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OFFICE OF THE CITY CLERK  
OAKLAND

2008 OCT 16 PM 6:48

Approved as to form and legality:

By: *D. Miller*  
Agency Counsel

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. 2008 - 0095 C.M.S.

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### RESOLUTION AMENDING THE EXCLUSIVE NEGOTIATING AGREEMENT WITH OAKLAND MARITIME SUPPORT SERVICES FOR THE DEVELOPMENT OF 15 ACRES WITHIN THE FORMER OAKLAND ARMY BASE TO EXTEND THE TERM OF THE AGREEMENT FROM AUGUST 11, 2008 TO FEBRUARY 28, 2009

**WHEREAS**, the Redevelopment Agency of the City of Oakland (the "Agency") owns approximately 165 acres of real property located in the "Gateway Development Area" (GDA) within the former Oakland Army Base; and

**WHEREAS**, the Oakland Army Base Redevelopment Plan EIR requires the Agency and the Port of Oakland to jointly implement two mitigation measures to reduce the impacts of trucking on West Oakland; and

**WHEREAS**, the Bay Conservation and Development Commission (BCDC) requires, as part of the 2006 land conveyance from the Oakland Army Reuse Authority to the Agency and the Port of Oakland, 15-acre set-asides by both entities for Ancillary Maritime Support Services (AMS); and

**WHEREAS**, on June 22, 2007, staff issued a Request for Proposals (RFP) for the development of an AMS facility within a 15-acre portion of the East Gateway Development Area specifically focused on trucking and truck-related activities, such as parking, trans-load facilities, offices and services targeting the local trucking sector; and

**WHEREAS**, staff received seven proposals and subsequently conducted a thorough review and interview process that included five finalists; and

**WHEREAS**, the proposal from Oakland Maritime Support Services (OMSS) was for the development of a 15-acre multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, and other services catering to trucking employees and businesses; and

**WHEREAS**, staff determined through the review and interview process that among the five finalists, OMSS's proposal was the most responsive to the RFP; and

**WHEREAS**, on November 6, 2007, the Agency approved Resolution Number 2007-0076, authorizing an Exclusive Negotiating Agreement (ENA) with OMSS for a term of 180 days to negotiate the financial terms, utilities, preservation or deconstruction of existing warehouses in the East Gateway, and other site preparation issues in the development of the proposed project; and

**WHEREAS**, the six-month ENA term expired August 11, 2008; and

**WHEREAS**, the Agency wishes to extend the term of the existing ENA from August 11, 2008 to February 28, 2009, to allow the Agency and OMSS to complete the negotiations; now therefore be it

**RESOLVED:** That the Redevelopment Agency hereby authorizes the Agency Administrator to execute an amendment to the ENA in a substantially similar form to the amendment attached hereto (Exhibit A) and that will extend the term of the ENA from August 11, 2008 to February 28, 2009; and be it

**FURTHER RESOLVED:** That the Agency hereby authorizes the Agency Administrator or his designee to take all actions necessary to carry out this resolution and its basic purposes; and be it

**FURTHER RESOLVED:** That all documents shall be reviewed and approved by the Office of the City Attorney as to form and legality prior to execution.

NOV 3 2008

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

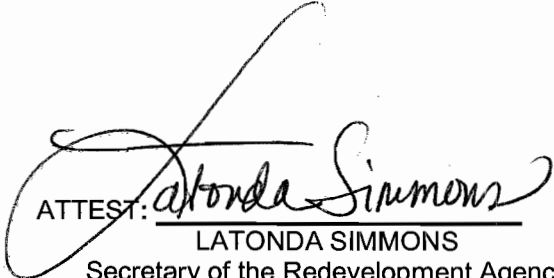
AYES – BROOKS, ~~BRUNNER~~, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND CHAIRPERSON DE LA FUENTE – 7

NOES – 0

ABSENT – 0

ABSTENTION – 0

Excused - Brunner - 1

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

## EXHIBIT A

### FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT Oakland Maritime Support Services

This First Amendment to the Exclusive Negotiating Agreement Between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services ("First Amendment") is made and entered into this 11<sup>th</sup> day of August 2008 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND MARITIME SUPPORT SERVICES, INC., a California corporation ("Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. 2008-\_\_\_\_ C.M.S, adopted on \_\_\_\_\_, 2008.

#### RECITALS

- A. In November 2007, the Parties entered into an Exclusive Negotiating Agreement (Agreement) to explore the possibility of developing 15 acres in the East Gateway area within the former Oakland Army Base for a multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, food and other services catering to trucking employees and businesses (the "Project"); and
- B. Under the Agreement, the period for negotiations between the Parties is 180 calendar days, which period expired on August 11, 2008; and
- C. The Parties wish to amend the Agreement to retroactively extend the period for negotiations from August 11, 2008 to February 28, 2009;

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Section 1.4 is hereby deleted in its entirety and replaced with the following:

Section 1.4 Length of Negotiation Period. Unless extended by written mutual agreement after formal approval of the Agency's Governing Body, the period for negotiations between the Parties under this Agreement shall, commence on the date of this Agreement and end on February 28, 2009 (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

2. Section 7.3 is hereby deleted in its entirety and replaced with the following:

7.3 Nonwaiver of Default

The failure of Agency to give notice of a default or to forbear and not enforce a default will not be construed as waiver of the right of Agency to enforce a similar default in the future.

3. Subsection 7.4(c) is hereby deleted in its entirety and replaced with the following:

Developer's remedy of specific performance will mean only that if Agency breaches its duty of negotiating in good faith or negotiating exclusively with Developer that Developer may seek an appropriate order requiring Agency to negotiate in good faith or to cease negotiating with a third party, which will allow Developer to have its full Negotiation Period of good faith, exclusive negotiations as provided for in this Agreement. The Negotiation Period for which a court may order negotiations will be calculated by subtracting any days that Agency negotiated exclusively and in good faith, but will not count any time that Agency was in breach and during which Developer seeks judicial recourse for the breach.

4. The Parties hereby agree that all other terms, conditions, and provisions of the Agreement remain unchanged and in full force.

5. The persons signing this Agreement on behalf of Developer affirm that they are authorized to execute on Developer's behalf.

[Signatures on following page]

IN WITNESS WHEREOF, this First Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services, Inc. has been executed by the Parties as of the date first written above.

**AGENCY:**

The REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: \_\_\_\_\_  
Dan Lindheim  
Agency Administrator

Approved as to form and legality:

By: \_\_\_\_\_  
Dianne Millner  
Agency Counsel

**DEVELOPER:**

OAKLAND MARITIME SUPPORT SERVICES, INC.,  
a California Corporation

By: \_\_\_\_\_  
William I. Aboudi  
President