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OAKLAND
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**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**
AGENDA REPORT

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 8, 2008

- RE: **(1) An Agency Resolution Authorizing the Agency Administrator to Negotiate and Execute Supplemental Agreement No. 1-B, Which Supplements Section 6.5 of the Memorandum of Agreement among the City of Oakland, the Oakland Redevelopment Agency, and the Port of Oakland Relating to the Fair Share Basis Cost Agreement for the Deconstruction of Buildings 804, 805, 806, 807, and 808 Within the East Gateway Development Area of the Former Oakland Army Base;**
- (2) A Resolution Authorizing the City Administrator to Negotiate and Execute Supplemental Agreement No. 1-B, Which Supplements Section 6.5 of the Memorandum of Agreement among the City of Oakland, the Oakland Redevelopment Agency, and the Port of Oakland Relating to the Fair Share Basis Cost Agreement for the Deconstruction of Buildings 804, 805, 806, 807, and 808 Within the East Gateway Development Area of the Former Oakland Army Base;**
- (3) An Agency Resolution Contributing an Amount Not-To-Exceed \$1,505,838 from the OBRA Operations Fund (9570), West Oakland Base Reuse Organization (88679), BayBridge Gateway Project (S235323), Miscellaneous Services Account (54919) to the City of Oakland for the City's Fair Share Cost of Deconstructing Buildings 804, 805, 806, 807 and 808 within the East Gateway Development Area of the Former Oakland Army Base;**
- (4) A City Resolution Accepting and Appropriating a Contribution of Redevelopment Agency Funds under the Cooperation Agreement in an Amount Not-To-Exceed \$1,505,838 to Fund the City's Fair Share Cost of Deconstructing Buildings 804, 805, 806, 807 and 808 within the East Gateway Development Area of the Former Oakland Army Base**

SUMMARY

Staff recommends that the Redevelopment Agency and the City enter into an agreement with the Port of Oakland to split the cost of joint mitigation measures pertaining to the deconstruction of shared historic buildings at the former Oakland Army Base. Specifically, Buildings 804, 805, 806, 807 and 808 straddle Agency and Port property within the East Gateway Development Area of the Army Base (see Attachment A), and the staffs of the Agency and the Port have tentatively

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agreed upon a methodology by which the costs of deconstruction of these buildings, if approved by the Agency, will be shared. The estimated cost to the Agency for the deconstruction of the five warehouses is \$1,505,838, based upon a maximum shared cost of \$3.50 per square foot.

To memorialize this agreement, staff recommends that the Agency and the City authorize the Agency/City Administrator to approve Supplemental Agreement 1-B (see Attachment B) to the Memorandum of Agreement among the City of Oakland, the Oakland Redevelopment Agency and the Port of Oakland ("City-Port MOA"). Staff is also requesting authorization to allocate up to \$1,505,838 from the Agency and authorization for the City to accept said funds to cover deconstruction costs.

Actual deconstruction of the portions of the warehouses within the Agency's East Gateway Development Area shall not occur until the Agency's development projects have been approved, the developers have demonstrated that they have considered adaptive reuse of the historic structures and determined that adaptive reuse is not feasible, and construction permits have been issued based upon approved site development plans.¹

FISCAL IMPACT

The following table provides a square footage breakdown of the buildings on the Agency's and Port's respective areas and estimated deconstruction costs based upon \$3.50/square foot:

Building #	Total Square Footage	Square Footage on Agency Property	Agency % of Shared Costs
804	237,983	27,789	11.68%
805	239,170	57,897	24.21%
806	237,760	52,146	21.93%
807	237,752	123,287	51.89%
808	238,518	169,120	70.90%
Total Sq. Ft.	1,191,003	430,239	36.12%
Cost @ \$3.50/sf	\$4,168,510	\$1,505,838	N/A

¹ Mitigation Measure 4.6-14 of the Oakland Army Base Area Redevelopment Plan Environmental Impact Report (EIR) adopted July 31, 2002.

The \$1,505,838 to cover deconstruction costs is available from the following fund:

Redevelopment Agency

Fund	9570	OBRA Operations Fund
Organization	88679	West Oakland Base Reuse Organization
Account	54919	Miscellaneous Contract Services
Project	S235323	OBRA BayBridge Gateway Project
New Project #	TBA	Gateway Building Deconstruction

The attached resolutions, if approved, will move the Redevelopment Agency funds to:

City of Oakland

Fund	7780	Redevelopment Agency Fund
Organization	88679	West Oakland Base Reuse Organization
Account	54919	Miscellaneous Contract Services
Project	P235310	OBRA Bay Bridge Gateway Project
New Project #	TBA	Gateway Building Deconstruction

The resolutions accompanying this Agenda Report authorize the creation of new Projects on the Agency and City sides for building deconstruction.

BACKGROUND

Supplemental Agreement 1-B supplements Section 6.5 of the City-Port MOA), as amended and restated on February 27, 2008, which governs the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the "EIR"). Supplemental Agreement 1-B will facilitate collaboration between the Agency and the Port for the development of the former Oakland Army Base as articulated in the Mitigation Monitoring and Reporting Program (MMRP) for the approved EIR for the development of the former Oakland Army Base (Mitigation Measure 4.6-9).² Under the terms of Mitigation Measure 4.6-9, the City and the Port will share the costs on a "fair-share basis" of a program to salvage as much materials as possible from the buildings within the Historic District.

On June 2, 2006, the Parties executed the "Letter Agreement Regarding the Sharing of Certain Costs for the Oakland Army Base Historic District Architectural Salvage, Reuse and Document Assessment," (the "Letter Agreement") and, on August 7, 2006, executed Supplemental

² Mitigation Measure 4.6-9 of the EIR states that "the City, Port and OARB sub-district developers shall fund on a fair share basis a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed."

Agreement 1-A to Section 6.5 of the City-Port MOA, in order to meet the timelines of the redevelopment of the former Oakland Army Base, and to evenly split the cost for implementation of certain cultural resources mitigation measures, including Mitigation Measure 4.6-9.

The structures in question are part of what is referred to as the "800-series" buildings located in the East Gateway Development Area. Buildings 802 through 808 are enormous wooden warehouses constructed shortly after the U.S. entered into World War II. Overall, 36.12% of Buildings 804, 805, 806, 807 and 808 are on Agency property. The Port has determined that deconstruction of these warehouses is necessary for development of the Port's Outer Harbor Intermodal Terminal (OHIT) in partnership with Union Pacific Railroad and Burlington Northern-Santa Fe Railroad. The Port has already commenced deconstruction of Building 802 and intends to issue a bid packet for the deconstruction of Building 803 soon. The Port plans to clear the entire OHIT site by July 2009.

Concurrently, the Agency is negotiating a long-term ground lease with Oakland Maritime Support Services (OMSS) for development of a multi-service truck depot. OMSS's site plan includes two contiguous 15-acre parcels set aside by the Agency and the Port in compliance with the Bay Conservation and Development Commission ("BCDC") requirement to accommodate Port-related activities, specifically regarding the need to divert truck activity from the streets of West Oakland. Staff plans to bring the OMSS Lease Development and Disposition Agreement (LDDA) and Long-Term Ground Lease recommendation before the Agency Board when it returns from recess in September 2008.

KEY ISSUES AND IMPACTS

Support for Port OHIT Project

The Port's expansion plans hinge significantly on the development of the OHIT, which will expedite the movement of containers by rail. The boundary line that demarks the Agency's and the Port's portions of the East Gateway Area was drawn to accommodate existing and future rail lines. From a structural standpoint, the boundary slices awkwardly through Buildings 804 – 808 (see Attachment A). The Agency is supporting the Port's OHIT project in a number of ways, including agreeing to a land exchange to accommodate the needs of the railroads, as well as coordinating efforts in deconstructing buildings on the respective sites, with the appropriate approvals in accordance with the MMRP.

Historic Preservation Considerations

Per the MMRP, deconstruction of portions of warehouses located on Agency property within the Army Base Historic District shall not take place until the following conditions are met: 1) the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan; 2) the developers have demonstrated that they considered

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adaptive reuse of the historic structures and determined that adaptive reuse of portions of Buildings 804, 805, 806, 807, and 808 is not feasible; and 3) only until construction permits are issued for the development of the site. Agency staff and OMSS representatives have been working diligently on determining the feasibility of adaptive reuse of portions of the 800 series buildings on the Agency/OMSS footprint, and will present an adaptive reuse feasibility determination along with the LDDA/Ground Lease recommendation in September.

Ancillary Maritime Support (AMS) Development

On November 6, 2007, the Agency Board authorized the Agency Administrator to enter into an Exclusive Negotiating Agreement (ENA) with OMSS to develop a 15-acre site within the East Gateway Area (Resolution No. 2007-0076 C.M.S.). This 15-acre site has also been approved by the BCDC to fulfill the Agency's obligation to develop a minimum of 15 acres for Ancillary Maritime Support (AMS) activities. To many stakeholders, the primary goal of the AMS is to provide truck parking and related services on the former Army Base in order to divert trucks from the streets of West Oakland and thus improve air quality and the health of West Oakland residents.

DECONSTRUCTION FAIR SHARE PROJECT DESCRIPTION

Supplemental Agreement 1-B (Attachment B), which supplements the City-Port MOA, pertains specifically to EIR Mitigation Measure 4.6-9 for the deconstruction related to the demolition of shared historic buildings on the former Oakland Army Base. The Agreement details the proportions of Buildings 804 – 808 that are located on Agency and Port property respectively. Although the Agreement states a maximum cost of \$3.50/square foot for deconstruction, that is only an estimate. Actual costs will vary. What will remain constant, however, is the proportional breakdown of the actual costs.

As previously stated, the application of this Supplemental Agreement will take place only if the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan and a determination that it is not feasible to reuse portions of Buildings 804 – 808 that are on the AMS footprint, and that deconstruction can occur only when construction permits are issued to commence work based upon the approved site development plan.

SUSTAINABLE OPPORTUNITIES

Economic: The deconstruction projects, if approved, should offer employment and job training opportunities to many Oakland residents. Moreover, the development of the sites cleared for

Port and Agency use as planned will generate significant high-quality jobs and tax revenue, and will increase land values in a vacant, blighted, abandoned military facility.

Environmental: The primary purpose of the deconstruction projects is to reuse the bulk of the materials from the warehouses, and to exceed the City's waste diversion goals. In the long-term, the Port's OHIT project is part of a major strategy to reduce emissions in West Oakland. The AMS should also mitigate the critical issue of truck parking in residential areas and the adverse effects of diesel emissions on West Oakland residents.

Social Equity: The deconstruction project described in this report will create employment and training opportunities for young adults with barriers to employment, including formerly incarcerated clients.

DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior access issues would be addressed when specific development plans are submitted to the City/Agency by a developer for review and approval.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the Agency Board adopt the following four resolutions to set the stage should a determination be made that some or all of the portions of the warehouses on Agency property are not feasible for reuse and therefore must be deconstructed:

- (1) An Agency Resolution Authorizing the Agency Administrator to Negotiate and Execute Supplemental Agreement No. 1-B, Which Supplements Section 6.5 of the Memorandum of Agreement among the City of Oakland, the Oakland Redevelopment Agency, and the Port of Oakland Relating to the Fair Share Basis Cost Agreement for the Deconstruction of Buildings 804, 805, 806, 807, and 808 Within the East Gateway Development Area of the Former Oakland Army Base;
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City of Oakland for the City's Fair Share Cost of Deconstructing Buildings 804, 805, 806, 807 and 808 within the East Gateway Development Area of the Former Oakland Army Base;

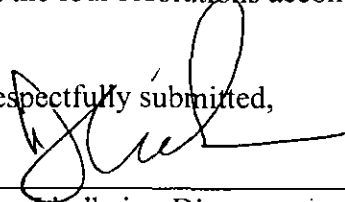
(4) A City Resolution Accepting and Appropriating a Contribution of Redevelopment Agency Funds under the Cooperation Agreement in an Amount Not-To-Exceed \$1,505,838 to Fund the City's Fair Share Cost of Deconstructing Buildings 804, 805, 806, 07 and 808 within the East Gateway Development Area of the Former Oakland Army Base

The Port is moving on an accelerated schedule to clear its portion of the East Gateway Area of the former Oakland Army Base for the OHIT. Staff believes that it is in the Agency's best interests to work in partnership with the Port on deconstruction projects wherever possible to minimize costs and to leverage the Port's project management expertise.

ACTION REQUESTED OF THE CITY/REDEVELOPMENT AGENCY

Staff recommends that the Agency Board adopt the four resolutions accompanying this report.

Respectfully submitted,



Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Gregory D. Hunter, Deputy Director
Community and Economic Development Agency
Economic Development & Redevelopment

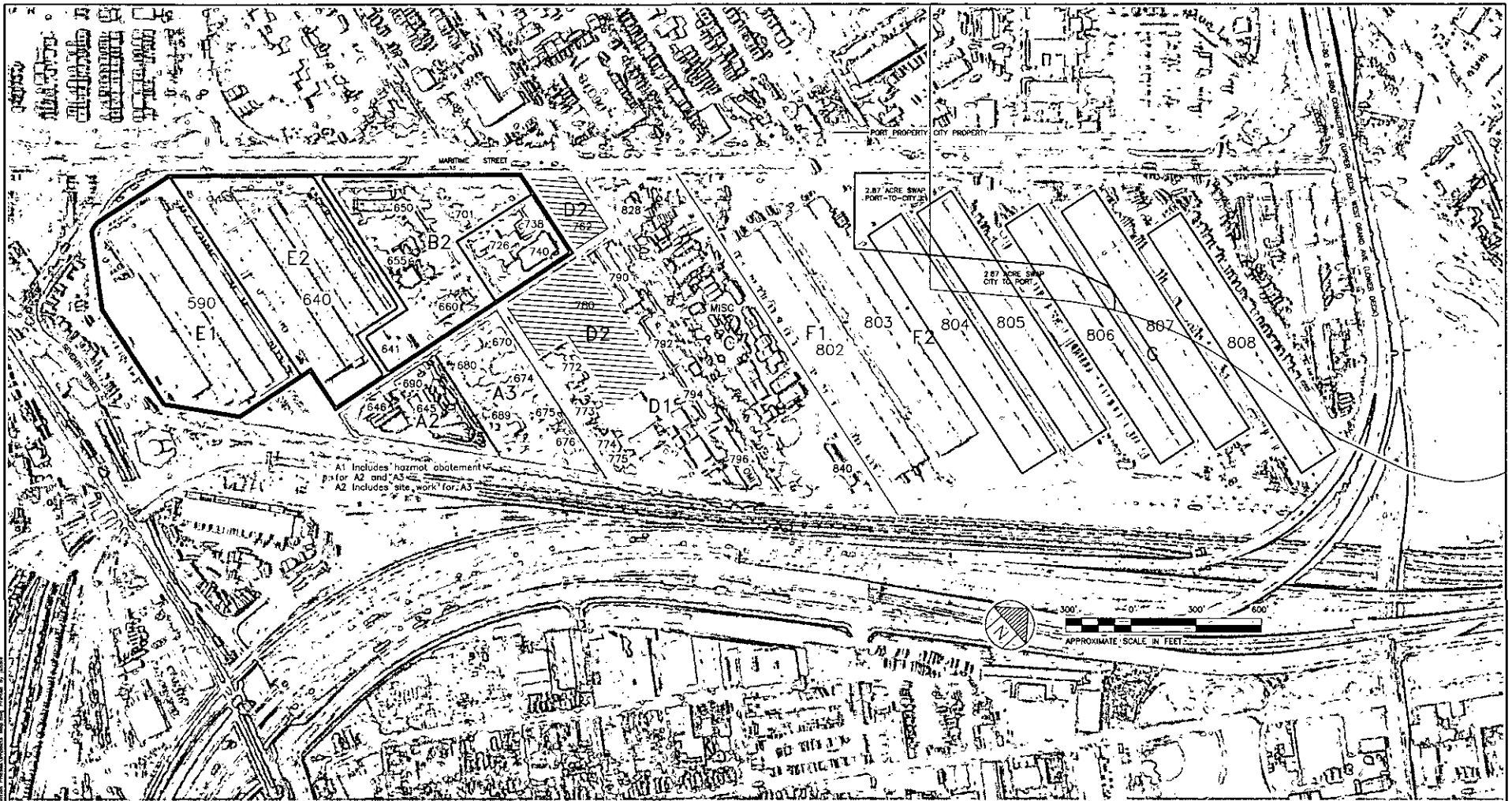
Prepared by:
Al Auletta, Redevelopment Area Manager
Community and Economic Development Agency
Redevelopment Division

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY/AGENCY ADMINISTRATOR

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A1 Includes hazmat abatement
 prior to A2 and A3
 A2 Includes site work for A3
 P.P.S.

NO.	REVISIONS	DATE	REV'D	APP'D	DRAWN

REFERENCES:
 PLANS: AS
 FIELD BOOKS:
 PORT OF OAKLAND DATUM
 IS 3.25' BELOW M.S.V.D. '29
 CAUTION:
 CHECK DRAWING FOR LATEST REVISIONS

CAUTION: THIS PLAN MAY BE REDUCED ORIGINAL SCALE

PORT OF OAKLAND
 530 WATER ST. OAKLAND, CALIFORNIA

FORMER OAKLAND ARMY BASE
 OUTER HARBOR INTERMODAL TERMINAL
 SITE DEVELOPMENT
 PROPOSED BUILDING DEMOLITION CONTRACTS



DATE: MARCH 20, 2007
 SCALE: AS SHOWN
 SHEET: 1 OF 1 SHEETS

DATE: 03/20/07 11:53:01 AM 03/20/07 11:53:01 AM 03/20/07 11:53:01 AM

SUPPLEMENTAL AGREEMENT NO. 1-B

TO THE

MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

(CITY-PORT MOA)

RELATING TO SECTION 6.5 OF THE CITY-PORT MOA

WITH RESPECT TO FINANCIAL CONTRIBUTION FOR JOINT

MITIGATION MEASURES (DECONSTRUCTION) AND

RELATED TO THE DECONSTRUCTION OF SHARED HISTORIC BUILDINGS

AMONG

THE OAKLAND REDEVELOPMENT AGENCY,

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

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

DATED: _____, 2008

**SUPPLEMENTAL AGREEMENT NO. 1-B TO
MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**

This **SUPPLEMENTAL AGREEMENT 1-B TO THE MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**, dated _____, 2008 (“Supplemental Agreement 1-B”) is entered into by and among the City of Oakland Redevelopment Agency, a community redevelopment agency organized and existing under the California Community Redevelopment Law (“ORA”), the City of Oakland, a municipal corporation, acting by and through its City Council (the “City Council”) (ORA and the City Council are collectively referred to as the “City”) and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the “Port”). Each of the City and the Port is a “Party”.

WHEREAS, this Supplemental Agreement 1-B is intended to supplement Section 6.5 of the Memorandum of Agreement for Oakland Army Base dated July 8, 2003 (the “City-Port MOA”), as restated and amended on July 30, 2007 relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the “EIR”).

WHEREAS, under the terms of Mitigation Measure 4.6-9 in the Mitigation Monitoring and Reporting Program of the EIR (the “MMRP”), the City and the Port (each acting as itself and as “sub-district developer”) have committed to share the costs on a “fair-share basis” of “a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed,” and, “[t]o the extent feasible,” to use these materials “in whole, on site,” or, “[i]f on-site reuse is found infeasible, opportunities shall be sought for reuse of these materials in other East Bay Area construction, or be sold into the recycled construction materials market.” The mitigation measure further stipulates that, “[s]alvage operations shall employ members of local job-training bridge programs; and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the “Shared Buildings”) are located partially on City property and partially on Port property, the City and Port agree that it is appropriate to share the costs of the Deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in this Supplemental Agreement 1-B; and

WHEREAS, on June 2, 2006, the Parties executed the “Letter Agreement Regarding the Sharing of Certain Costs for the Oakland Army Base Historic District Architectural Salvage, Reuse and Document Assessment,” (the “Letter Agreement”) and, on August 7, 2006, executed Supplemental Agreement No. 1-A To The Memorandum of Agreement for Oakland Army Based Relating to Section 6.5 of the City-Port MOA (Supplemental Agreement 1-A), in order to meet the timelines of the redevelopment of the former Oakland Army Base, and to evenly split the cost for implementation of certain

cultural resources mitigation measures, including Mitigation Measure 4.6-9 of the EIR; and

WHEREAS, the Parties acknowledge that this Supplemental Agreement 1-B is entered into in furtherance of the Parties' obligations under Section 6.5 of the City-Port MOA related to the Parties' financial contributions for Cultural Resources Mitigation Measures and to specifically further define the Parties' obligations with respect to the deconstruction and the concurrent demolition of the Shared Buildings.

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

1. **Definitions.** Unless otherwise defined in this Supplemental Agreement 1-B, the capitalized terms in this Supplemental Agreement 1-B will have the meaning given such terms in the City-Port MOA.
2. **Shared Costs**
 - 2.1. The City and the Port (each a "Party") shall share the costs of the Deconstruction of the Shared Buildings, which shall include the salvaging as whole timber posts, beams, trusses and siding of the Shared Buildings and other actions required as part of Mitigation Measure 4.6-9 of the MMRP (including employing members of the local job-training bridge programs) (the "Deconstruction") and costs of the concurrent demolition of the remaining portions of the Shared Buildings, which demolition shall include the taking down of those portions of the Shared Buildings that are not deconstructed, clearing and hauling away of the materials and debris for proper disposal and documentation (the "Demolition"). Neither Deconstruction nor Demolition shall include any environmental remediation of property, for which the Parties' responsibilities and allocation of costs are set forth in Section 5 of the City-Port MOA, or the removal of the slabs, footings or flooring of the shared building, underground remediation, dewatering for construction purposes or the removal or treatment of hazardous materials (the "Excluded Items"). The costs of both the Deconstruction and Demolition of any or all of the Shared Buildings are referred to herein as the "Shared Costs."
 - 2.2. "Shared Costs" shall include (a) the reasonable out-of-pocket transaction costs incurred by any Party for the study, design, implementation of the Deconstruction and Demolition (excluding in the case of each Party (i) its own costs and expenses for staff and internal overhead and (ii) both in-house and outside legal counsel), (b) survey, environmental, insurance and consulting costs associated with the design, implementation or carrying out of the Deconstruction and Demolition, (c) costs of Deconstruction and Demolition, including any payments to third-party contractors or local job-training bridge program for the performance of the Deconstruction and Demolition. The terms and conditions of this Supplemental Agreement 1-B shall apply to any Shared Costs expended by either Party prior to the execution of this Supplemental Agreement No.1-B, as

long as all conditions set forth in this Section 2 shall have been met relating to such Shared Costs.

2.3. For each Shared Building, each Party shall pay a percentage share of any Shared Costs in proportion to the percentage of the square footage of each of the Shared Buildings on each respective Party's property. For the purposes of this Supplemental Agreement 1-B, the Parties agree that the square footage and percentage share of the Shared Costs for each Shared Building are as follows:

<u>Building #</u>	<u>Total Square Footage</u>	<u>Square Footage on Port Property</u>	<u>Port Percentage of Shared Costs</u>	<u>Square Footage on Agency Property</u>	<u>City Percentage of Shared Costs</u>
804	237,983	210,194	88.32	27,789	11.68
805	239,170	181,273	75.79	57,897	24.21
806	237,760	185,614	78.07	52,146	21.93
807	237,752	114,285	48.11	123,287	51.89
808	238,518	69,398	29.10	169,120	70.90
Total	1,191,003	760,764	63.88	430,239	36.12

2.4. The aggregated or total of Shared Costs for all Shared Buildings shall not exceed a maximum of Four Million Eighty Eight Thousand Seven Hundred Dollars (\$4,088,700) based on (\$3.50/s.f.) (the "Maximum Shared Costs"). If, at any time, the total Shared Costs is estimated by either Party to exceed the Maximum Shared Costs, the total Shared Costs may be increased by mutual written agreement of the City and the Port.

3. Initiation and Implementation of Deconstruction and Demolition

3.1. Upon the execution of this Supplemental Agreement 1-B, either the Port or the City may initiate the implementation of the Deconstruction and Demolition of any of the Shared Buildings (the "Initiating Party") by first submitting an implementation plan and agreement (an "Implementation Agreement") to the other Party (the "Other Party") for agreement by the Other Party in writing relating to the Shared Building or Shared Buildings on which the Initiating Party intends to initiate the Deconstruction and Demolition. The Implementation Agreement shall include, but not limited to:

- 3.1.1. a scope of work, including any pre-demolition hazardous material survey (the costs of such survey shall be part of the Shared Costs),
- 3.1.2. submittals from and regarding any third-party consultant or contractor as required in subsection 3.3 (including description of any bidding procedure or requirements),
- 3.1.3. estimated budget based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,

- 3.1.4. estimated time for completion (including any phasing of the Deconstruction and Demolition) based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,
 - 3.1.5. insurance and indemnity provisions,
 - 3.1.6. construction mitigation and environmental compliance,
 - 3.1.7. any other information deemed relevant by agreement between the Parties.
 - 3.2. Notwithstanding any requirement in subsection 3.1 above, if the Other Party has not responded in writing within thirty (30) days of the date that the Initiating Party has submitted its Implementation Agreement to the Other Party, the Other Party's agreement to proceed is deemed granted and the Implementation Agreement is deemed effective as to and binding on both Parties, and the Initiating Party may proceed with the design and implementation of such Deconstruction and Demolition as set forth in the Implementation Agreement.
 - 3.3. Prior to the contracting or hiring of any third-party consultant or contractor by any Party for the purpose of the Deconstruction or Demolition, each Party will review and accept the scope and budget for any such third-party contract, provided however, each Party shall complete its review of the scope and budget within thirty (30) days from the date that the Initiating Party delivers to the Other Party in writing the scope and budget for review (which scope and budget may be submitted as part of the Implementation Agreement), and no Party may unreasonably withhold its acceptance of the scope and budget. If no objection is raised during the thirty (30) day review period, the scope and budget shall be deemed accepted by the Parties and the Initiating Party may proceed with the hiring of the third party consultant or contractor. If any party finds the scope and budget unacceptable, the objecting Party shall specify its objection within the thirty (30) day review period and the Parties shall negotiate a resolution to the objection, provided however, that the objecting Party shall alone bear any costs incurred as a result of the objection being raised (including, but not limited to, costs of engineering, survey or attorney services or costs due to delay of Deconstruction or Demolition).
 - 3.4. The Initiating Party may initially pay the cost of any Deconstruction and Demolition it initiated and implemented pursuant to any Implementation Agreement. The Initiating Party shall invoice the Other Party for reimbursement of the Other Party's percentage share of the Shared Costs, but in any event, no later than forty-five (45) days after the payment of such Shared Costs by the Initiating Party or forty-five (45) days after the Completion of the Deconstruction and Demolition, whichever is later. The Other Party shall reimburse the Initiating Party for its share of the Shared Cost within forty-five (45) days from the date of the invoice from the Initiating Party.
4. **Indemnification.** The City shall indemnify and hold harmless the Port and its directors, officers, agents and employees from and against any and all actions, causes

of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the City of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP. The Port shall indemnify and hold harmless the City and its directors, officers, agents and employees from and against any and all actions, causes of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the Port of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP.

5. Termination

- 5.1. Either Party may terminate this Supplemental Agreement 1-B by giving the other Party thirty (30) days' prior written notice.
- 5.2. If, following fifteen (15) days' prior written notice, either Party shall fail to cure or commence cure of any failure on its part to perform its respective obligations hereunder, then the non-defaulting Party may terminate this Supplemental Agreement 1-B immediately on giving notice of its election to so terminate.
- 5.3. Notwithstanding any provision of this Section 5, any obligation of any Party to pay, reimburse or indemnify the other Party pursuant to subsection 3.4 and Section 4, or any obligation of any Party under any Implementation Plan agreed to by the Parties shall survive the termination of this Supplemental Agreement 1-B.

6. Miscellaneous

- 6.1. This Supplemental Agreement 1-B shall constitute satisfaction of the Parties' obligation under Section 6.5 of the City-Port MOA to reach agreement on financial contributions from the City and the Port for fair share funding of Mitigation Measure 4.6-9 of the MMRP.
- 6.2. In every circumstance in this Supplemental Agreement 1-B where approval, consent or mutual written agreement is required of one or both Parties, the Parties agree to work cooperatively to arrive at said agreement, and no Party may withhold its approval or consent unreasonably.
- 6.3. This Supplemental Agreement supersedes any conflicting provision or agreement between the Parties respecting the fair share funding and implementation of Mitigation Measure 4.6-9 of the MMRP, including any contradictory or conflicting provisions of the Letter Agreement or Supplemental Agreement 1-A.

IN WITNESS WHEREOF, this Supplemental Agreement No.1-B has been duly executed by each of the Parties as of the first date stated above.

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

Dated: _____

By: _____
Deborah A. Ederly
City Administrator

OAKLAND REDEVELOPMENT AGENCY

Dated: _____

By: _____
Deborah A. Ederly
Agency Administrator

Dated: _____

Approved as to form and legality for the City:

Name:
Title:

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

Dated: _____

By: _____
Omar R. Benjamin
Executive Director

Dated: _____

Approved as to form and legality for the Port:

Name:
Title:

Resolution No.: _____

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OAKLAND
2008 JUN 26 PM 8:23

Approved as to Form and Legality:


ORA Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

AN AGENCY RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE SUPPLEMENTAL AGREEMENT NO. 1-B, WHICH SUPPLEMENTS SECTION 6.5 OF THE MEMORANDUM OF AGREEMENT AMONG THE CITY OF OAKLAND, THE OAKLAND REDEVELOPMENT AGENCY AND THE PORT OF OAKLAND RELATING TO THE FAIR SHARE BASIS COST AGREEMENT FOR THE DECONSTRUCTION OF BUILDINGS 804, 805, 806, 807, AND 808 WITHIN THE EAST GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE

WHEREAS, Supplemental Agreement 1-B is intended to supplement Section 6.5 of the Memorandum of Agreement for Oakland Army Base dated July 8, 2003 (the "City-Port MOA"), as restated and amended on July 30, 2007, relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the "EIR"); and

WHEREAS, under the terms of the EIR and the Mitigation Monitoring and Reporting Program (MMRP) Measure 4.6-9, the City and the Port (each acting as itself and as "sub-district developer") have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed;" and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the "Shared Buildings") are located partially on Agency property and partially on Port property, the Agency and Port agree that it is appropriate to share the costs of the Deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in Supplemental Agreement 1-B; and

WHEREAS, on June 2, 2006, the Parties executed the "Letter Agreement Regarding the Sharing of Certain Costs for the Oakland Army Base Historic District Architectural

Salvage, Reuse and Document Assessment,” (the “Letter Agreement”) and, on August 7, 2006, executed Supplemental Agreement No. 1-A To The Memorandum of Agreement for Oakland Army Based Relating to Section 6.5 of the City-Port MOA (Supplemental Agreement 1-A), in order to meet the timelines of the redevelopment of the former Oakland Army Base, and to proportionally split the cost for implementation of certain cultural resources mitigation measures, including Mitigation Measure 4.6-9; and

WHEREAS, the Parties acknowledge that Supplemental Agreement 1-B is entered into in furtherance of the Parties’ obligations under Section 6.5 of the City-Port MOA related to the Parties’ financial contributions for Cultural Resources Mitigation Measures and to specifically further define the Parties’ obligations with respect to the deconstruction and the concurrent demolition of the Shared Buildings; and

WHEREAS, the Parties also acknowledge that Measure 4.6-14 of the MMRP states that “the City, Port and OARB sub-district developers shall fund on a proportional fair share basis a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed. These materials shall be used on site if deconstruction is the only option. Reuse of a warehouse building or part of a warehouse building at its current location, or relocated to another Gateway location is preferable;” and

WHEREAS, the Agency will not engage in or authorize the deconstruction of the segments of Buildings 804, 805, 806, 807, 808 until such time that it has been determined that adaptive reuse is not feasible based upon a site development plan approved by the Agency Board and until such time that construction permits are issued to commence development of the site as approved; Now, therefore, be it

RESOLVED: That the Agency Administrator is authorized to enter into Supplemental Agreement 1-B to establish the administrative framework to implement Measure 4.6-9 relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the “EIR; and be it

FURTHER RESOLVED: That the material terms of Supplemental Agreement 1-B will be consistent with the draft attached as Exhibit A hereto; and be it

FURTHER RESOLVED: That deconstruction of portions of warehouses located on Agency property within the Historic District of the former Oakland Army Base shall not take place until the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan and a determination made that it is not feasible to reuse portions of Buildings 804, 805, 806, 807, and 808, and no deconstruction shall commence until construction permits are issued for the development of the site as approved; and be it

FURTHER RESOLVED: That the Redevelopment Agency, acting as a Responsible Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the Agency confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have not been met. Specifically, and without limitation, the Agency finds and determines that the

project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the July 8, 2008 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to Supplemental Agreement I-B consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES – BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
CHAIRPERSON DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

Exhibit A: Supplemental Agreement No.1-B

SUPPLEMENTAL AGREEMENT NO: 1-B

TO THE

MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

(CITY-PORT MOA)

RELATING TO SECTION 6.5 OF THE CITY-PORT MOA

WITH RESPECT TO FINANCIAL CONTRIBUTION FOR JOINT

MITIGATION MEASURES (DECONSTRUCTION) AND

RELATED TO THE DECONSTRUCTION OF SHARED HISTORIC BUILDINGS

AMONG

THE OAKLAND REDEVELOPMENT AGENCY,

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

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

DATED: _____, 2008

SUPPLEMENTAL AGREEMENT NO. 1-B TO
MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

This **SUPPLEMENTAL AGREEMENT 1-B TO THE MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**, dated _____, 2008 ("Supplemental Agreement 1-B") is entered into by and among the City of Oakland Redevelopment Agency, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("ORA"), the City of Oakland, a municipal corporation, acting by and through its City Council (the "City Council") (ORA and the City Council are collectively referred to as the "City") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port"). Each of the City and the Port is a "Party".

WHEREAS, this Supplemental Agreement 1-B is intended to supplement Section 6.5 of the Memorandum of Agreement for Oakland Army Base dated July 8, 2003 (the "City-Port MOA"), as restated and amended on July 30, 2007 relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the "EIR").

WHEREAS, under the terms of Mitigation Measure 4.6-9 in the Mitigation Monitoring and Reporting Program of the EIR (the "MMRP"), the City and the Port (each acting as itself and as "sub-district developer") have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed," and, "[t]o the extent feasible," to use these materials "in whole, on site," or, "[i]f on-site reuse is found infeasible, opportunities shall be sought for reuse of these materials in other East Bay Area construction, or be sold into the recycled construction materials market." The mitigation measure further stipulates that, "[s]alvage operations shall employ members of local job-training bridge programs; and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the "Shared Buildings") are located partially on City property and partially on Port property, the City and Port agree that it is appropriate to share the costs of the Deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in this Supplemental Agreement 1-B; and

WHEREAS, on June 2, 2006, the Parties executed the "Letter Agreement Regarding the Sharing of Certain Costs for the Oakland Army Base Historic District Architectural Salvage, Reuse and Document Assessment," (the "Letter Agreement") and, on August 7, 2006, executed Supplemental Agreement No. 1-A To The Memorandum of Agreement for Oakland Army Based Relating to Section 6.5 of the City-Port MOA (Supplemental Agreement 1-A), in order to meet the timelines of the redevelopment of the former Oakland Army Base, and to evenly split the cost for implementation of certain

cultural resources mitigation measures, including Mitigation Measure 4.6-9 of the EIR; and

WHEREAS, the Parties acknowledge that this Supplemental Agreement 1-B is entered into in furtherance of the Parties' obligations under Section 6.5 of the City-Port MOA related to the Parties' financial contributions for Cultural Resources Mitigation Measures and to specifically further define the Parties' obligations with respect to the deconstruction and the concurrent demolition of the Shared Buildings.

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

1. **Definitions.** Unless otherwise defined in this Supplemental Agreement 1-B, the capitalized terms in this Supplemental Agreement 1-B will have the meaning given such terms in the City-Port MOA.
2. **Shared Costs**
 - 2.1. The City and the Port (each a "Party") shall share the costs of the Deconstruction of the Shared Buildings, which shall include the salvaging as whole timber posts, beams, trusses and siding of the Shared Buildings and other actions required as part of Mitigation Measure 4.6-9 of the MMRP (including employing members of the local job-training bridge programs) (the "Deconstruction") and costs of the concurrent demolition of the remaining portions of the Shared Buildings, which demolition shall include the taking down of those portions of the Shared Buildings that are not deconstructed, clearing and hauling away of the materials and debris for proper disposal and documentation (the "Demolition"). Neither Deconstruction nor Demolition shall include any environmental remediation of property, for which the Parties' responsibilities and allocation of costs are set forth in Section 5 of the City-Port MOA, or the removal of the slabs, footings or flooring of the shared building, underground remediation, dewatering for construction purposes or the removal or treatment of hazardous materials (the "Excluded Items"). The costs of both the Deconstruction and Demolition of any or all of the Shared Buildings are referred to herein as the "Shared Costs."
 - 2.2. "Shared Costs" shall include (a) the reasonable out-of-pocket transaction costs incurred by any Party for the study, design, implementation of the Deconstruction and Demolition (excluding in the case of each Party (i) its own costs and expenses for staff and internal overhead and (ii) both in-house and outside legal counsel), (b) survey, environmental, insurance and consulting costs associated with the design, implementation or carrying out of the Deconstruction and Demolition, (c) costs of Deconstruction and Demolition, including any payments to third-party contractors or local job-training bridge program for the performance of the Deconstruction and Demolition. The terms and conditions of this Supplemental Agreement 1-B shall apply to any Shared Costs expended by either Party prior to the execution of this Supplemental Agreement No.1-B, as

long as all conditions set forth in this Section 2 shall have been met relating to such Shared Costs.

2.3. For each Shared Building, each Party shall pay a percentage share of any Shared Costs in proportion to the percentage of the square footage of each of the Shared Buildings on each respective Party's property. For the purposes of this Supplemental Agreement 1-B, the Parties agree that the square footage and percentage share of the Shared Costs for each Shared Building are as follows:

<u>Building #</u>	<u>Total Square Footage</u>	<u>Square Footage on Port Property</u>	<u>Port Percentage of Shared Costs</u>	<u>Square Footage on Agency Property</u>	<u>City Percentage of Shared Costs</u>
804	237,983	210,194	88.32	27,789	11.68
805	239,170	181,273	75.79	57,897	24.21
806	237,760	185,614	78.07	52,146	21.93
807	237,752	114,285	48.11	123,287	51.89
808	238,518	69,398	29.10	169,120	70.90
Total	1,191,003	760,764	63.88	430,239	36.12

2.4. The aggregated or total of Shared Costs for all Shared Buildings shall not exceed a maximum of Four Million Eighty Eight Thousand Seven Hundred Dollars (\$4,088,700) based on (\$3.50/s.f.) (the "Maximum Shared Costs"). If, at any time, the total Shared Costs is estimated by either Party to exceed the Maximum Shared Costs, the total Shared Costs may be increased by mutual written agreement of the City and the Port.

3. Initiation and Implementation of Deconstruction and Demolition

3.1. Upon the execution of this Supplemental Agreement 1-B, either the Port or the City may initiate the implementation of the Deconstruction and Demolition of any of the Shared Buildings (the "Initiating Party") by first submitting an implementation plan and agreement (an "Implementation Agreement") to the other Party (the "Other Party") for agreement by the Other Party in writing relating to the Shared Building or Shared Buildings on which the Initiating Party intends to initiate the Deconstruction and Demolition. The Implementation Agreement shall include, but not limited to:

- 3.1.1. a scope of work, including any pre-demolition hazardous material survey (the costs of such survey shall be part of the Shared Costs),
- 3.1.2. submittals from and regarding any third-party consultant or contractor as required in subsection 3.3 (including description of any bidding procedure or requirements),
- 3.1.3. estimated budget based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,

- 3.1.4. estimated time for completion (including any phasing of the Deconstruction and Demolition) based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,
 - 3.1.5. insurance and indemnity provisions,
 - 3.1.6. construction mitigation and environmental compliance,
 - 3.1.7. any other information deemed relevant by agreement between the Parties.
 - 3.2. Notwithstanding any requirement in subsection 3.1 above, if the Other Party has not responded in writing within thirty (30) days of the date that the Initiating Party has submitted its Implementation Agreement to the Other Party, the Other Party's agreement to proceed is deemed granted and the Implementation Agreement is deemed effective as to and binding on both Parties, and the Initiating Party may proceed with the design and implementation of such Deconstruction and Demolition as set forth in the Implementation Agreement.
 - 3.3. Prior to the contracting or hiring of any third-party consultant or contractor by any Party for the purpose of the Deconstruction or Demolition, each Party will review and accept the scope and budget for any such third-party contract, provided however, each Party shall complete its review of the scope and budget within thirty (30) days from the date that the Initiating Party delivers to the Other Party in writing the scope and budget for review (which scope and budget may be submitted as part of the Implementation Agreement), and no Party may unreasonably withhold its acceptance of the scope and budget. If no objection is raised during the thirty (30) day review period, the scope and budget shall be deemed accepted by the Parties and the Initiating Party may proceed with the hiring of the third party consultant or contractor. If any party finds the scope and budget unacceptable, the objecting Party shall specify its objection within the thirty (30) day review period and the Parties shall negotiate a resolution to the objection, provided however, that the objecting Party shall alone bear any costs incurred as a result of the objection being raised (including, but not limited to, costs of engineering, survey or attorney services or costs due to delay of Deconstruction or Demolition).
 - 3.4. The Initiating Party may initially pay the cost of any Deconstruction and Demolition it initiated and implemented pursuant to any Implementation Agreement. The Initiating Party shall invoice the Other Party for reimbursement of the Other Party's percentage share of the Shared Costs, but in any event, no later than forty-five (45) days after the payment of such Shared Costs by the Initiating Party or forty-five (45) days after the Completion of the Deconstruction and Demolition, whichever is later. The Other Party shall reimburse the Initiating Party for its share of the Shared Cost within forty-five (45) days from the date of the invoice from the Initiating Party.
4. **Indemnification.** The City shall indemnify and hold harmless the Port and its directors, officers, agents and employees from and against any and all actions, causes

of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the City of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP. The Port shall indemnify and hold harmless the City and its directors, officers, agents and employees from and against any and all actions, causes of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the Port of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP.

5. Termination

- 5.1. Either Party may terminate this Supplemental Agreement 1-B by giving the other Party thirty (30) days' prior written notice.
- 5.2. If, following fifteen (15) days' prior written notice, either Party shall fail to cure or commence cure of any failure on its part to perform its respective obligations hereunder, then the non-defaulting Party may terminate this Supplemental Agreement 1-B immediately on giving notice of its election to so terminate.
- 5.3. Notwithstanding any provision of this Section 5, any obligation of any Party to pay, reimburse or indemnify the other Party pursuant to subsection 3.4 and Section 4, or any obligation of any Party under any Implementation Plan agreed to by the Parties shall survive the termination of this Supplemental Agreement 1-B.

6. Miscellaneous

- 6.1. This Supplemental Agreement 1-B shall constitute satisfaction of the Parties' obligation under Section 6.5 of the City-Port MOA to reach agreement on financial contributions from the City and the Port for fair share funding of Mitigation Measure 4.6-9 of the MMRP.
- 6.2. In every circumstance in this Supplemental Agreement 1-B where approval, consent or mutual written agreement is required of one or both Parties, the Parties agree to work cooperatively to arrive at said agreement, and no Party may withhold its approval or consent unreasonably.
- 6.3. This Supplemental Agreement supersedes any conflicting provision or agreement between the Parties respecting the fair share funding and implementation of Mitigation Measure 4.6-9 of the MMRP, including any contradictory or conflicting provisions of the Letter Agreement or Supplemental Agreement 1-A.

IN WITNESS WHEREOF, this Supplemental Agreement No.1-B has been duly executed by each of the Parties as of the first date stated above.

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

Dated: _____

By: _____
Deborah A. Edgerly
City Administrator

OAKLAND REDEVELOPMENT AGENCY

Dated: _____

By: _____
Deborah A. Edgerly
Agency Administrator

Dated: _____

Approved as to form and legality for the City:

Name:
Title:

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

Dated: _____

By: _____
Omar R. Benjamin
Executive Director

Dated: _____

Approved as to form and legality for the Port:

Name:
Title:

Resolution No.: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 JUN 26 PM 8:23

Approved as to Form and Legality:

D. Miller
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE SUPPLEMENTAL AGREEMENT NO. 1-B, WHICH SUPPLEMENTS SECTION 6.5 OF THE MEMORANDUM OF AGREEMENT AMONG THE CITY OF OAKLAND, THE OAKLAND REDEVELOPMENT AGENCY AND THE PORT OF OAKLAND RELATING TO THE FAIR SHARE BASIS COST AGREEMENT FOR THE DECONSTRUCTION OF BUILDINGS 804, 805, 806, 807 AND 808 WITHIN THE EAST GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE

WHEREAS, Supplemental Agreement 1-B is intended to supplement Section 6.5 of the Memorandum of Agreement for Oakland Army Base dated July 8, 2003 (the "City-Port MOA"), as restated and amended on July 30, 2007, relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the "EIR"); and

WHEREAS, under the terms of the EIR and the Mitigation Monitoring and Reporting Program (MMRP) Measure 4.6-9, the City and the Port (each acting as itself and as "sub-district developer") have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed;" and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the "Shared Buildings") are located partially on Agency property and partially on Port property, the City and Port agree that it is appropriate to share the costs of the Deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in Supplemental Agreement 1-B; and

WHEREAS, on June 2, 2006, the Parties executed the "Letter Agreement Regarding the Sharing of Certain Costs for the Oakland Army Base Historic District Architectural Salvage, Reuse and Document Assessment," (the "Letter Agreement") and, on August 7, 2006, executed Supplemental Agreement No. 1-A To The Memorandum of Agreement for

Oakland Army Based Relating to Section 6.5 of the City-Port MOA (Supplemental Agreement 1-A), in order to meet the timelines of the redevelopment of the former Oakland Army Base, and to proportionally split the cost for implementation of certain cultural resources mitigation measures, including Mitigation Measure 4.6-9; and

WHEREAS, the Parties acknowledge that Supplemental Agreement 1-B is entered into in furtherance of the Parties' obligations under Section 6.5 of the City-Port MOA related to the Parties' financial contributions for Cultural Resources Mitigation Measures and to specifically further define the Parties' obligations with respect to the deconstruction and the concurrent demolition of the Shared Buildings; and

WHEREAS, the Parties also acknowledge that Measure 4.6-14 of the MMRP states that "the City, Port and OARB sub-district developers shall fund on a fair share basis a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed. These materials shall be used on site if deconstruction is the only option. Reuse of a warehouse building or part of a warehouse building at its current location, or relocated to another Gateway location is preferable;" and

WHEREAS, the City will not engage in or authorize the deconstruction of the segments of Buildings 804, 805, 806, 807, 808 until such time that it has been determined that adaptive reuse is not feasible based upon a site development plan approved by the Agency Board and until such time that construction permits are issued to commence development of the site as approved; Now, therefore, be it

RESOLVED: That the City Administrator is authorized to enter into Supplemental Agreement 1-B to establish the administrative framework to implement Measure 4.6-9 relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the EIR; and be it

FURTHER RESOLVED: That the material terms of Supplemental Agreement 1-B will be consistent with the draft attached as Exhibit A hereto; and be it

FURTHER RESOLVED: That deconstruction of portions of warehouses located on Agency property within the Historic District of the former Oakland Army Base shall not take place until the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan and a determination that it is not feasible to reuse portions of Buildings 804, 805, 806, 807, and 808, and no deconstruction shall commence until construction permits are issued for the development of the site as approved; and be it

FURTHER RESOLVED: That the City Council, acting as the Lead Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the City Council confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have **not** been met. Specifically, and without limitation, the City Council finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more

severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the accompanying July 8, 2008 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project and be it

FURTHER RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to Supplemental Agreement 1-B consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A: Supplemental Agreement No.1-B

SUPPLEMENTAL AGREEMENT NO. 1-B

TO THE

MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

(CITY-PORT MOA)

RELATING TO SECTION 6.5 OF THE CITY-PORT MOA

WITH RESPECT TO FINANCIAL CONTRIBUTION FOR JOINT

MITIGATION MEASURES (DECONSTRUCTION) AND

RELATED TO THE DECONSTRUCTION OF SHARED HISTORIC BUILDINGS

AMONG

THE OAKLAND REDEVELOPMENT AGENCY,

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

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

DATED: _____, 2008

SUPPLEMENTAL AGREEMENT NO. 1-B TO

MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE

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WHEREAS, this Supplemental Agreement 1-B is intended to supplement Section 6.5 of the Memorandum of Agreement for Oakland Army Base dated July 8, 2003 (the "City-Port MOA"), as restated and amended on July 30, 2007 relating to the financial contributions required from the City and the Port for joint mitigation measures committed to under the Oakland Army Base Area Redevelopment Plan Environmental Impact Report certified by the City Planning Commission on July 31, 2002 (the "EIR").

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cultural resources mitigation measures, including Mitigation Measure 4.6-9 of the EIR; and

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1. **Definitions**. Unless otherwise defined in this Supplemental Agreement 1-B, the capitalized terms in this Supplemental Agreement 1-B will have the meaning given such terms in the City-Port MOA.
2. **Shared Costs**
 - 2.1. The City and the Port (each a "Party") shall share the costs of the Deconstruction of the Shared Buildings, which shall include the salvaging as whole timber posts, beams, trusses and siding of the Shared Buildings and other actions required as part of Mitigation Measure 4.6-9 of the MMRP (including employing members of the local job-training bridge programs) (the "Deconstruction") and costs of the concurrent demolition of the remaining portions of the Shared Buildings, which demolition shall include the taking down of those portions of the Shared Buildings that are not deconstructed, clearing and hauling away of the materials and debris for proper disposal and documentation (the "Demolition"). Neither Deconstruction nor Demolition shall include any environmental remediation of property, for which the Parties' responsibilities and allocation of costs are set forth in Section 5 of the City-Port MOA, or the removal of the slabs, footings or flooring of the shared building, underground remediation, dewatering for construction purposes or the removal or treatment of hazardous materials (the "Excluded Items"). The costs of both the Deconstruction and Demolition of any or all of the Shared Buildings are referred to herein as the "Shared Costs."
 - 2.2. "Shared Costs" shall include (a) the reasonable out-of-pocket transaction costs incurred by any Party for the study, design, implementation of the Deconstruction and Demolition (excluding in the case of each Party (i) its own costs and expenses for staff and internal overhead and (ii) both in-house and outside legal counsel), (b) survey, environmental, insurance and consulting costs associated with the design, implementation or carrying out of the Deconstruction and Demolition, (c) costs of Deconstruction and Demolition, including any payments to third-party contractors or local job-training bridge program for the performance of the Deconstruction and Demolition. The terms and conditions of this Supplemental Agreement 1-B shall apply to any Shared Costs expended by either Party prior to the execution of this Supplemental Agreement No.1-B, as

long as all conditions set forth in this Section 2 shall have been met relating to such Shared Costs.

- 2.3. For each Shared Building, each Party shall pay a percentage share of any Shared Costs in proportion to the percentage of the square footage of each of the Shared Buildings on each respective Party's property. For the purposes of this Supplemental Agreement 1-B, the Parties agree that the square footage and percentage share of the Shared Costs for each Shared Building are as follows:

<u>Building #</u>	<u>Total Square Footage</u>	<u>Square Footage on Port Property</u>	<u>Port Percentage of Shared Costs</u>	<u>Square Footage on Agency Property</u>	<u>City Percentage of Shared Costs</u>
804	237,983	210,194	88.32	27,789	11.68
805	239,170	181,273	75.79	57,897	24.21
806	237,760	185,614	78.07	52,146	21.93
807	237,752	114,285	48.11	123,287	51.89
808	238,518	69,398	29.10	169,120	70.90
Total	1,191,003	760,764	63.88	430,239	36.12

- 2.4. The aggregated or total of Shared Costs for all Shared Buildings shall not exceed a maximum of Four Million Eighty Eight Thousand Seven Hundred Dollars (\$4,088,700) based on (\$3.50/s.f.) (the "Maximum Shared Costs"). If, at any time, the total Shared Costs is estimated by either Party to exceed the Maximum Shared Costs, the total Shared Costs may be increased by mutual written agreement of the City and the Port.

3. Initiation and Implementation of Deconstruction and Demolition

- 3.1. Upon the execution of this Supplemental Agreement 1-B, either the Port or the City may initiate the implementation of the Deconstruction and Demolition of any of the Shared Buildings (the "Initiating Party") by first submitting an implementation plan and agreement (an "Implementation Agreement") to the other Party (the "Other Party") for agreement by the Other Party in writing relating to the Shared Building or Shared Buildings on which the Initiating Party intends to initiate the Deconstruction and Demolition. The Implementation Agreement shall include, but not limited to:

- 3.1.1. a scope of work, including any pre-demolition hazardous material survey (the costs of such survey shall be part of the Shared Costs),
- 3.1.2. submittals from and regarding any third-party consultant or contractor as required in subsection 3.3 (including description of any bidding procedure or requirements),
- 3.1.3. estimated budget based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,

- 3.1.4. estimated time for completion (including any phasing of the Deconstruction and Demolition) based on the scope of work identified in the Implementation Agreement for the Deconstruction and Demolition of the particular Shared Building or Shared Buildings,
 - 3.1.5. insurance and indemnity provisions,
 - 3.1.6. construction mitigation and environmental compliance,
 - 3.1.7. any other information deemed relevant by agreement between the Parties.
 - 3.2. Notwithstanding any requirement in subsection 3.1 above, if the Other Party has not responded in writing within thirty (30) days of the date that the Initiating Party has submitted its Implementation Agreement to the Other Party, the Other Party's agreement to proceed is deemed granted and the Implementation Agreement is deemed effective as to and binding on both Parties, and the Initiating Party may proceed with the design and implementation of such Deconstruction and Demolition as set forth in the Implementation Agreement.
 - 3.3. Prior to the contracting or hiring of any third-party consultant or contractor by any Party for the purpose of the Deconstruction or Demolition, each Party will review and accept the scope and budget for any such third-party contract, provided however, each Party shall complete its review of the scope and budget within thirty (30) days from the date that the Initiating Party delivers to the Other Party in writing the scope and budget for review (which scope and budget may be submitted as part of the Implementation Agreement), and no Party may unreasonably withhold its acceptance of the scope and budget. If no objection is raised during the thirty (30) day review period, the scope and budget shall be deemed accepted by the Parties and the Initiating Party may proceed with the hiring of the third party consultant or contractor. If any party finds the scope and budget unacceptable, the objecting Party shall specify its objection within the thirty (30) day review period and the Parties shall negotiate a resolution to the objection, provided however, that the objecting Party shall alone bear any costs incurred as a result of the objection being raised (including, but not limited to, costs of engineering, survey or attorney services or costs due to delay of Deconstruction or Demolition).
 - 3.4. The Initiating Party may initially pay the cost of any Deconstruction and Demolition it initiated and implemented pursuant to any Implementation Agreement. The Initiating Party shall invoice the Other Party for reimbursement of the Other Party's percentage share of the Shared Costs, but in any event, no later than forty-five (45) days after the payment of such Shared Costs by the Initiating Party or forty-five (45) days after the Completion of the Deconstruction and Demolition, whichever is later. The Other Party shall reimburse the Initiating Party for its share of the Shared Cost within forty-five (45) days from the date of the invoice from the Initiating Party.
4. **Indemnification.** The City shall indemnify and hold harmless the Port and its directors, officers, agents and employees from and against any and all actions, causes

of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the City of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP. The Port shall indemnify and hold harmless the City and its directors, officers, agents and employees from and against any and all actions, causes of action, claims, costs, damages, demands, expenses (including reasonable attorney fees), liabilities and losses that arise from or relate to the performance, observance, compliance, nonperformance, non-observance or non-compliance by the Port of its obligations or legal duty under this Supplemental Agreement 1-B, to comply with the California Environmental Quality Act or pursuant to any provision of the MMRP.

5. Termination

- 5.1. Either Party may terminate this Supplemental Agreement 1-B by giving the other Party thirty (30) days' prior written notice.
- 5.2. If, following fifteen (15) days' prior written notice, either Party shall fail to cure or commence cure of any failure on its part to perform its respective obligations hereunder, then the non-defaulting Party may terminate this Supplemental Agreement 1-B immediately on giving notice of its election to so terminate.
- 5.3. Notwithstanding any provision of this Section 5, any obligation of any Party to pay, reimburse or indemnify the other Party pursuant to subsection 3.4 and Section 4, or any obligation of any Party under any Implementation Plan agreed to by the Parties shall survive the termination of this Supplemental Agreement 1-B.

6. Miscellaneous

- 6.1. This Supplemental Agreement 1-B shall constitute satisfaction of the Parties' obligation under Section 6.5 of the City-Port MOA to reach agreement on financial contributions from the City and the Port for fair share funding of Mitigation Measure 4.6-9 of the MMRP.
- 6.2. In every circumstance in this Supplemental Agreement 1-B where approval, consent or mutual written agreement is required of one or both Parties, the Parties agree to work cooperatively to arrive at said agreement, and no Party may withhold its approval or consent unreasonably.
- 6.3. This Supplemental Agreement supersedes any conflicting provision or agreement between the Parties respecting the fair share funding and implementation of Mitigation Measure 4.6-9 of the MMRP, including any contradictory or conflicting provisions of the Letter Agreement or Supplemental Agreement 1-A.

IN WITNESS WHEREOF, this Supplemental Agreement No.1-B has been duly executed by each of the Parties as of the first date stated above.

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

Dated: _____

By: _____
Deborah A. Edgerly
City Administrator

OAKLAND REDEVELOPMENT AGENCY

Dated: _____

By: _____
Deborah A. Edgerly
Agency Administrator

Dated: _____

Approved as to form and legality for the City:

Name:
Title:

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

Dated: _____

By: _____
Omar R. Benjamin
Executive Director

Dated: _____

Approved as to form and legality for the Port:

Name:
Title:

Resolution No.: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JUN 26 PM 8:23

Approved as to Form and Legality:

A. Hallner

ORA Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION CONTRIBUTING AN AMOUNT NOT-TO-EXCEED \$1,505,838 FROM THE OBRA OPERATIONS FUND (9570), WEST OAKLAND BASE REUSE ORGANIZATION (88679), BAYBRIDGE GATEWAY PROJECT (S235323), MISCELLANEOUS CONTRACT SERVICES ACCOUNT (54919) TO THE CITY OF OAKLAND FOR THE CITY'S FAIR SHARE COST OF DECONSTRUCTING BUILDINGS 804, 805, 806, 807 AND 808 WITHIN THE EAST GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE

WHEREAS, the Agency and the Port of Oakland each owns and plans to redevelop portions of the former Oakland Army Base ("Base"); and

WHEREAS, under the terms of the Oakland Army Base Redevelopment Area Environmental Impact Report and the Mitigation Monitoring and Reporting Program (MMRP) Measure 4.6-9, the City and the Port (each acting as itself and as "sub-district developer") have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed on the Base in anticipation of the Base's redevelopment;" and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the "Shared Buildings") are located partially on Agency property and partially on Port property, the City, Agency and Port (the "Parties") agree that it is appropriate to share the costs of the deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in a proposed agreement to be executed by the Parties ("Supplemental Agreement 1-B"); and

WHEREAS, the Agency will not engage in or authorize the deconstruction of the segments of Buildings 804, 805, 806, 807, 808 until such time that it has been determined that adaptive reuse is not feasible based upon a site development plan approved by the Agency Board and until such time that construction permits are issued to commence development of the site as approved; and

WHEREAS, the City and the Agency entered into a Cooperation Agreement on July 1, 2004, which generally governs the provision of assistance and the payment of funds between the two agencies, including Agency financial contributions and other assistance to support City public improvements; Now, therefore, be it

RESOLVED: That deconstruction of portions of warehouses located on Agency property within the Historic District of the former Oakland Army Base shall not take place until the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan and a determination that it is not feasible to reuse portions of Buildings 804, 805, 806, 807, and 808, and until construction permits are issued to commence development of the site as approved; and be it

FURTHER RESOLVED: That the City Council hereby accepts a contribution of Redevelopment Agency Funds under the Cooperation Agreement in an amount Not-To-Exceed \$1,505,838 to cover the costs of the City's fair share of the Shared Buildings' deconstruction costs, and appropriates such funds to the City's Redevelopment Agency Fund (7780), West Oakland Base Reuse Org (88679), Miscellaneous Contract Services Account (54919), OBRA Bay Bridge Gateway Project P235310 or to a new Project fund that the City creates for the deconstruction of the Shared Buildings; and be it further

FURTHER RESOLVED: That the City Council, acting as the Lead Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the City Council confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have not been met. Specifically, and without limitation, the City Council finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the accompanying July 8, 2008 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project and be it

FURTHER RESOLVED: That the City Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with the respect to the allocation and contribution of Agency funds consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
CHAIRPERSON DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 JUN 26 PM 8:23

Approved as to Form and Legality:


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A CITY RESOLUTION ACCEPTING AND APPROPRIATING A CONTRIBUTION OF REDEVELOPMENT AGENCY FUNDS UNDER THE COOPERATION AGREEMENT IN AN AMOUNT NOT-TO-EXCEED \$1,505,838 TO FUND THE CITY'S FAIR SHARE COST OF DECONSTRUCTING BUILDINGS 804, 805, 806, 807 AND 808 WITHIN THE EAST GATEWAY DEVELOPMENT AREA OF THE FORMER OAKLAND ARMY BASE

WHEREAS, the Agency and the Port of Oakland each owns and plans to redevelop portions of the former Oakland Army Base ("Base"); and

WHEREAS, under the terms of the Oakland Army Base Redevelopment Area Environmental Impact Report and the Mitigation Monitoring and Reporting Program (MMRP) Measure 4.6-9, the City and the Port (each acting as itself and as "sub-district developer") have committed to share the costs on a "fair-share basis" of "a program to salvage as whole timber posts, beams, trusses and siding of warehouses to be deconstructed on the Base in anticipation of the Base's redevelopment;" and

WHEREAS, because certain of the historic warehouses referred to in Mitigation Measure 4.6-9 as Buildings 804, 805, 806, 807 and 808 (the "Shared Buildings") are located partially on Agency property and partially on Port property, the City, Agency and Port (the "Parties") agree that it is appropriate to share the costs of the deconstruction of the Shared Buildings and concurrent demolition of the Shared Buildings on a fair-share basis as set forth in a proposed agreement to be executed by the Parties ("Supplemental Agreement 1-B"); and

WHEREAS, the City will not engage in or authorize the deconstruction of the segments of Buildings 804, 805, 806, 807, 808 until such time that it has been determined that adaptive reuse is not feasible based upon a site development plan approved by the Agency Board and until such time that construction permits are issued to commence development of the site as approved; and

WHEREAS, the City and the Agency entered into a Cooperation Agreement on July 1, 2004, which generally governs the provision of assistance and the payment of funds between the two agencies, including Agency financial contributions and other assistance to support City public improvements; Now, therefore, be it

RESOLVED: That deconstruction of portions of warehouses located on Agency property within the Historic District of the former Oakland Army Base shall not take place until the Agency Board approves a Lease Disposition and Development Agreement and a Ground Lease with a detailed site development plan and a determination that it is not feasible to reuse portions of Buildings 804, 805, 806, 807, and 808, and until construction permits are issued to commence development of the site as approved; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to contribute Redevelopment Agency Funds under the Cooperation Agreement in an amount Not-To-Exceed \$1,505,838 to pay the City's anticipated share of deconstruction costs of the Shared Buildings under Supplemental Agreement 1-B from OBRA Operations Fund (9570), West Oakland Base Reuse Organization (88679), BayBridge Gateway Project (S235323), Miscellaneous Contract Services Account (54919) to Redevelopment Agency Fund (7780), West Oakland Base Reuse Organization (88679), Miscellaneous Contract Services Account (54919), OBRA Bay Bridge Gateway Project (P235310) or to a new Project fund that the City creates for the Deconstruction of the Shared Buildings; and be it

FURTHER RESOLVED: That the Redevelopment Agency, acting as a Responsible Agency, has independently reviewed, analyzed, and considered the 2002 Army Base EIR, the 2006 Supplemental EIR and Addenda #1 prior to acting on the approvals. Based upon such independent review, analysis, and consideration, and exercising its independent judgment, the Agency confirms that the 2002 Army Base EIR and 2006 Supplemental EIR can be applied to this set of proposed actions and approves Addenda #1 to the Supplemental EIR because the criteria of CEQA Guidelines Section 15162 requiring additional environmental review have **not** been met. Specifically, and without limitation, the Agency finds and determines that the project would not result in any new or more severe significant impacts, there is no new information of substantial importance that would result in any new or more severe significant impacts, there are no substantial changes in circumstances that would result in any new or more severe significant impacts, and there is no feasible mitigation measure or alternative that is considerably different from others previously analyzed that has not been adopted, based upon the July 8, 2008 City Council Agenda Report, Addenda #1 and elsewhere in the record for this project; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

FURTHER RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to the acceptance and appropriation of Agency and City funds consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California