

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 APR -7 PM 4:42

TO: Office of the Agency Administrator
ATTN: Deborah A. Edgerly
FROM: Community and Economic Development Agency
DATE: April 19, 2005

RE: REPORT AND RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A SETTLEMENT AGREEMENT WITH THE UNITED STATES NAVY AND THE OAKLAND BASE REUSE AUTHORITY REGARDING THE DISPOSITION OF THE NAVAL MEDICAL CENTER OAKLAND (OAK KNOLL) PROPERTY THAT WILL INCLUDE TRANSFERRING APPROXIMATELY 5.5 ACRES OF THE PROPERTY TO THE OAKLAND REDEVELOPMENT AGENCY

SUMMARY

On September 25, 2002, OBRA and the Oakland Redevelopment Agency filed a complaint in federal court against the United States Department of the Navy ("Navy"), challenging the Navy's proposed sale of the former Naval Medical Center Oakland ("Oak Knoll property"). The lawsuit was filed to compel the Navy to transfer of a part of the Oak Knoll property containing 18 former officer housing units to the Agency pursuant to the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

On August 25, 2003, the District Court ordered the Navy to transfer the property at issue to OBRA and the Agency. Soon thereafter, the Navy appealed the District Court's order, whereupon the matter was assigned to a mediator and has been continued pending the resolution of settlement negotiations. Since that time, OBRA and Agency staffs have been engaged in negotiations with Navy over the settlement terms. Staff has regularly updated the Agency and OBRA Governing Body regarding settlement talks during its closed session meetings. Staff has arrived at an agreement with the Navy, with the support and guidance of the OBRA and Agency Boards, and with the participation of Councilmember/OBRA Board Member Larry Reid in a mediation session that took place on February 23, 2005.

On March 21, 2005, pursuant to Resolution No. 2005-04, the Oakland Base Reuse Authority authorized the Executive Director to negotiate and execute a settlement agreement with the United States regarding the disposition of the Oak Knoll property, including the transfer of approximately 5.5 acres of the property to the Agency.

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Staff presented the final terms and conditions of the proposed Settlement Agreement to the Agency at its April 5, 2005 Closed Session and received authorization to present the Settlement Agreement in open session for final approval at its April 19, 2005 meeting.

FISCAL IMPACT

Per the order of the District Court, the Department of the Navy is responsible for a zero cost transfer of 5.5 acres of the Oak Knoll property to the Redevelopment Agency as reimbursement to the Redevelopment Agency Liability/Contingency/Finance Fund (9526) for funding the \$2 million requirement of the Oak Knoll Homeless Accommodation in 1997 (ORA Resolution No. 96-54). All predevelopment costs associated with the transfer, such as the preparation of a legal description and title insurance, will be funded out of the City Attorney Office Litigation Settlement Fund. Upon the sale of the property to a private developer, the City Attorney's Office and the Redevelopment Agency will be reimbursed.

DISCUSSION

In 2001, the Navy reneged its prior offer to convey the Oak Knoll property to the Redevelopment Agency and OBRA and announced that the 174-acre property would be conveyed to private ownership through a public auction. In 2002, the Redevelopment Agency and OBRA filed the litigation to compel the Navy to convey to them the 18-officer unit parcel of land located at the former Naval Medical Center Oakland as part of the homeless accommodation required by federal military base reuse laws. The litigation was necessary in order for the Redevelopment Agency to recoup the \$2 million dollar loan that it provided to the Oakland Base Reuse Authority in 1997 to fund the Oak Knoll Homeless Accommodation with the Alameda County Homeless Collaborative.

The attached Settlement Agreement provides:

- The Navy will convey the 18-unit officer housing parcel to the Agency within 90 days after the settlement agreement is executed.
- The agreed upon parcel contains the land area around the 18 units and the area of two access ways, Barcelona and St. Andrews; it is approximately 5.5 acres.
- The Agency and OBRA will remove the *lis pendens* from the Oak Knoll property 90 days after the settlement agreement is executed.

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- The Navy will dismiss its appeal within 30 days after the settlement agreement is executed.
- The U.S. District Court will retain jurisdiction over the case, solely to enforce the provisions of the settlement agreement.
- The Navy will be responsible for vacating the property of any inhabitants before conveyance.
- The Agency will take title to the property in an “as is” condition, with certification by the Navy that it has complied with all federal laws requiring disclosure and responsibility for certain environmental conditions. The Agency has a right to inspect the property before conveyance.
- The Navy will disclose all existing documents and information relevant to the condition of the property.
- The Agency and OBRA will refrain from actively discouraging prospective buyers from purchasing the larger parcel owned by the Navy, and will provide only “value neutral” information to prospective buyers.
- If the Navy has failed to convey the property to the Agency within 90 days for any reason, the Agency may call an immediate hearing before Judge Patel of the US District Court to impose penalties upon the Navy within the court’s discretion.

PROGRAM OR PROJECT OR POLICY DESCRIPTION

As a result of the Settlement Agreement with the Department of the Navy, the federal base reuse responsibilities of the Oakland Base Reuse Authority and the Redevelopment Agency will be culminated.

The Department of the Navy will sponsor a public sale and auction of the remaining 169-acres of the former Navy base in summer 2005.

SUSTAINABLE OPPORTUNITIES

This report does not include approval of any specific projects addressing sustainable opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

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

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RECOMMENDATION(S) AND RATIONALE

Staff is recommending that the Redevelopment Agency enter the Settlement Agreement with the Department of the Navy, to end the litigation and to support the reuse of the property which has remained vacant since 1997 for productive redevelopment.

ACTION REQUESTED OF THE AGENCY

Staff is requesting authorization to negotiate and execute the Settlement Agreement with the Navy regarding the Naval Medical Center Oakland disposition, acquire ownership of the 5.5 acres of Oak Knoll property, and to take any all actions to support the transfer of property.

Respectfully submitted,



CLAUDIA CAPPIO
Director of Development

Prepared by:
Aliza Gallo
Oakland Base Reuse Authority

APPROVED AND FORWARDED TO THE
OAKLAND REDEVELOPMENT AGENCY:



OFFICE OF THE AGENCY ADMINISTRATOR

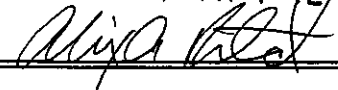
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OAKLAND REDEVELOPMENT AGENCY

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RESOLUTION No. _____ C.M.S.

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RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A SETTLEMENT AGREEMENT WITH THE UNITED STATES NAVY AND THE OAKLAND BASE REUSE AUTHORITY REGARDING THE DISPOSITION OF THE NAVAL MEDICAL CENTER OAKLAND (OAK KNOLL) PROPERTY THAT WILL INCLUDE TRANSFERRING APPROXIMATELY 5.5 ACRES OF THE PROPERTY TO THE OAKLAND REDEVELOPMENT AGENCY

WHEREAS, Oakland Base Reuse Authority ("OBRA") and the Redevelopment Agency of the City of Oakland (the "Agency") filed a complaint in the United States District Court, Northern District of California against the United States Department of the Navy ("Navy") on September 25, 2002, challenging the Navy's proposed sale of the former Naval Medical Center Oakland ("Oak Knoll property") to a third party ("the Action"); and

WHEREAS, the Action was filed to compel the Navy to transfer of a part of the Oak Knoll property containing 18 former officer housing units to the Agency pursuant to the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and

WHEREAS, on August 25, 2003, the District Court ordered the Navy to transfer the property at issue to OBRA and the Agency; and

WHEREAS, on October 31, 2003, the Navy filed a Notice of Appeal in the U.S. Court of Appeals for the Ninth Circuit regarding the District Court's Order; and

WHEREAS, the matter has been assigned to a mediator and has been continued pending the resolution of settlement negotiations; and

WHEREAS, OBRA, the Agency and the Navy have reached settlement agreement by which an approximately 5.5-acre portion of the Oak Knoll property will be transferred to the Agency; and

WHEREAS, the Agency's governing board finds that it is in the Agency best interests to reach final settlement of the Action; therefore be it

RESOLVED: That the Agency Administrator is authorized to negotiate and execute a settlement agreement with the United States Department of the Navy by which an approximately 5.5-acre portion of the Oak Knoll property will be transferred to the Agency; and be it

FURTHER RESOLVED: That the Settlement Agreement will be reviewed and approved as to form and legality by OBRA Counsel and Agency Counsel prior to execution; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary to complete the federal base reuse requirements with regard to the Oak Knoll property, and to implement the Settlement Agreement consistent with this Resolution and its basic purposes.

IN SESSION, OAKLAND, CALIFORNIA, April 19, 2005

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
Interim Clerk of the Redevelopment
Agency of the City of Oakland

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**SETTLEMENT AGREEMENT AND RELEASE
RELATED TO NAVAL MEDICAL CENTER OAKLAND**

Plaintiffs-Appellees, Oakland Base Reuse Authority ("OBRA"), 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, the Oakland Redevelopment Agency and the County of Alameda entered into on March 21, 1995, and restated and revised as of July 15, 2003, and the Redevelopment Agency of the City of Oakland ("Redevelopment Agency" or "ORA") (collectively referred to hereafter as "Oakland" or "Plaintiffs") and defendants-appellants United States of America, United States Department of Defense, United States Department of Navy, Donald H. Rumsfeld in his official capacity as Secretary of Defense, Gordon R. England in his official capacity as Secretary of the Navy, and the General Services Administration (collectively referred to hereafter as "United States" or "Defendants") hereby enter into this Settlement Agreement and Release ("Agreement").

RECITALS

WHEREAS, Oakland filed a complaint in the United States District Court, Northern District of California (No. C 02-4652MHP) against the United States on September 25, 2002, challenging Defendants' proposed sale of the former Naval Medical Center Oakland ("Oak Knoll property") to a third party ("the Action"). Oakland filed the Action to enjoin Defendants from selling the entire Oak Knoll property in order to compel the transfer of a part of the Oak Knoll property containing 18 former officer housing units ("Officer Housing Unit Parcel") to Oakland

pursuant to the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103-421); and

WHEREAS, on August 25, 2003, the District Court issued a Memorandum & Order Re Summary Judgment (“Order”) granting injunctive relief against Defendants concerning the disposition of the portion of the Oak Knoll property containing the Officer Housing Unit Parcel, to wit: “Defendants are ORDERED to transfer the property at issue to plaintiffs in accordance with the terms of the homeless accommodation agreement”; and

WHEREAS, on October 31, 2003, the United States filed a Notice of Appeal in the United States Court of Appeals for the Ninth Circuit (No. 04-15112) regarding the District Court’s Order. The matter has been assigned to a mediator and has been continued pending the resolution of settlement negotiations; and

WHEREAS, to avoid the expense and inconvenience of further litigation, and without any acknowledgment of liability, the Parties now desire to settle the disputes in the Action described above; and

WHEREAS, the OBRA Governing Body has authorized the Executive Director to enter into this Agreement pursuant to Resolution No. 2005-_____; and

WHEREAS, the Redevelopment Agency of the City of Oakland has authorized the Agency Administrator to enter into this Agreement pursuant to Resolution No. _____.

NOW THEREFORE, in consideration of value received and the mutual covenants contained in this Agreement, the Parties agree as follows:

DEFINITIONS

1. "Action" means the legal action filed in the United States District Court for the Northern District of California, Case No. CV 02-4652-MHP, and currently pending on appeal in the United States Court of Appeals for the Ninth Circuit, Case No. C 04-15112.
2. "Agreement" means this Settlement Agreement and Release.
3. "Defendants" means the United States of America, Department of the Navy, Gordon R. England in his official capacity as Secretary of the Navy, the Department of Defense, Donald Rumsfeld in his official capacity as Secretary of Defense, and the General Services Administration.
4. "Navy" means the Department of the Navy and Gordon R. England in his official capacity as Secretary of the Navy.
5. "Oakland" means the Oakland Base Reuse Authority and the Redevelopment Agency of the City of Oakland, collectively.
6. "Officer Housing Unit Parcel" means the nine (9) officer housing units on Barcelona Street and the nine (9) officer housing units on Santa Cruz Street and related real property, as specifically described in Exhibit A hereto.
7. "United States" means the Defendants.
8. "Party" means the United States, Defendants, Oakland, or Plaintiffs; "Parties" will refer to these entities individually and collectively.
9. "Plaintiffs" means Oakland.
10. "Oak Knoll property" will mean the 174+ acre real property formerly known as the Naval Medical Center Oakland located in Oakland, California, or any portion thereof. "Oak Knoll

property” includes the “Officer Housing Unit Parcel.”

11. “Execution Date” will mean the last signature date shown in the signature blocks at the end of this Agreement.

TERMS

1. **Conveyance of Real Property.** Within ninety (90) days of the Execution Date, Defendants will convey by quitclaim deed all of the United States’ right, title, and interest in the Officer Housing Unit Parcel specifically described in Exhibit A hereto, to the Redevelopment Agency, on and subject to the terms and conditions set forth herein. Oakland will provide a legal description and survey of the Officer Housing Unit Parcel, and any associated access or utility easements or reservations, that conform to the survey and underwriting requirements of the American Land Title Association (ALTA) extended land title insurance policy, subject to Navy approval. The Navy will conduct a walk-through with Plaintiffs prior to conveyance to ensure that the Officer Housing Unit Parcel is free of all inhabitants. In addition the Navy will board up the first floor windows and doors of the Officer Housing Units Parcel and maintain the property in accordance with Navy requirements until the transfer described in this Section. The Navy will cooperate with any efforts by Plaintiffs to remove unwanted encumbrances on the Officer Housing Unit Parcel by providing copies of existing Navy documents that are not otherwise exempt from disclosure under applicable laws or regulations.

2. **Release of Lis Pendens.** Within ninety (90) days of the Execution Date, or within three (3) days of conveyance of the Officer Housing Unit to the Redevelopment Agency, whichever is earlier, Plaintiffs will deliver to Defendants a release of the *lis pendens*, executed and in recordable form. Such release will be sufficient to release the *lis pendens* recorded against the

Oak Knoll property.

3. **Enforcement Hearing.** Upon execution of this Agreement, the Parties will request a hearing before the Honorable Marilyn Hall Patel of the United States District Court on the 91st day after the Execution Date. If the Court is unable to schedule a hearing on that date, the hearing will be scheduled for as soon thereafter as possible. The purpose of the hearing will be to facilitate enforcement of this Agreement. If the Defendants have failed to convey the Officer Housing Unit Parcel to the Redevelopment Agency within 90 days after the Execution Date, the Court may take such action as it deems appropriate.

4. **Reciprocal Easements.** Defendants will grant to Plaintiffs and their successors and assigns (a) access easements over existing Navy owned roadways adjacent to the Officer Housing Unit Parcel reasonably required for public and emergency service access to such Parcel, and (b) utility easements across adjacent Navy property for all utility systems reasonably required for residential development of the Officer Housing Unit Parcel. Defendants will reserve to themselves and their successors and assigns (a) easements over existing roadways reasonably required for access to Navy-owned property, and (b) utility easements for all utility systems reasonably required for development of Navy-owned property. The Parties agree to confer to determine the reasonableness of the easements described in this Section.

5. **Disclosure.** Within 30 days of the Execution Date, Defendants will disclose to Plaintiffs, as required by all applicable laws and regulations, documentation in their possession that pertains to the environmental condition of the Officer Housing Unit Parcel. Such disclosure will include, as required by all applicable laws and regulations, any documents pertaining to changes in the environmental condition of that parcel, if any, since the issuance of the Finding of Suitability to

Transfer (“FOST”) for the Oak Knoll property. To the extent that they have no such documents pertaining to changes in the environmental condition of the Officer Housing Unit Parcel since the issuance of the FOST, Defendants will provide a letter documenting this to Plaintiffs. .

6. Cooperation in Sale of Property.

a. Plaintiffs will provide only objective information to prospective buyers.

b. Plaintiffs and their representatives will act in good faith to make only accurate statements, both orally and in writing, regarding the government's ability to convey good title to the Oak Knoll property, the environmental condition of the property, a buyer's ability to develop the property, costs associated with development of that property, including but not limited to *demolition costs, infrastructure, redevelopment and planning requirements pertaining to the redevelopment and reuse of the property.* If Plaintiffs or their representatives make inaccurate statements, Plaintiffs will correct them as soon as possible after such statements are brought to Plaintiffs' attention.

c. Plaintiffs and their representatives will not post or place any signs or placards on or near the larger Oak Knoll parcel, other than those required by applicable law. This provision does not prohibit the City from including contact information for zoning, planning and other relevant, factual information in the Defendants' invitation for bids, as determined by Defendants.

d. Defendants and Plaintiffs will issue a joint press release announcing this Agreement when it becomes effective.

e. (DELETE ENTIRE PARAGRAPH)

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7. Environmental Conditions. The Redevelopment Agency has the right to review the

condition of the Officer Housing Unit Parcel prior to transfer.

8. Mutual Release of Claims.

a. Upon the conveyance of real property required in Section 1 of this Agreement, Oakland will provide Defendants with an executed release and waiver of any and all claims against Defendants of any right, title or interest in the entire Oak Knoll property or any portion thereof, including but not limited to its right to enforce the District Court's August 25, 2003 Order, and any monetary claims or damages, including claims for payment of money in lieu of transfer of the Oak Knoll property to Oakland, and any claims for interest, in the form attached hereto as Exhibit B, except for a claim for enforcement of this Agreement as reserved in Section 12 herein, and an executed release of the *lis pendens* recorded against the Oak Knoll property meeting the requirements of Section 2..

b. Upon provision of a release and waiver of any and all claims and a release of *lis pendens* as provided by Section 8(a) above, Defendants will provide Plaintiffs with an executed release and waiver of any liability against Plaintiffs for any claim arising from this Action, except for proceedings for enforcement of this Agreement as reserved in Section 12 herein, in the form attached hereto as Exhibit C, and any other necessary documents and/or agreements to effectively resolve the Action.

9. Hold Harmless. Oakland will indemnify and hold Defendants harmless for any and all claims related to the sale and transfer of the Oak Knoll property that may be brought by or on behalf of the Alameda County Homeless Base Conversion Collaborative, or any member thereof, and/or any citizen or groups of citizens of Oakland, as well as any other public or private entity on behalf of Oakland.

10. **Dismissal of Appeal.** Within thirty (30) days of the Execution Date, Defendants will file a Motion to Dismiss the Appeal with the United States Court of Appeals for the Ninth Circuit. Defendants will take all necessary actions, including the filing of declarations and other documents, to assist the Court of Appeal in dismissing the Appeal.

11. **Continuance of Mediation.** The Parties, upon the Execution Date, agree to contact the Mediator to inform her that this Agreement has been entered and to continue the mediation for a period of time to allow for the Parties to discharge their obligations under this Agreement and the Motion to Dismiss the Appeal to be filed.

12. **Resolution of Disputes and Enforcement of Settlement Agreement.** Plaintiffs and Defendants agree that, upon dismissal of the appeal by the Ninth Circuit Court of Appeals and remand to the District Court, that they will jointly request that the District Court delay the entry of a final judgment and/or dismissal of this case and retain jurisdiction over this Action solely to enforce the provisions of this Agreement, and to take action on Defendants' Motion to Dismiss and Vacate as set out in Section 13 below. In the event that any party believes that another party has not fully complied with its obligations under this Agreement, the Parties agree to confer with each other in good faith before petitioning the court to enforce the Agreement. The Parties agree that in such action the rule of construction which provides that any ambiguity will be construed against the drafter of an agreement will not apply to the interpretation of this Agreement.

13. **Final Judgment and Dismissal of Action:** Subsequent to Defendants' conveyance of the Officer Housing Unit Parcel and Plaintiffs' release of the *lis pendens* on the entire Oak Knoll property, the United States may file in the United States District Court for the Northern District of California a motion to dismiss the Action as moot and vacate the District Court's

Memorandum and Order of August 25, 2003. Oakland agrees that it will not, in any way, oppose the United States' motion to dismiss and vacate.

14. **No Admission of Liability.** The Parties agree that their entry into this Agreement will not represent any admission of fact or law by the United States or Oakland.

15. **Modification of Agreement.** The Parties agree that the terms set forth in this Agreement constitute the entire Agreement and are not subject to modification, except by a writing signed by the Parties.

16. **Execution of Documents.** The Parties agree to execute any and all further documents that may be necessary to effectuate the purpose of this Agreement.

17. **Notices.** All notices, requests, demands and other communication between the Parties in regards to rights, duties and obligations under this Agreement will be in writing and sent either by fax, e-mail or overnight delivery and given as follows:

If to Oakland:

Oakland Base Reuse Authority
Attn: Aliza Gallo, Executive Director
700 Murmansk Street, Suite No. 3
Oakland, California 94607
Tel. No. (510) 238-7256
Fax No. (510) 238-2936
E-mail: agallo@oaklandnet.com

Oakland Redevelopment Agency
Attn: Deborah Edgerly, Agency Administrator
1 City Hall Plaza, 3rd Floor
Oakland, California 94612
Tel. No. (510) 238-3301
Fax No. (510) 238-2227
E-mail: dedgerly@oaklandnet.com

Oakland City Attorney
Attn: John A. Russo, Esq.
1 City Hall Plaza, 6th Floor
Oakland, California 94612
Tel. No. (510) 238-3601
Fax No. (510) 238-6500
E-mail: jarusso@oaklandcityattorney.org

If to United States:

United States Department of the Navy
Attn: Wayne Army, Deputy Assistant Secretary of the Navy (Installations
and Facilities)
1000 Navy Pentagon, Room 4E765
Washington, D.C. 20350-1000
Tel. No. (703) 693-4527
Fax No. (703) 693-2734
E-mail: Wayne.Army@Navy.mil

BRAC Program Management Office (West)
Attn: Kimberly Kesler
1230 Columbia Street, Suite 1100
San Diego, California 92101
Tel No. (619) 532-0993
Fax No. (619) 532-0995
E-mail: Kimberly.Kesler@Navy.mil

United States Department of Justice
Attn: Charles M. O'Connor, Esq.
450 Golden Gate Avenue
P.O. Box 36055
San Francisco, California 94102
Tel. No. (415) 436-7180
Fax No. (415) 436-6748
E-mail: charles.o'connor@usdoj.gov

18. **Costs and Attorney Fees.** Each Party will bear their own costs and attorney fees incurred in litigating the Action.
19. **Effective Date.** This Agreement will be effective upon its full execution.

20. **Authorization.** Each of the undersigned representatives of Oakland and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that Party, hereto.

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

22. **Integration.** This Agreement and its exhibits constitute the entire agreement between and among the Parties and supercede all prior and contemporaneous agreements and understandings of the Parties in connection with the settlement of the Action.

OAKLAND BASE REUSE AUTHORITY:

Aliza Gallo
Executive Director

Date: _____

Approved as to form:

Alix A. Rosenthal
OBRA General Counsel

Date: _____

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND:

Deborah A. Edgerly
Agency Administrator

Date: _____

Approved as to form:

Agency Counsel

Date: _____

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF DEFENSE,
SECRETARY OF DEFENSE DONALD H. RUMSFELD,
U.S. DEPARTMENT OF THE NAVY,
SECRETARY OF THE NAVY,
U.S. GENERAL SERVICES ADMINISTRATION:

Wayne Army
Deputy Assistant Secretary of the Navy
(Installations and Facilities)

Date: _____

Approved as to form:

Charles M. O'Connor
U.S. Department of Justice

Date: _____