELOPMENT  
COLLABORATIVE**

This Amended and Restated Memorandum of Understanding ("ARMOU") is by, between and among the Oakland Base Reuse Authority ("OBRA"), the Redevelopment Agency of the City of Oakland ("ORA"), the City of Oakland, acting by and through its Board of Port Commissioners (the "Port"), the Oakland Army Base Workforce Development Collaborative ("Workforce Collaborative"), and the member agencies of the Workforce Collaborative as limited parties to this ARMOU, regarding the provision of homeless assistance as a part of the community restoration of the former Oakland Army Base ("Oakland Army Base"), and shall take effect the last signature date of the persons whose names are shown in the signature blocks at the end of this ARMOU, which date shall be the "Effective Date".

**RECITALS**

**WHEREAS**, OBRA, ORA and the Alameda County Homeless Base Conversion Collaborative ("Homeless Collaborative") negotiated and entered into the Memorandum of Understanding Among the Oakland Base Reuse Authority, the Redevelopment Agency of the City of Oakland and the Alameda County Homeless Base Conversion Collaborative Regarding Homeless Assistance at the Oakland Army Base, dated April 28, 1999 ("MOU"); and

**WHEREAS**, the MOU sets forth the terms and conditions by which OBRA, ORA and the Homeless Collaborative agreed that OBRA and ORA would fulfill the requirements of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100-526), as amended by the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510, 10 U.S.C. §2687 note) and the Base Closure Communities and Community Assistance Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 104-421), as implemented through 32 CFR Part 176, Revitalizing Base Closure Communities and Community Assistance, Community Redevelopment and Homeless Assistance ("Federal Regulation") (collectively "federal base closure law"); and

**WHEREAS**, the MOU provides, in part, that the Homeless Collaborative receive interests in the real property in various specified buildings east of Maritime Street at the Oakland Army Base ("OARB-East"); and

**WHEREAS**, the MOU also sets forth a number of contingencies the occurrence of which requires the parties to negotiate an alternative

accommodation that provides substantially equivalent buildings and property, or other payment, as set forth in the MOU; and

**WHEREAS**, OBRA, ORA and the Homeless Collaborative represent that the MOU was approved by the United States Department of Housing and Urban Development ("HUD") on September 24, 1999; and

**WHEREAS**, in November 1999 the San Francisco Bay Conservation and Development Commission ("BCDC") informed the United States Department of the Army and OBRA that the uses set forth in OBRA's Draft Final Reuse Plan for the Oakland Army Base, including the intended uses by the Homeless Collaborative of OARB-East as set forth in the MOU, are inconsistent with the "port priority use" designation of BCDC's San Francisco Bay Plan and BCDC's and the Metropolitan Transportation Commission's San Francisco Bay Area Seaport Plan ("Bay Plan and Seaport Plan"); and

**WHEREAS**, in order to comply with the Bay Plan and Seaport Plan, as amended, OBRA amended the Draft Final Reuse Plan to provide that most of OARB-East, including the buildings to be used by the Homeless Collaborative under the MOU, is to be developed by the Port to expand its maritime terminals and reconfigure and expand its rail facility through the new Intermodal Facility project; and

**WHEREAS**, the decision by BCDC and the subsequent amendment of the Draft Final Reuse Plan have made portions of the homeless accommodation in the MOU impossible to implement; and

**WHEREAS**, the members of the Homeless Collaborative with rights and obligations under the MOU have incorporated into the Oakland Army Base Workforce Development Collaborative, a California nonprofit public benefit corporation (the "Workforce Collaborative"), and represent to OBRA, ORA and the Port that the Workforce Collaborative has legally assumed the rights, duties and obligations of the Homeless Collaborative under the MOU; and

**WHEREAS**, OBRA and ORA have consented to the assignment of the Homeless Collaborative's rights, duties and obligations under the MOU to the Workforce Collaborative based upon the representations made by the Workforce Collaborative as to its standing and ability to assume such rights, duties and obligations; and

**WHEREAS**, representatives of OBRA, ORA, the Port and the Workforce Collaborative have negotiated and agreed on alternative terms and conditions of the required homeless accommodation for the Oakland Army Base as set forth herein; and

**WHEREAS**, the parties to this ARMOU believe that the ARMOU meets the homeless assistance requirements of federal base closure law, and therefore agree that it replaces the MOU in its entirety, and that the MOU is, as of the Effective Date of this ARMOU, of no further force or effect.

AGREEMENT

**A. PURPOSE:** The purpose of this ARMOU is to set forth the terms and conditions for the provision of a homeless accommodation related to the closure of the Oakland Army Base as contemplated by Section H of the MOU. OBRA and ORA represent that the terms and conditions of this ARMOU meet the homeless assistance requirements of federal base closure law and that no additional review and/or approval of any agency or department of the government of the United States is required. This ARMOU replaces and supersedes the MOU which is, as of the Effective Date of this ARMOU, of no further force or effect.

**B. PARTIES:**

**1. Oakland Base Reuse Authority:** OBRA is a joint powers authority created pursuant to California Government Code sections 6500 et seq. and by the joint powers agreement by and among the City of Oakland, ORA and the County of Alameda entered into on March 21, 1995, and restated and revised as of July 15, 2003 ("OBRA JPA"). OBRA is the "local redevelopment authority" recognized by the Secretary of the United States Department of Defense ("DOD") through the Office of Economic Adjustment, as the entity responsible for design and implementation of the redevelopment plan for the Oakland Army Base.

**2. Redevelopment Agency of the City of Oakland:** ORA is a public entity created pursuant to the provisions of the California Community Redevelopment Law (Health & Safety Code sections 33000 et seq.) by the City of Oakland by Ordinance No. 9240 C.M.S. Pursuant to the OBRA JPA, ORA is OBRA's successor-in-interest as of the date of the termination of OBRA and is to accept responsibility for the implementation of the redevelopment plan for the Oakland Army Base as developed by OBRA.

**3. City of Oakland, acting by and through its Board of Port Commissioners:** The Port is a department of the City of Oakland created and existing under Article VII of the Charter of the City of Oakland. The exclusive control and management of the Port is vested in the Board of Port Commissioners. The Port is to obtain, in part, ownership of the portions of the Oakland Army Base that include the buildings and property identified in the MOU for use by the Homeless Collaborative, and the Port intends to develop the property to expand its maritime terminals and reconfigure and expand the Port's rail facility through its New Intermodal Facility project.

**4. The Oakland Army Base Workforce Development Collaborative:** The Workforce Collaborative is a California non-profit public benefit corporation that provides housing and services to homeless persons and families in Alameda County. OBRA, ORA and the Port do not guarantee that the Workforce Collaborative meets the definition of a qualified Homeless Care Provider under federal regulations, however, the parties to the Workforce Collaborative's

Articles of Incorporation hereby attest and represent to the City that they each meet the definition for Homeless Care Provider. The Workforce Collaborative is the successor-in-interest to the Homeless Collaborative, which has been recognized by OBRA to be the sole entity authorized to negotiate on behalf of homeless assistance providers "Homeless Care Providers" for homeless assistance at the Oakland Army Base. OBRA and ORA consented to the assignment of Homeless Collaborative's rights, duties and obligations under the MOU to the Workforce Collaborative by passage of OBRA Resolution No. 2004-07 and ORA Resolution No. \_\_\_\_\_ C.M.S.

**C. BINDING EFFECT:** The terms and conditions contained herein are intended to be binding on the parties hereto. HUD previously approved the MOU and OBRA, ORA and the Homeless Collaborative represent that no additional review or approval by HUD, the US Department of Defense, or any other department or agency of the federal government is necessary or required. Each of OBRA, ORA and the Port has determined that the July 19, 2002 Final Environmental Impact Report for the Oakland Army Base Area Redevelopment Plan is sufficient for purposes of the California Environmental Quality Act ("CEQA") and the parties believe that no additional environmental review is necessary or required in order to approve or carry out this ARMOU.

**D. RATIFICATION:** By affixing the signature of their authorized representatives, OBRA, ORA the Port, the Workforce Collaborative, and the parties to the Workforce Collaborative's Articles of Incorporation unconditionally approve the terms and conditions contained herein, except as expressly provided herein. The proposed terms and conditions were approved by the Governing Body of OBRA at its meeting of September 20, 2004, by passage of OBRA Resolution No. 2004-08. The proposed terms and conditions were approved by ORA at its meeting of \_\_\_\_\_, 2004, by passage of ORA Resolution No. \_\_\_\_\_ C.M.S. The proposed terms and conditions were approved by the Port at its meeting of \_\_\_\_\_, 2004, by passage of Port Resolution No. \_\_\_\_\_. The proposed terms and conditions have been approved by the Workforce Collaborative at its meeting of \_\_\_\_\_, 2004, by passage of Board Resolution No. \_\_\_\_\_.

**E. NOTICE OF INTEREST:** The Homeless Collaborative submitted a Notice of Interest dated August 18, 1997, and a supplemental Notice of Interest dated February 1998, pursuant to the Federal Regulation referenced in the Recitals above, which identify the buildings and property at the Oakland Army Base where the Homeless Collaborative proposed to meet the needs of homeless persons and families by addressing gaps in the Alameda County Homeless Continuum of Care System ("Continuum of Care System"). The Workforce Collaborative, and each of the parties to the Workforce Collaborative's Articles of Incorporation, understands and agrees that the terms and conditions contained herein represent all of the homeless assistance to which it or any Homeless Care Provider is entitled at or with respect to the Oakland Army Base and that it will not seek the use or ownership of

any other building or property at the Oakland Army Base or other form of homeless assistance identified in the Notices of Interest but not included herein.

**F. TERMS AND CONDITIONS:** The following are the terms and conditions by which the homeless assistance associated with the Oakland Army Base will be satisfied:

**1. Oakland Army Base Leases:**

**(a) Leased Buildings.** Contemporaneously with their signing this ARMOU, the entities listed immediately below have entered into the following lease agreements for the following buildings (hereinafter referred to as the "Leased Buildings"):

(1) Building 590 (103,052 sq. feet): OBRA, Workforce Collaborative and Alameda County Community Food Bank ("Food Bank")

(2) Building 738 (7,225 sq. feet): OBRA, Workforce Collaborative and A Safe Place

(3) Building 740 (14,175 sq. feet): OBRA, Workforce Collaborative and Jobs For Homeless Consortium, Inc., a California non-profit corporation ("Jobs Consortium")

(4) Building 790 (37,853 sq. feet): OBRA and Workforce Collaborative

**(b) Lease Agreements.** The lease agreements listed in Section F.1(a) are in a form consistent with OBRA's standard Triple Net Lease. The Workforce Collaborative is a signatory to the lease agreements with the above parties, and has therefore entered into the lease agreements.

**(c) Lease Termination Dates**

(1) **Workforce Collaborative.** The term of the lease for Building 790 ends four months after the Effective Date, or such earlier date as lessee may elect by written notice to OBRA. The Workforce Collaborative must vacate such building by such date, regardless of whether it has secured a replacement site for its operations.

(2) **A Safe Place and Jobs Consortium.** The terms of the leases for Buildings 738 and 740 end on June 1, 2005, or such earlier date as the lessees under each lease may elect for such lease by written notice to OBRA. A Safe Place, Jobs Consortium and the Workforce Collaborative must vacate such buildings by such date, regardless of whether they have secured replacement sites for the operations of A Safe Place or Jobs Consortium.



(3) **Food Bank.** The term of the lease for Building 590 ends the earlier of August 1, 2005, and six (6) months after the Food Bank acquires a replacement property or such earlier date as the lessees under the lease may elect by written notice to OBRA. The Food Bank and Workforce Collaborative must vacate such building by the earlier of the above dates, regardless of whether they have secured a replacement site for operations of the Food Bank.

If any lessee fails to vacate the building it occupies by the date it is required to do so pursuant to this section, such lessee will be deemed to be holding over, pursuant to, and as defined in, Section 24.1 of OBRA's standard Triple Net Lease agreement. If the Food Bank has not vacated all of Building 590 by the earlier of (1) August 1, 2005 and (2) 6 months after the Food Bank acquires a replacement property, thereafter the Food Bank and Workforce Collaborative shall be responsible for the payment of Base Rent in the amount of \$0.40 per square foot per month. The occupancy of any lessee who has failed to vacate by the date required by its lease will be unlawful and the lessee will be subject to removal through appropriate legal proceedings. If the Port, OBRA or ORA initiate legal proceedings to remove said member, the party(ies) initiating legal proceedings will be entitled to recover damages for any unlawful occupancy, including the full rental value of the property occupied on or after the lease termination date, and all other damages recoverable under law, and the Workforce Collaborative shall be jointly and severably liable with any lessee who has failed to vacate, even if the Workforce Collaborative does not occupy the Leased Building after the lease term ends. All such damages, and all costs and legal fees incurred by the Port, OBRA, or ORA related to any such unlawful occupancy may be deducted from any compensation owed to the Workforce Collaborative, under Section F.2. below.

**2. Funding:**

(a) **Amount of Payment.** OBRA, ORA and the Port will provide funding to the Workforce Collaborative and in the escrow account for the benefit of the Food Bank (see Section F.2(b)(4) below) in the total amount of Ten Million Eight Hundred Thousand Dollars (\$10,800,000) at the time and in the increments set forth in Sections F.2.(b) and F.2.(c) below, except as provided herein. If one or more of the lessees fails to vacate all of the Leased Building space on or before the lease termination dates found in Section F.1.(c) above, then the total amount of funding OBRA, ORA and the Port are required to provide will not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000). If any lessee continues to occupy any portion of the Leased Building space on or after August 1, 2005, then the total amount of funding OBRA, ORA and the Port are required to provide will not exceed Ten Million Dollars (\$10,000,000). Payments may be made by any combination of OBRA, ORA and the Port and in such amounts as between them they may agree so long as the required payment amount is provided, but the total amount paid will not exceed \$10,800,000, or a

reduction in the total amount as provided for in this section in the last paragraph of Section F.1(d) above or in Section F.2(c) below.

**(b) Initial Payments**

(1) **Workforce Collaborative.** Upon presentation by the Workforce Collaborative of reasonable documentary evidence to the Port, OBRA and ORA that it has either contractual control over a replacement property or has physically vacated Building 790, and upon the City's written acceptance of such documentary evidence by the Port, OBRA and ORA, they will disburse to the Workforce Collaborative an amount not to exceed Two Million Dollars (\$2,000,000).

(2) **A Safe Place.** Upon presentation by A Safe Place of reasonable documentary evidence to the Port, OBRA and ORA that it has either contractual control over a replacement property or that it and the Workforce Collaborative have physically vacated Building 738, and upon the written acceptance of such documentary evidence by the Port, OBRA and ORA, they will disburse to the Workforce Collaborative an amount not to exceed One Million Dollars (\$1,000,000).

(3) **Jobs Consortium.** Upon presentation by the Jobs Consortium of reasonable documentary evidence to the Port, OBRA and ORA that it has either contractual control over a replacement property or that it and the Workforce Collaborative have physically vacated Building 740, and upon the written acceptance of such documentary evidence by the Port, OBRA and ORA, they will disburse to the Workforce Collaborative an amount not to exceed One Million Dollars (\$1,000,000).

(4) **Food Bank.** After presentation by the Food Bank of reasonable documentary evidence to the Port, OBRA and ORA that it has either contractual control over a replacement property or that it and the Workforce Collaborative have physically vacated Building 590, and after the written acceptance of such documentary evidence by the Port, OBRA and ORA, they will deposit an amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) into an escrow account for the benefit of the Food Bank. The escrow account will be that used for the Food Bank's purchase of real estate to which it will relocate from the Oakland Army Base, and the deposit will be made immediately before the anticipated close of escrow. The deposit may be withdrawn by the Port, OBRA and ORA if such sale does not close within a reasonable time after the deposit is made.

(5) **United Indian Nations.** After presentation by the United Indian Nations of reasonable documentary evidence to the Port, OBRA and ORA that it has contractual control over a property or that it is prepared to enter into a professional services contract with the Workforce Collaborative for the provision of homeless assistance services, and after the written acceptance of such documentary evidence by the Port, OBRA and ORA, they will deposit an

amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_,000) into an escrow account for the benefit of the united Indian Nations. Such funds will not be made available to United Indian Nations will not be made available prior to June 1, 2005, when all of the Workforce Collaborative agencies have vacated the Oakland Army Base premises.

The disbursements made pursuant to paragraphs (1), (2), (3), and (5) above will be made into an account with a financial institution designated by the Workforce Collaborative.

**(c) Final Payment of Funds.** Upon presentation by the Workforce Collaborative of a written statement to the Port, OBRA and ORA that all of the Leased Buildings have been vacated in accordance with the schedule in Section F.1.(c) above, the Port, OBRA and ORA will verify such statement, and will confirm or dispute all or portions of such statement within three business days of its receipt. If the Port, OBRA and ORA confirm that all of the Leased Buildings have been vacated in accordance with the schedule in Section F.1.(c), the Port, OBRA and ORA will deposit into an account specified by Workforce Collaborative the balance due under Section F.2.(a) above ("Final Payment") within 60 calendar days after vacation confirmation, provided that the Port, OBRA and ORA may retain from the final payment: (i) any and all costs for damages arising from the occupancy of a Leased Building that OBRA, ORA or the Port may recover through the terms of the leases between OBRA and the lessees, (ii) any other costs for damages arising from the occupancy of a Leased Building that OBRA, ORA or the Port may recover by law, and (iii) any deductions that may be made pursuant to Sections F.1(c) or F.2.(a) above.

If and to the extent the Workforce Collaborative grants any of the Final Payment to any third party, such payment will be made in accordance with a standard contract entered into between the Workforce Collaborative and the third party, which contract expressly requires that (a) such payment be used in accordance with Section F.3. below and (b) the third party provide to the Workforce Collaborative written reports and a financial statement on a regular basis so that the Workforce Collaborative is able to comply with its obligations under Section F.4. below.

**3. Use of Funds:** All funds provided by the Port, OBRA or ORA under this ARMOU shall be used exclusively by the recipient for and expended on activities designed to meet the needs of the homeless persons and families by addressing gaps in the Continuum of Care System as defined at section 176.5 of the Federal Regulation and as required by section 176.30 of the Federal Regulation. The Workforce Collaborative intends to use the funds to relocate its work force development programs, the Food Bank, Jobs Consortium and the offices of A Safe Place to locations off of the Oakland Army Base, but within Alameda County. The funds may be used to either purchase or lease real property or to acquire any other interest in property for the purposes of providing services to homeless persons and families in

Alameda County and/or direct service, administrative or other operational activity or function to meet the needs of homeless persons and families within the Continuum of Care System.

**4. Monitoring the Use of Funds:** Commencing on the first anniversary of the first payment of any funds under Section F.2.(b), the Workforce Collaborative must provide written reports and a financial statement to the ORA and/or its designee on a regular reporting basis as determined by the ORA and/or its designee. The financial statement may be subjected to an audit conducted by ORA and/or its designee. The parties agree that funding can only be used for activities as defined in Section F.3. Failure by the Workforce Collaborative to use the funds on activities to address gaps in the Continuum of Care System will result in ORA or its designee taking the following actions: (i) demand that the Workforce Collaborative cure the violation by spending new money in the amount that funds were not used to address gaps in the Continuum of Care System or were used to replace existing housing and/or services; (ii) demand that the Workforce Collaborative cure the violation by paying to ORA or its designee the amount of funds spent in violation of Section F.2(C); and/or (iii) any other action deemed appropriate by ORA and/or its designee to cure the violation.

**5. Program Descriptions:**

**(a) In General.** The Workforce Collaborative intends to use the funds to relocate its work force development programs, the Food Bank, Jobs Consortium and the offices of A Safe Place to locations off of the Oakland Army Base, but within Alameda County.

**(b) Work Force Development Program.** The Work Force Development Program ("WFDP") will be created, developed and managed by the Workforce Collaborative with the intention of providing opportunities for homeless persons to obtain skill, experience and assistance needed to enter the local workforce and support to remain in the workforce. The WFDP will consist of on-site education, employment training and support services provided by selected homeless providers, community-based organizations and public agencies. The goal of the program is to educate and train homeless individuals and those at risk of homelessness to prepare them for employment opportunities.

**6. Performance Standards:** The Workforce Collaborative Job Training Programs will be monitored by the City of Oakland's Job Training Performance Standards and Assessment and Reporting System of the Workforce Investment Board (WIB). WIB will assess the applicability of using these standards for the Workforce Collaborative programs and its program contractors. The Workforce Collaborative will meet the reporting requirements and program goals to be agreed to by the Workforce Collaborative and ORA or its designee. The performance report will, among other things, identify for the preceding year (i) the number of homeless persons who received job

training and support and placement services, (ii) the number of homeless persons who actually completed job training, and (iii) the number of homeless persons who actually obtained employment.

**7. Default:** A default may consist of (i) a failure to meet the reporting requirements or program goals set forth in Sections F.4. through F.6., or (ii) a failure to meet the reporting or program goals set forth in the City of Oakland's Job Training Performance Standards and Assessment and Reporting System of the Workforce Investment Board.

For any such default under (i) above, OBRA and ORA will notify the Workforce Collaborative in writing of the default and that such default must be cured within one year. The remedies for a failure to cure a default related to Section F.4. within the one year period identified in the default letter may include, at the sole discretion of OBRA and ORA, termination of the lease(s) of the building(s) at the Army Base, the right, within OBRA's and ORA's sole discretion, to direct the transfer of any and all real property interests owned, leased, or held by the Workforce Collaborative to a third party within Alameda County that provides like or similar services, or any other action deemed appropriate by OBRA and ORA to cure the violation.

For any default under (ii) above, ORA and/or its designee will notify the Workforce Collaborative in writing of the default and set forth a period of time to cure the default, and the remedies for a failure to cure the default are set forth herein.

**G. RELEASE:**

**1. General Release:** The Workforce Collaborative understands and agrees that the terms and conditions by which the homeless assistance at the Oakland Army Base will be satisfied, as set forth in Section F herein, constitute all of the funds, assistance and support that the Workforce Collaborative is entitled to as the homeless assistance component of the redevelopment plan for the Oakland Army Base. The Workforce Collaborative, nor any of its members, may make no additional demand or file any action of any kind for additional funds or other form of homeless assistance as to the provision of homeless assistance at or in connection with the Oakland Army Base.

In consideration for the agreement by OBRA, ORA and the Port to provide the funding required by and in accordance with Section F.2., the Workforce Collaborative agrees to release OBRA, the City of Oakland, ORA and the Port, their officials, officers, employees and agents, from any and all actions related to the payment of any other funds, the leasing of buildings and entitlement to any other forms of homeless assistance at or in connection with the closing of the Oakland Army Base and any and all proceedings and actions related to the provision of homeless assistance at or in connection with the closing of the Oakland Army Base.

**2. Release of Liability and Indemnification:** Each of the Workforce Collaborative and its member organizations hereby releases, and agrees to hold harmless, indemnify and defend OBRA, the City of Oakland, ORA and the Port, their officials, officers, employees and agents, from and against any and all claims, actions and/or causes of action for damages and costs, including attorneys fees, and/or any other liability arising directly or indirectly from the receipt or use of the funds provided pursuant to this ARMOU, brought by the Homeless Collaborative, any member or former member of the Homeless Collaborative, and any homeless person or any other person or entity, and from the use of any and all real property leased or purchased by the Workforce Collaborative, the Food Bank, A Safe Place or Jobs Consortium ("Future Claims") with any such funds provided pursuant to this ARMOU. On the date that the Final Payment is made pursuant to Section F.2 (c) above ("Final Payment Date"), the Workforce Collaborative will make a deposit into a separate account with a financial institution designated by the Workforce Collaborative ("Indemnification Account"), in an amount to be agreed upon by the parties ("Indemnification Amount"), to be used only to pay for any damages and costs, including attorneys fees, arising from any Future Claims. The balance of funds in the Indemnification Account may be released to the Workforce Collaborative on the date that is the later of (a) exactly four years from the Final Payment Date if no Future Claim is pending at that time, or (b) the date of final settlement or judgment of any Future Claim pending on the fourth anniversary of the Final Payment Date, once all costs from such claim are paid in full.

**H. CONTINGENCIES:**

**1. Judicial Review:** If any court or administrative tribunal determines that all or any portion of this ARMOU is improper or otherwise does not comply with any statute, rule or regulation, then the parties will seek to cure any deficiency or improper provision. The specific term or condition of this ARMOU found to be unlawful will be unenforceable until the deficiency is cured or the improper provision is amended. If the deficiency cannot be cured or the improper provision amended to comply with the relevant statute, rule or regulation, then this ARMOU will be null and void and unenforceable by either party. In such case, the parties will reconvene to negotiate alternative terms and conditions to satisfy the homeless assistance component of the redevelopment plan for the Oakland Army Base. Any subsequent agreement reached must account for any funds or other benefits already provided to or on behalf of the Workforce Collaborative, the Food Bank, A Safe Place and Job Consortium, and must include the same balance of the needs of the communities in the vicinity of the Oakland Army Base for economic development and the needs of the homeless as of the effective date of the MOU. The agreement must also provide substantially equivalent buildings and property, or other payment, as set forth in the MOU, but may not exceed a value in excess of Ten Million Eight Hundred Thousand Dollars (\$10,800,000) as said amount may be reduced in accordance with

Section F.1(c), Section F.2(a) and/or Section F.2(c) above. Any assistance provided by OBRA, ORA and/or the Port pursuant to the terms of the MOU or this ARMOU, including, but not limited to the no-cost lease of leased buildings set forth in section F.1. above, must be considered and accounted for in any such negotiations and agreement.

**2. Termination of the Workforce Collaborative:** If the Workforce Collaborative disbands, fails to cure a default pursuant to Section F.7. or is otherwise deemed unable to accept the payment of funds from OBRA, ORA and/or the Port prior to any payment of the funds, then the funds owed under Section F will be paid to the successor organization of the Workforce Collaborative for the purpose of funding new activities designed to meet the needs of homeless persons in Alameda County by addressing gaps in the Continuum of Care System. If there is no successor organization to the Workforce Collaborative, then the funding obligations under Section F will terminate with no further obligation by OBRA, ORA or the Port.

**I. ENFORCEMENT:** This ARMOU will be enforceable pursuant to the laws of the State of California. Prior to the filing of an action, the party alleging a breach of this ARMOU must demand in writing that the breaching party cures the alleged breach. Upon the alleged breaching party's failure to cure, or 60 days after the written demand is made, whichever is earlier, then the complaining party may file an action. The prevailing party in any such action will be entitled to its costs and fees, including reasonable attorneys' fees (not to exceed \$125.00 per hour).

**J. ASSIGNMENT OF RIGHTS:** Any of the parties to this ARMOU may assign its rights, duties and obligations contained herein to another qualified entity with the written consent of the other parties. Such consent may not be unreasonably withheld. The party seeking to make an assignment must first notify the other parties in writing of its desire to make the assignment and identify the entity to which the assignment will be made. Any entity to which an assignment is to be made must be qualified and have the capacity to perform the duties and responsibilities contained herein. It is acknowledged by the parties to this ARMOU that ORA will succeed to all of the rights, duties and obligations of OBRA herein upon the termination of OBRA pursuant to the terms of the OBRA JPA.

**K. 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: