

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 MAR 11 PM 6:29

TO: Office of the City/Agency Administrator  
ATTN: Dan Lindheim  
FROM: Community Economic Development Agency  
DATE: March 23, 2010

RE: **A Report Regarding the Army Base Environmental Remediation Program and:  
An Agency Resolution Requesting Authorization for the Agency Administrator to: 1) Execute Amendment 1 to the 2008 Amended and Restated Memorandum of Agreement between City of Oakland, Oakland Redevelopment Agency and Port of Oakland for Oakland Army Base Which Primarily Modifies the Manner in Which Reimbursements for Remediation Costs are Submitted to and Paid from Remediation Accounts, 2) Create a New Fund for the Army Base Joint Environmental Remediation Account, 3) Appropriate Five Million Seven Hundred Forty-One Thousand Four Hundred Seventy-Seven Dollars (\$5,741,477) from OBRA Leasing & Utility Fund (9575) Into the Army Base Joint Environmental Remediation Account Fund, 4) Accept Five Million Seven Hundred Forty-One Thousand Four Hundred Seventy-Seven Dollars (\$5,741,477) from the Port of Oakland for Deposit Into the Army Base Joint Environmental Remediation Account Fund; and 5) Appropriate and Expend up to Eleven Million Four Hundred Eighty-Two Thousand Nine Hundred Fifty-Four Dollars (\$11,482,954) of the Army Base Joint Environmental Remediation Account Fund for Army Base Environmental Remediation Program Activities; and  
A City Resolution Requesting Authorization for the City Administrator to Execute Amendment 1 to the 2008 Amended and Restated Memorandum of Agreement between City of Oakland, Oakland Redevelopment Agency and Port of Oakland for Oakland Army Base Which Primarily Modifies the Manner in Which Reimbursements for Remediation Costs are Submitted to and Paid from Remediation Accounts**

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**SUMMARY**

Staff recommends the City Council and the Oakland Redevelopment Agency Board ("Agency") authorize the City/Agency Administrator to: amend the 2008 Amended and Restated Memorandum of Agreement for Oakland Army Base ("ARMOA"), create the Army Base Joint Remediation Account Fund, appropriate \$5,741,477 from OBRA Leasing & Utility Reinvestment Fund (9575) into the Army Base Joint Environmental Remediation Fund, and accept, appropriate and expend for eligible Army Base Environmental Remediation actions up to \$11,482,954 of the Army Base Joint Environmental Remediation Fund monies for Army Base Environmental Remediation Program activities.

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Staff is recommending these actions in order to meet the obligations of the City of Oakland ("City") and the ARMOA, Economic Development Conveyance (EDC) Memorandum of Agreement, EDC Deed, Oakland Army Base Remedial Action Plan/Risk Management Plan (RAP/RMP), Oakland Army Base Consent Agreement and other former Oakland Army Base ("Army Base") agreements and to allow the continuation of the ongoing efforts to carry out Army Base environmental cleanup actions.

## **FISCAL IMPACT**

This attached resolution authorizes the transfer of approximately \$5,741,477 from the OBRA Leasing & Utility Reinvestment Fund (9575) into the Army Base Joint Environmental Remediation Fund (fund number to be determined).

In addition, this report authorizes the acceptance, appropriation and expenditure of approximately \$5,741,477 from the Port of Oakland. This Port of Oakland contribution will also be deposited into the Army Base Joint Environmental Remediation Account Fund over time, and represents the Port's 50% share of the Army Base Remediation Program.

Both the Port and the Agency will make their contributions in \$500,000 increments. Each and every time the Army Base Joint Environmental Remediation Fund balance is depleted to the \$250,000 level or below, the parties will deposit another \$500,000 each up to a total amount of \$11,482,954.

## **BACKGROUND**

In August 2006, the Agency acquired approximately 165 acres of the former Army Base and the Port acquired approximately 170 acres. In accepting the property, the Agency became legally obligated to complete the environmental remediation of the property; through the ARMOA, the Port became legally obligated to complete certain portions of the environmental remediation on property conveyed to the Port. The Army Base Environmental Remediation Program ("Remediation Program") consists of 187 sites (see Tables 2 & 3) on the Agency-owned and Port-owned portions of the Army Base.

As noted below, to date, the Environmental Remediation Program performed by both the Port and the Agency has expended approximately \$9.5 million on clean-up activities. Table 1 shows the total amount of time-sequenced funds potentially available to complete remediation work at the former Army Base.

<b>TABLE 1 – Fund Sources</b>		
Federal Funds	\$9,509,312	Expended
Agency & Port Funds	\$11,482,954	
Insurance Policy	\$30,000,000*	
<b>TOTAL</b>	<b>\$50,992,266</b>	

**\*IMPORTANT NOTE:** The Insurance Policy funds are available only until August 7, 2013 and only after the Agency and Port expends \$11,482,954 on eligible remediation projects. The total federal funds granted were \$13 million with the requirement that \$3,490,688 be used to purchase the Insurance Policy.

The 187 remediation sites fall into two basic categories, Remedial Action Plan (RAP) sites and Risk Management Plan (RMP) sites (see *Attachment A*).

The RAP sites are 7 identified chemical release areas that required remediation to protect human health and the environment. As locations that were already identified to require remediation, these sites were made a first priority in the remediation plan for the Army Base. An example of a completed RAP location is the former Building 1 area where a thick ooze of petroleum hydrocarbons from historical use of the site was removed from the property.

Because of their characteristics, the 180 RMP locations were generally projected to be addressed during redevelopment activities at the Army Base. An example of an RMP location would be an area where hazardous materials were stored and there are indications, such as staining, that the soil below the structure might have been impacted by the historical use. After demolition of the building, the exposed soil below the building would be investigated to evaluate the impact to the soil and determine the extent of remediation required, if any. Other RMP locations include sites where contamination has been detected, but the extent will be further defined when areas below structures are accessible.

<b>TABLE 2 2003 - Clean-up Sites</b>	<b># of Sites</b>	<b>Remediation Schedule</b>
RAP sites	7	Known Contamination Sites
RMP sites	180	Potential Remediation Sites

The Remediation Program has expended approximately \$9.5 million, reaching the end of the 1<sup>st</sup> source Federal of funds, to investigate or clean 109 remedial sites at the Army Base over the six year period 2003 to 2009. Table 3 provides a breakdown of the RAP and RMP sites that have been closed or are near closure. The closed sites have been investigated and cleaned, and the Agency and/or Port has received documentation from the state of California Department of Toxic Substance Control (“DTSC”) and/or the Regional Water Quality Control Board (“RWQCB”) verifying the site is closed and requires no further action. The near closure sites

have been investigated and cleaned if necessary, and are awaiting documentation from the DTSC and/or RWQCB for final closure.

<b>TABLE 3 2003-2009 Remediation</b>	<b># of Sites Cleaned-up</b>
RAP Sites Closed	4
RMP Sites Closed	15
RAP Sites near closure	3
RMP Sites near closure	87
Total Sites	109

Attached to this report is a table and figure listing and showing the 109 Army Base remediation sites that have been cleaned to date (*Attachments B & C*).

#### Environmental Remediation Program Goals (2010-2013)

The Remediation Program's goal is to complete remediation by August 7, 2013, of the remaining 78 remedial sites (187 total sites minus 109 sites cleaned up or near closure). This work is envisioned to occur in concert and coordination with AMB Property Corporation and California Capital Group (AMB/CCG) the selected Army Base developer. Attached to this report is a table and map listing the 78 sites to be cleaned (*Attachments D & E*). The August 7, 2013, completion date is important because the \$30 million Insurance Policy expires as of that date and the entire \$30 million in potential insurance funds available for clean-up under the Insurance Policy will become unavailable after that date.

In the future, staff will bring forward a report detailing a remediation plan, schedule and cost sharing agreement developed by Agency and Port staffs in coordination with AMB/CCG representatives.

## **KEY ISSUES AND IMPACTS**

### ARMOA Amendment & Fund Creation

The proposed ARMOA revisions are shown in the attached Amendment 1 to the ARMOA (*Attachment F*). The creation and appropriation of a new fund (i.e., the Joint Environmental Remediation Fund) is required to implement the ARMOA and continue the ongoing remediation efforts. To date, the Agency and Port have retained qualified contractors to undertake clean-up activities at the Army Base. The contractors have invoiced for the work and, for Agency contractors, the Agency has processed and paid the contractors through OBRA Environmental Remediation Fund (9576). The Agency in turn submits the invoices to the Army for reimbursement and to the insurance company which issued the Insurance Policy so they can be counted toward the \$20.9 million (the "Attachment Point") which must be spent out of the 1<sup>st</sup>

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and 2<sup>nd</sup> source of funds before the Insurance Policy funds are available. Once the Agency receives reimbursement from the Army, it places the funds in OBRA Environmental Remediation Fund (9576). The Port follows a similar internal payment process submitting its costs, with backup, to the Agency for forwarding to the Army for ESCA reimbursement.

Now that the approximate \$9.5 million in federal funds have been expended, the Army Base Environmental Remediation Program must now transition to the use of Agency and Port funds to pay for Army Base remediation activities. Once the Agency and Port funds (\$11,482,954) are expended, any additional eligible remediation costs will be funded through the Insurance Policy. To enable the transition from the use of federal funds to the use of Agency and Port funds, the ARMOA requires the parties (Agency and Port) to establish and fund the Army Base Joint Remediation Account Fund with each party depositing \$5,741,477 in funds into the Joint Remediation Account in \$500,000 increments, which are replenished when the account reaches \$250,000 or less. City of Oakland Finance and Management Agency staff has advised that a new fund, Joint Remediation Account Fund (9XXX), must be created.

Additionally, staff is requesting authorization to amend the ARMOA to revise certain provisions as follows:

- (a) Place a \$5 million cap on future reimbursement of remedial cover costs by each party ("remedial covers" are caps that are put over contaminated areas);
- (b) Revise the remediation costs standard to the "deemed reasonable" standard, as defined in the Insurance Policy, to qualify for Joint Environmental Remediation Fund submittal;
- (c) Require the party incurring the costs to cover any claimed remediation costs not ultimately covered by ESCA funds or qualified under the Insurance Policy; and
- (d) City and Port would submit their respective remediation costs independently to the insurance company rather than jointly.

The proposed Amendment 1 to the ARMOA does not change the fundamental existing responsibilities of the City/ Agency and the Port with respect to environmental clean-up. Previously, the Agency/City and Port have presented their environmental remediation costs to the insurance company in a combined report, and the Agency/City and the Port shared the responsibility for any costs determined not to be covered by the Insurance Policy. The proposed Amendment 1 to the ARMOA will allow each party to submit their reports to the insurance company separately, and provide that in limited circumstances, if costs incurred are neither ESCA reimburseable, nor insurance eligible, the party incurring them would pay them.

The principal purpose and effect of Amendment 1 to the ARMOA is to streamline the process whereby the Agency/City and the Port can pursue and implement their respective environmental obligations in a manner consistent with their obligations to each other, and the City/Agency obligations to the Army and state environmental agencies, as well as their reporting

obligations under the Insurance Policy. Staff from both the City of Oakland and the Port of Oakland have agreed upon the proposed terms of the amendment to the ARMOA.

## **PROGRAM DESCRIPTION**

The Remediation Program is a joint program between the Agency/City and Port to clean-up the Army Base in support of the redevelopment of the 363-acres of former Army Base property acquired by the Agency and Port.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** This report and its requested actions do not provide any specific sustainable economic opportunities. The Remediation Program promotes and includes sustainable opportunities as part of its ongoing remediation and contracting activities.

**Environmental:** This report and its requested actions do not provide any specific sustainable environmental opportunities.

**Social Equity:** This report and its requested actions do not provide any specific sustainable social equity opportunities.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The proposed project has no direct impact on access by seniors and people with disabilities.

## **RECOMMENDATIONS AND RATIONALE**

Staff recommends the Agency Board authorize the Agency Administrator to: execute Amendment 1 to the February 27, 2008 Amended and Restated Memorandum of Agreement for Oakland Army Base ("ARMOA"), create a new fund for the Army Base Joint Remediation Account, appropriate \$5,741,477 from OBRA Leasing & Utility Reinvestment Fund (9575) into the Army Base Joint Environmental Remediation Fund, and accept, appropriate and expend up to \$11,482,954 of the Army Base Joint Environmental Remediation Fund monies for Army Base Environmental Remediation Program activities. Staff's recommended actions will allow the continuation of the ongoing efforts of the Agency and the Port to carry out their respective responsibilities for the Army Base environmental cleanup in a manner consistent with the state environmental remediation requirements, the Insurance Policy requirements, and the Army Base MOA requirements and protocols.

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Staff recommends the City Council authorize the City Administrator to: execute Amendment 1 to the February 27, 2008 Amended and Restated Memorandum of Agreement for Oakland Army Base.

The Remediation Program goals and recommendations for the period 2010 to August 2013 will support and enhance the redevelopment of the property, limit the Agency/City and Port liability associated with the property and the property's redevelopment and increase the land value and the potential development opportunities for the property.

### **ALTERNATIVE RECOMMENDATIONS**

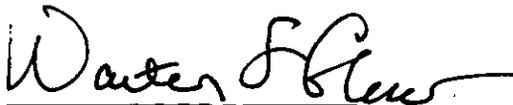
In the event the Agency and Council do not authorize staff to create the Army Base Joint Remediation Account and accept, appropriate and expend Army Base Joint Environmental Remediation funds for clean-up purposes, the Remediation Program would stop. The Remediation Program and clean-up stoppage would result in the Agency defaulting on the Army Base EDC Deed, Army Base Consent Agreement, RAP/RMP and ARMOA. This alternative event would also affect the Port of Oakland's ability to meet its obligations under the ARMOA to clean-up its portions of the Army Base.

Most likely the Army, DTSC, RWCQB and the Port of Oakland would take legal action against the Agency and City. Finally, the use of \$30 million in Insurance Policy funds would be jeopardized and the obligations to complete clean-up would remain, and the costs to do so would increase over time.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff is requesting that the City Council and Agency Board approve the attached resolutions.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

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

Prepared by:  
John Monetta, Program Analyst  
CEDA Real Estate

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



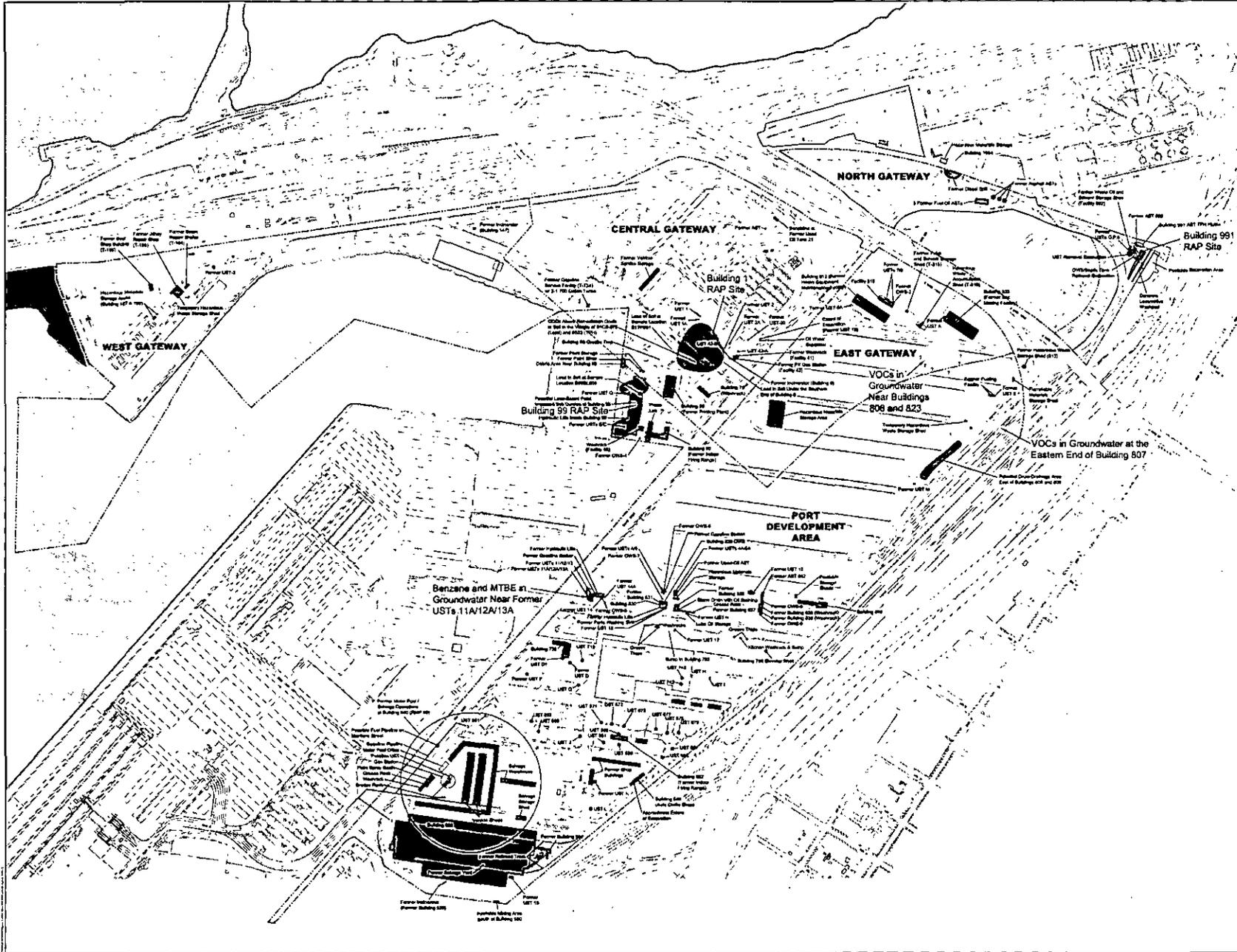
Office of the City/Agency Administrator

**ATTACHMENTS:**

- Attachment A – Figure 1 – Original RAP/RMP Map – September 2002
- Attachment B – Table of Cleaned Army Base Remediation Sites
- Attachment C - Figure 2 – Closed RAP/RMP Sites
- Attachment D - Table of Army Base Remediation Sites to be Cleaned
- Attachment E - Figure 3 - RMP Sites to be Cleaned – 2010 to 2013
- Attachment F – Amendment 1 to ARMOA

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ATTACHMENT A



N

0 100 200  
Approximate Scale in Feet

**EXPLANATION**

- Building or Area Addressed by Remedial Action Plan ("RAP" Sites)
- Estimated Location of Former Underground Storage Tanks (USTs), Above Ground Storage Tanks (AGSTs), Oil/Water Reservoirs (OWR), Wastewater, Building, or Other Location Addressed by Remedial Action Plan ("Estimated RMP Locations")
- Surveyed Location of Former Underground Storage Tanks (USTs), Above Ground Storage Tanks (AGSTs), Oil/Water Reservoirs (OWR), Wastewater, Building, or Other Location Addressed by Remedial Action Plan ("Surveyed RMP Locations")
- Base Realignment and Closure ("BRAC") Property Subject to Finding of Suitability for Early Transfer ("FOT") - Including Adjacent Submerged Lands in Oakland Base Reuse Authority ("OBRA") by No-Cost Economic Development Conveyance ("EDCC") ("RMP Implementation Area")
- BRAC Property with Eventual Finding of Suitability for Transfer to Department of Interior ("DOI") on Behalf of the East Bay Regional Parks District ("EBRPD") by Public Benefit Conveyance ("PBC") ("RMP Parcel 1")
- U.S. Army Reserve Property
- Real Property Outside Oakland Army Base ("OAB")
- San Francisco Bay
- VOCs in Groundwater
- Planned Development Area Boundary

- NOTES:**
1. All locations are approximate.
  2. Base map is from Plan of Oakland Gateway Group Meeting, March 2009.
  3. RMP locations surveyed by Johnson Pacific Surveyors, Inc., March 2009.

**Erler & Kalinowski, Inc.**  
RAP Sites and RMP Locations

Former Oakland Army Base  
Oakland, CA  
February 2010  
EKI A80026 00  
Figure 1

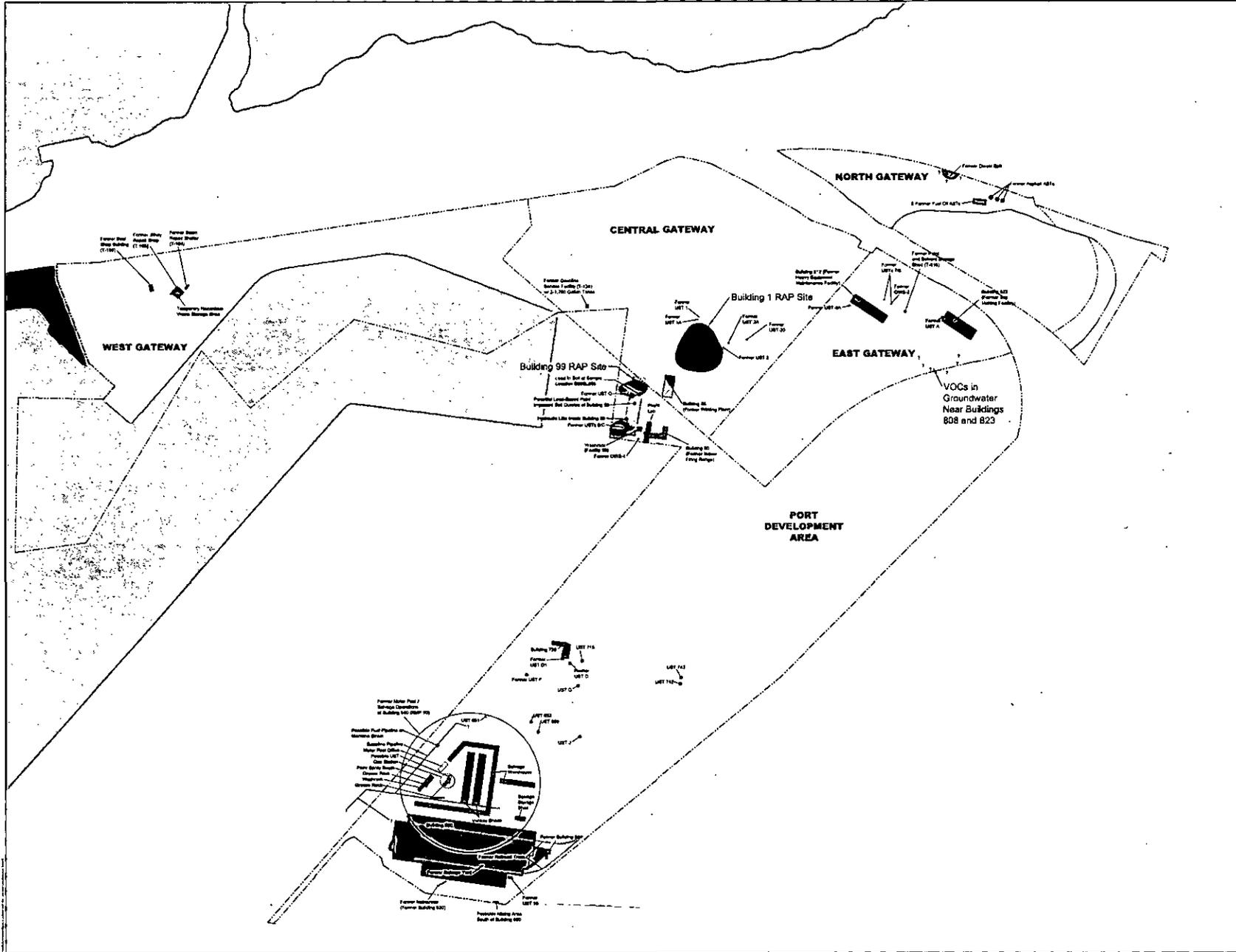
**ATTACHMENT B****Table of Cleaned Army Base Remediation Sites**

<b>Sites Cleaned</b>	<b>Site ID #</b>	<b>Site Type</b>	<b>Closure Status</b>
Building 1		RAP	Closed
Groundwater at Building 808		RAP	Closed
Groundwater at Building 807		RAP	Remedial Action Underway
UST 11A/12A/13A		RAP	Pending
Groundwater at Building 99		RAP	Closed
Building 99 soil		RAP	Closed
Former Building T-166	3	RMP	Closed
Former Building T-165	4	RMP	Closed
Temp HazWaste Storage Shed	5	RMP	Closed
Former Building T-164	6	RMP	Closed
Off-site Building 1084	20	RMP	Closed
Five 7,000 gal. fuel oil ASTs	99	RMP	Closed
Three 1,000 gal asphalt ASTs	100	RMP	Closed
Building 99 Paint Shop	11	RMP	Closed
Facility 815	23	RMP	Closure Requested
Oil Water Separator 2	24	RMP	Closure Requested
Former Building T-815	25	RMP	Closure Requested
Building 840	52a*	RMP	Prepare Closure Request
Building 840 Lead In Shallow Soil	52b*	RMP	Prepare Closure Request
Pesticide Shed Northwest Of Building 840	53*	RMP	Prepare Closure Request
Pesticide Shed Northwest Of Building 840	54*	RMP	Prepare Closure Request
Building 790 - Washrack	55*	RMP	Prepare Closure Request
Building 790 - Grease Trap	56*	RMP	Prepare Closure Request
Building 792 - Washrack	57*	RMP	Prepare Closure Request
Building 792 - Grease Trap	58*	RMP	Prepare Closure Request
Building 793 - Boiler Room And Sump	59*	RMP	Prepare Closure Request
Building 794 - Grease Trap	60*	RMP	Prepare Closure Request
Building 794 - Washrack And Sump	61*	RMP	Prepare Closure Request
Building 794 - Grease Trap	62*	RMP	Prepare Closure Request
Building 738 - Shop	63*	RMP	Closure Requested
Building 773 - Incinerator	64*	RMP	Prepare Closure Request
Building 774 - Incinerator	65*	RMP	Prepare Closure Request
Building 775 - Incinerator	66*	RMP	Prepare Closure Request
Building 682 - Firing Range	67*	RMP	Prepare Closure Request
Building 647 - Shop	68*	RMP	Prepare Closure Request
Building 645 - Shop	69*	RMP	Prepare Closure Request
Building 648 - Shop	70*	RMP	Prepare Closure Request

<b>continued - Sites Cleaned</b>	<b>Site ID #</b>	<b>Site Type</b>	<b>Closure Status</b>
Building 591 - Battery Maintenance & Washrack	71*	RMP	Closure Requested
Pesticide Mixing And Storage	72*	RMP	Closure Requested
Building 530 - Incinerator	73*	RMP	Closure Requested
Building 683 - Shop & Grease Rack	74*	RMP	Prepare Closure Request
Hydraulic Lift -- Building 1	75	RMP	Closed
UST L	76*	RMP	Prepare Closure Request
Building 590 AST	77a*	RMP	Closure Requested
Building 616 AST	77b*	RMP	Closure Requested
Building 640 AST	77c*	RMP	Closure Requested
Building 642 AST	77d*	RMP	Closure Requested
Building 646 AST	77e*	RMP	Prepare Closure Request
Building 707 AST	77f*	RMP	Closure Requested
Building 717 AST	77g*	RMP	Closure Requested
Building 745 AST	77h*	RMP	Prepare Closure Request
Building 746 AST	77i*	RMP	Prepare Closure Request
Building 748 AST	77j*	RMP	Prepare Closure Request
Building 755 AST	77k*	RMP	Prepare Closure Request
Building 793 AST	77l*	RMP	Prepare Closure Request
Building 590	79a*	RMP	Closure Requested
Building 590	79b*	RMP	Closure Requested
Building 590	79c*	RMP	Closure Requested
Building 590	79d*	RMP	Closure Requested
Salvage Yard Near Building 590	81*	RMP	Closure Requested
Building 85	86	RMP	Closed
Building 812	87	RMP	Closure Requested
Building 823	88	RMP	Closure Requested
Gas Station	90a*	RMP	Closure Requested
Grease Rack	90b*	RMP	Closure Requested
Grease Rack	90c*	RMP	Closure Requested
Paint Spray Booth	90d*	RMP	Closure Requested
Salvage Storage Shed	90e*	RMP	Closure Requested
Salvage Warehouse	90f*	RMP	Closure Requested
Salvage Warehouse	90g*	RMP	Closure Requested
Vehicle Sheds	90h*	RMP	Closure Requested
Vehicle Sheds	90i*	RMP	Closure Requested
Washrack	90j*	RMP	Closure Requested
UST 15	92*	RMP	Closure Requested
UST-2A (Underground Storage Tank)	93	RMP	Closed
UST K	95*	RMP	Prepare Closure Request
UST-3 (Underground Storage Tank)	96	RMP	Prepare Closure Request
UST-1A (Underground Storage Tank)	105	RMP	Closed
UST-2 (Underground Storage Tank)	106	RMP	Closed
UST-19 (Underground Storage Tank)	107	RMP	Closure Requested
UST-1 (Underground Storage Tank)	108	RMP	Closed

<b>continued - Sites Cleaned</b>	<b>Site ID #</b>	<b>Site Type</b>	<b>Closure Status</b>
UST-20 (Underground Storage Tank)	109	RMP	Closed
Former UST Q	112*	RMP	Prepare Closure Request
UST-A (Underground Storage Tank)	113	RMP	Closure Requested
UST-8A (Underground Storage Tank)	114	RMP	Closure Requested
UST-7 & UST-8 (Underground Storage Tank)	123*	RMP	Closure Requested
UST 17	126*	RMP	Prepare Closure Request
UST G	127*	RMP	Closure Requested
UST D	129*	RMP	Closure Requested
UST F	130*	RMP	Closure Requested
UST D1	131*	RMP	Closure Requested
UST H	132*	RMP	Prepare Closure Request
UST 715	134*	RMP	Closure Requested
UST 742	135*	RMP	Prepare Closure Request
UST 743	136*	RMP	Prepare Closure Request
UST 671	137*	RMP	Prepare Closure Request
UST 672	138*	RMP	Prepare Closure Request
UST 673	139*	RMP	Prepare Closure Request
UST 681	140*	RMP	Prepare Closure Request
UST 682	141*	RMP	Prepare Closure Request
UST 686	142*	RMP	Prepare Closure Request
UST 677	143*	RMP	Prepare Closure Request
UST 678	144*	RMP	Prepare Closure Request
UST 679	145*	RMP	Prepare Closure Request
UST 684	146*	RMP	Prepare Closure Request
UST 688	147*	RMP	Prepare Closure Request
UST 651	148*	RMP	Closure Requested
UST 652	149*	RMP	Closure Requested
UST 660	150*	RMP	Closure Requested
UST J	151*	RMP	Closure Requested
Building 796 Elevator Equipment Area	157*	RMP	Prepare Closure Request

ATTACHMENT C



N

0 300 600  
(Approximate Scale in Feet)

**EXPLANATION:**

- Building or Area Addressed by Remedial Action Plan ("RAP Sites")
- Estimated Location of Former Underground Storage Tank (UST), Above Ground Storage Tank (AST), Oil/Water Separator (OWS), Washroom, Building, or Other Location Addressed by Risk Management Plan ("Estimated RMP Locations")
- Surveyed Location of Former Underground Storage Tank (UST), Above Ground Storage Tank (AST), Oil/Water Separator (OWS), Washroom, Building, or Other Location Addressed by Risk Management Plan ("Surveyed RMP Locations")
- Base Realignment and Closure ("BRAC") Property Subject to Finding of Suitability for Early Transfer ("ESMET"), Including Adjacent Submerged Lands, in Oakland Bay Area (CBA) by No-Cost Economic Development Conveyance ("NCEDC") ("NCEDC Implementation Area")
- BRAC Property with Eventual Finding of Suitability for Transfer to Department of Interior ("DOI") on Behalf of the East Bay Regional Park District ("EBRPD") by Public Benefit Conveyance ("PBC") ("PBC Parcel 1")
- Real Property Owned Oakland Army Base ("OAB")
- San Francisco Bay
- VOCs in Groundwater
- Planned Development Area Boundary

- Notes:**
1. All locations are approximate.
  2. Base map taken from Port of Oakland Committee Group Base map, March 2008.
  3. RMP locations surveyed by Inception Pacific Surveyors, Inc., March 2008.

**Erler & Kalinowski, Inc.**

RAP Sites and RMP Locations that are Closed or Pending Closure

Former Oakland Army Base  
 Oakland, CA  
 February 2010  
 EKI A80026 00  
 Figure 2

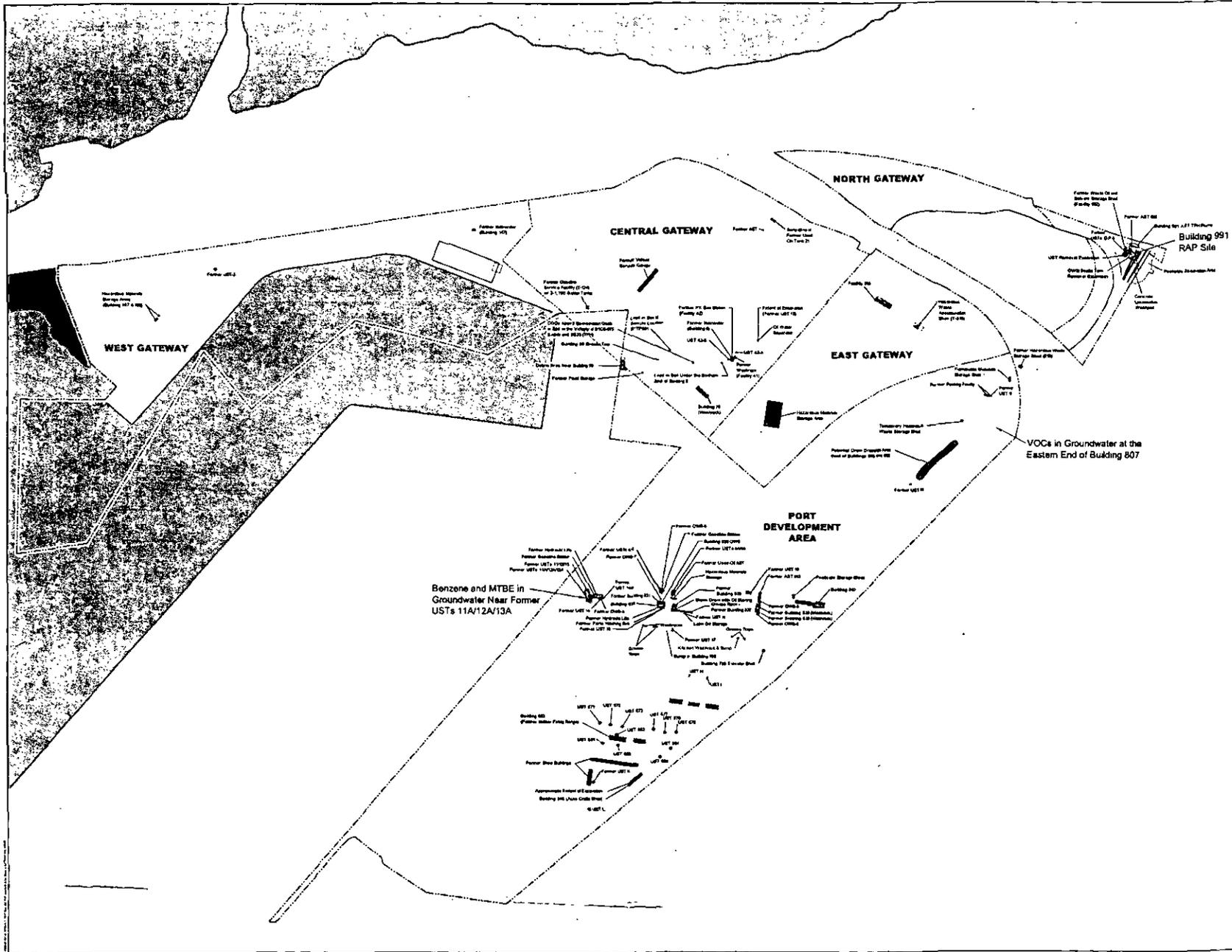
**ATTACHMENT D**

**Table of Army Base Remediation Sites  
To Be Cleaned – 2010 to 2013**

<b>2010-2013 Program Goal</b>	<b>Site ID #</b>	<b>Actions Needed to Clean &amp; Close</b>	<b>Clean-up Goal Date</b>
Building S-4	8	Additional Information	2010
Grease Trap near Building 60	9	Additional Information	2010
Paint storage shed near Building 99	10	Additional Information	2010
Wash rack near Building 70	15	Additional Information	2010
Former gas service facility	97	Additional Information	2010
B1CS-075	154	Additional Information	2010
B1TP001 near Building 60	156	Additional Information	2010
Building 6	16	Building 6 Demolition	2010
Former Building 42	17	Building 6 Demolition	2010
Former Building 41	18	Building 6 Demolition	2010
Former UST-42A	101	Building 6 Demolition	2010
Former UST-42B	102	Building 6 Demolition	2010
Soil – southern end of Building 6	155	Building 6 Demolition	2010
Building 991	RAP	Pending Action by Army at Adjacent Federal Property	2013
Building 169	1	Data & Remediation	2013
Building 167	2	Data & Remediation	2013
Former incinerator near Building 141	7	Data & Remediation	2013
Northern portion of Building 90	14*	Data & Remediation	2013
Oil water separator near Building 5	19	Data & Remediation	2013
Building T-816	22	Data & Remediation	2013
Building 992	21*	Data & Remediation	2013
Haz. Material Shed near Building 808	27*	Data & Remediation	2013
Haz. Material Shed near Building 807	28*	Data & Remediation	2013
Bay 1 of Building 806	29	Data & Remediation	2013
Building 828 - Hyd. Lift #1	30*	Data & Remediation	2013
Building 828 - Hyd. Lift #2	31*	Data & Remediation	2013
Building 828 - Hyd. Lift #3	32*	Data & Remediation	2013
Building 828 - OWS-5	33*	Data & Remediation	2013
Building 830 - OWS-6	34*	Data & Remediation	2013
Building 830 - OWS-7	35*	Data & Remediation	2013
Building 831 - washrack	36*	Data & Remediation	2013
Building 830 - OWS	37*	Data & Remediation	2013
Building 830 - Hyd. Lift #1	38*	Data & Remediation	2013
Building 830 - Hyd. Lift #2	39*	Data & Remediation	2013
Building 830 - Hyd. Lift #3	40*	Data & Remediation	2013
Building 830 - Hyd. Lift #4	41*	Data & Remediation	2013
Building 830 - sink	42*	Data & Remediation	2013

<b>continued - 2010-2013 Program Goal</b>	<b>Site ID #</b>	<b>Actions Needed to Clean &amp; Close</b>	<b>Clean-up Goal Date</b>
Haz. Waste Storage N of Building 838	43*	Data & Remediation	2013
Building 838 - auto shop	44*	Data & Remediation	2013
Building 832 - gas station	45*	Data & Remediation	2013
Building 837 - grease rack	46*	Data & Remediation	2013
Building 835 - lube oil storage shed	47*	Data & Remediation	2013
Building 838 - washrack	48*	Data & Remediation	2013
Building 839 - washrack	49*	Data & Remediation	2013
OWS-8 near Building 843	50*	Data & Remediation	2013
OWS-9 near Building 843	51*	Data & Remediation	2013
Building 828 - gas station	78*	Data & Remediation	2013
Building 90 - former indoor firing range	80*	Data & Remediation	2013
Building 843	83*	Data & Remediation	2013
Building 830 - auto craft shop	84*	Data & Remediation	2013
Drum Area East of Buildings 805 & 806	89*	Data & Remediation	2013
Former Used Oil Tank 21	91	Data & Remediation	2013
Lead in soil at location B99SL005 in the Building 99 area	94*	Data & Remediation	2013
AST near Building 14	98	Data & Remediation	2013
USTs O, P, 6	103*	Data & Remediation	2013
AST 994	104*	Data & Remediation	2013
Former USTs B/C	111*	Data & Remediation	2013
UST 9	115*	Data & Remediation	2013
UST M	116*	Data & Remediation	2013
UST 14	117*	Data & Remediation	2013
USTs 4A, 5A	118*	Data & Remediation	2013
UST 10	119*	Data & Remediation	2013
AST 842	120*	Data & Remediation	2013
UST 18	121*	Data & Remediation	2013
USTs 4, 5	122*	Data & Remediation	2013
UST 14A	124*	Data & Remediation	2013
UST N	125*	Data & Remediation	2013
AST	128*	Data & Remediation	2013
Possible fuel pipeline on Maritime Street	158*	Data & Remediation	2013
Historical Spills and Stains			2013
Lead in Soil Around Buildings			2013
Former PCB-Containing Equipment			2013
Railroad Tracks			2013
Storm Drains and Sanitary Sewers			2013
Debris Area			2013

ATTACHMENT E



N

0 200 400  
Approximate Scale in Feet

**EXPLANATION**

- Building or Area Addressed by Remedial Action Plan (RAP Site)
- Estimated Location of Former Underground Storage Tank (UST) Above Ground Storage Tank (AST), Oil Water Separator (OWS), Washers, Building or Other Location Addressed by Risk Management Plan (RMP) (Estimated RMP Location)
- Surveyed Location of Former Underground Storage Tank (UST), Above Ground Storage Tank (AST), Oil Water Separator (OWS), Washers, Building or Other Location Addressed by Risk Management Plan (Surveyed RMP Location)
- Base Realignment and Closure (BRAC) Property Subject to Finding of Suitability for Entry Transfer (FOSET), Including Adjacent Submerged Lands, to Declassify Base Release Authority (DBRA) by the Coast Economic Development Commission (CEDC) (Realignment Area)
- BRAC Property with Potential Finding of Suitability for Transfer to Department of Interior (DOI) on Basis of the East Bay Regional Parks District (EBRP) by Public Benefit Conveyance (Former BRAC Parcel)
- Half Property Outside Gateway Area (OGAF)
- San Francisco Bay
- VOCs in Groundwater
- Planned Development Area Boundary

**Notes:**

1. All locations are approximate.
2. Base map taken from Part of Cultural Resources Drawn Base Map, March 2008.
3. RMP locations surveyed by American Pacific Surveyors, Inc., March 2008.

**Erler & Kallnowski, Inc.**

RAP Sites and RMP Locations to be Closed in the Future

Former Oakland Army Base  
Oakland, CA  
February 2010  
EKI AG0026 00  
Figure 3

**ATTACHMENT F**

**AMENDMENT 1**

**TO THE AMENDED AND RESTATED  
MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE  
AMONG  
THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,  
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**

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This Amendment 1 to the Amended and Restated Memorandum of Agreement for Oakland Army Base (“Amendment 1”), dated for reference purposes only as of \_\_\_\_\_, 2010, and effective as of \_\_\_\_\_, 2010 (“Amendment 1 Effective Date”) is the first written amendment to the Amended and Restated Memorandum of Agreement for Oakland Army Base, dated as of February 27, 2008 (hereinafter, “Restated MOA”). This Amendment 1 is entered into by and among the Redevelopment Agency of the City of Oakland, 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”), and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the “Port”), in the following factual context:

A. The terms used in this Amendment 1 shall have the same meanings assigned to them in the Restated MOA.

B. ORA and the City Council are together referred to herein as the “City”. The City and the Port (each a “Party” and, collectively, the “Parties”) intend to work cooperatively to pursue their respective goals, objectives, and legal and fiduciary obligations with respect to the environmental remediation and development of the OARB, all as set out more fully in the Restated MOA, the terms of which are incorporated herein by reference.

C. The Parties have had discussions regarding, among other things, ways to streamline the process of submitting costs for reimbursement out of the ESCA Funds and reporting to Chubb Custom Insurance Company (“Chubb”) so that they can be credited toward the Insurance Attachment Point of the Insurance Policy issued by Chubb under which both the City and the Port are insureds.

D. As a result of those discussions, the Parties have agreed to amend the Restated MOA, pursuant to Section 11.2 of the Restated MOA, through this Amendment 1.

E. To effectuate this agreement, the City sent an email to Chubb dated June 11, 2009, a copy of which is attached as Exhibit "A" to this Amendment 1 and incorporated herein by reference, advising Chubb that the Parties are separately submitting their respective remediation cost reports to Chubb with respect to the costs described in Section F of this Amendment 1 in order to expedite matters.

F. After sending the e-mail mentioned in Section E of this Amendment 1, the City and the Port prepared and transmitted to Chubb their separate submissions for any remediation costs incurred up to the Amendment 1 Effective Date which the City or the Port believed should be credited toward the Insurance Attachment Point of the Insurance Policy but which had not yet been so credited ("Section F Remediation Costs") so that they could be credited toward the Insurance Attachment Point of the Insurance Policy.

G. The Parties also desire to amend certain provisions of the Restated MOA as set forth in this Amendment 1.

H. The Restated MOA was executed by the Mayor of the City of Oakland and the President of the City Council on behalf of the City Council, and was executed by the Agency Administrator on behalf of ORA. Since the City Council has adopted Resolution No. authorizing the City Administrator of the City of Oakland to execute this Amendment 1 on behalf of the City Council, and the City Attorney has confirmed that the City Administrator's signature fully binds the City Council in this Amendment 1, the Mayor of the City of Oakland and the President of the City Council are not required to execute this Amendment 1.

**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. Except to the extent amended by this Amendment 1, all other provisions of the Restated MOA (including all Exhibits and Schedules to the Restated MOA) shall remain in full force and effect.

2. Based on ESCA funding requests submitted to the Army as of the Amendment 1 Effective Date, and once the City submits the Port's Section F Remediation Costs to the Army for reimbursement out of the ESCA Funds, which the City agrees to do within five (5) days after the Port Attorney executes this Amendment 1, the Parties agree that upon receipt of all requested amounts from the Army, at least the Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) in ESCA Funds referenced in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1, will have been "expended". Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the City and the Port shall proceed to make the deposits called for in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1. The rights of the Parties to make withdrawals from the Remediation Account, however, shall be modified to the extent set forth herein.

3. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.3 of the Restated MOA is hereby rescinded in its entirety and replaced by the following, new Section 5.3:

**“5.3. Unfunded Remediation Costs.**

(a) Generally. The Parties acknowledge and agree that the following costs and expenses associated with the investigation and remediation of the EDC Property in accordance with the Regulatory Requirements shall be considered “Unfunded Remediation Costs”: (1) any such costs incurred after the ESCA Funds are expended and before the Insurance Attachment Point is reached; (2) any such costs that exceed the total of the ESCA Funds and the limits of the Insurance Policy even after the Insurance Attachment Point is reached; and (3) such costs, if any, which are ultimately determined, whether before or after reimbursement from the ESCA Funds or the Insurance Policy, not to be covered by the ESCA Funds or the Insurance Policy.

(b) Allocation. All Unfunded Remediation Costs as described in Sections 5.3(a)(1) and (2) of the Restated MOA shall be allocated to the City and the Port in accordance with the Allocation Proportion, provided that:

(1) Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party undertaking the demolition; provided, however, that if there are Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition associated with a building that straddles the boundary of properties owned by both the Port and the City, then such Unfunded Remediation Costs will be shared by the Parties owning the contiguous properties proportionately, based on the amount of square footage of the building being demolished that is located on the property owned by the Port and on the property owned by the City;

(2) Unfunded Remediation Costs associated with Marine Sediments shall be the responsibility of the Port in accordance with Section 5.5 of the Restated MOA;

(3) all future costs for applications of covers after the Amendment 1 Effective Date for which either Party seeks reimbursement from the Remediation Account shall be limited to a total of Five Million Dollars (\$5,000,000.00) for each of the City and the Port, so that the aggregate amount for application of covers after the Amendment 1 Effective Date for which reimbursement is sought from the Remediation Account by the City and the Port will not exceed Ten Million Dollars (\$10,000,000.00); provided, however, that the limitation described above shall not prohibit each Party from seeking credit toward the Insurance Attachment Point or coverage under the Insurance Policy for future costs for applications of covers after the Amendment 1 Effective Date;

(4) except as required by DTSC or another Governmental Authority, or as necessary to achieve the stated remedial objectives of the RAP and/or RMP, the costs associated with a Party’s decision to excavate and transport off of the EDC Property soil with concentrations of chemicals of concern below remedial goals described in the RAP and/or RMP, which Regulatory

Requirements would permit re-use of the soil on the EDC Property, shall be deemed Unfunded Remediation Costs and shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party electing to excavate and dispose of the soil off of the EDC Property; and

(5) in the event that Chubb finally disallows a Section F Remediation Cost application toward the Insurance Attachment Point or coverage under the Insurance Policy, or the Army finally denies reimbursement of a Section F Remediation Cost reimbursement from the ESCA Funds solely because of a delay in submitting the cost information to the Army, or Chubb, then the Party incurring such cost shall be entitled to payment for such cost from the Remediation Account, but the Parties first shall be obliged to diligently pursue all appropriate remedies and efforts to dispute the disallowance of the cost based on the alleged delay.

Except as provided in Section 5.3(b)(5), the Unfunded Remediation Costs described in Section 5.3(a)(3) shall be the sole responsibility of the Party incurring them, and said Party shall not claim any reimbursement from the Remediation Account for said Unfunded Remediation Costs. If the Party has initially been reimbursed for such Unfunded Remediation Cost from the ESCA Funds or the Remediation Account, such Party shall reimburse the ESCA Funds or the Remediation Account in the amount it received for the unsuccessfully disputed Unfunded Remediation Cost plus, in the case of reimbursement to the Remediation Account, interest thereon at the annual rate of six percent (6%). Moreover, in the event that the Remediation Account has been closed, any Party who later becomes obliged to reimburse the Remediation Account shall instead pay to the other Party directly the Allocation Proportion (*i.e.*, 50%) of the amount that it is obliged to reimburse the Remediation Account.

(c) Allocation Procedure. Pursuant to Section 2 of Amendment 1, the Parties agree that at least Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) of the ESCA Funds have been "expended" (including amounts subject to outstanding funding requests under Army Grants Officer review). Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the Parties shall deposit in the aggregate One Million Dollars (\$1,000,000) in the Remediation Account in accordance with the Allocation Proportion (*i.e.*, Five Hundred Thousand Dollars (\$500,000) from the Port and Five Hundred Thousand Dollars (\$500,000) from the City). Each Party may draw from the Remediation Account to fulfill its remediation obligations as set forth in Section 5.1 of the Restated MOA, subject to, and consistent with, the draw procedures set forth in Section 5.3(d) of the Restated MOA. The Remediation Account Manager shall notify the Parties in writing each time the Remediation Account balance falls below Two Hundred Fifty Thousand Dollars (\$250,000). Within thirty (30) days after receipt of such notice from the Remediation Account Manager, the Remediation Account shall be funded by the Parties in aggregate One Million Dollar (\$1,000,000) increments in accordance with the Allocation Proportion. Such incremental payments shall continue until the aggregate amount paid for

environmental remediation from ESCA Funds and from Remediation Account funds equals the Insurance Attachment Point.

(d) Remediation Account Draws. Once any Unfunded Remediation Costs have been “deemed reasonable” under Paragraph 33 of the Insurance Policy because sixty (60) days have elapsed after Chubb’s receipt of the City’s and/or the Port’s submissions of costs and/or any “additional information or back up documentation” requested by Chubb and Chubb has not rejected or denied the costs, any Party seeking to withdraw funds from the Remediation Account shall make a request to the Remediation Account Manager specifying in sufficient detail the amount of funds requested, including a reasonable itemization of costs, and a description of how the funds will be used to comply with the obligations set forth in Section 5.1 of the Restated MOA, and the Remediation Account Manager shall pay the funds requested to the Party requesting them. The Parties may, if they mutually agree, arrange for claimed Unfunded Remediation Costs (including all or any portion of the Section F Remediation Costs) deemed to merit or require faster payment from the Remediation Account to be paid from the Remediation Account before they have been “deemed reasonable” under the Insurance Policy, subject to the reimbursement provisions herein. The Parties anticipate that draws generally will be based on invoices from third party service providers payable on a thirty (30) day cycle, and will comprise only costs that are Unfunded Remediation Costs as described in Section 5.3(a) of the Restated MOA, subject to the exceptions provided in Section 5.3(b) of the Restated MOA. Draws will not be made on the basis of estimates of future costs to be incurred. Therefore, the draw request will include an invoice in sufficient detail to determine the service provider and the services performed.

(e) Allocation Accounting. The Port and the City shall establish the Remediation Account and will require the Remediation Account Manager to provide a statement on a monthly basis that reflects the account balance, the cumulative contributions to the Remediation Account by each Party and specific draws on the Remediation Account. The Parties, with the assistance of the Remediation Account Manager, shall, on a monthly basis, reconcile the Remediation Account to ensure that each Party’s contribution to the Remediation Account was consistent with the Allocation Proportion. If a Party underfunded its Allocation Proportion of the Remediation Account, it shall reimburse the Party that overfunded the Remediation Account in an amount that reconciles the cumulative Remediation Account contributions with the Allocation Proportion.

(f) Demonstration of Financial Assurance for Conveyance. The City and the Port cooperated in submitting to DTSC a financial assurance demonstration in accordance with the Allocation Proportion, under which the City demonstrated financial capabilities of funding fifty percent (50%) of the anticipated remediation funding gap, and the Port demonstrated financial capabilities of funding the remaining fifty percent (50%) of the remediation funding gap.”

4. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.4 is hereby rescinded in its entirety and replaced by the following, new Section 5.4:

**“5.4. Insurance Policy.**

(a) Insurance Attachment Point. Prior to the Amendment 1 Effective Date, and before the Insurance Attachment Point under the Insurance Policy is reached, the Parties were obligated by the Restated MOA to jointly submit the reports required by the Insurance Policy to Chubb, executed by the Port and by OBRA or ORA, and specifying allowable costs incurred during the reporting period. In addition to the agreed separate submission of Section F Remediation Costs described in Section F above, on and after the Amendment 1 Effective Date, each Party shall separately transmit the submissions to Chubb required by the Insurance Policy, specifying allowable remediation costs incurred by that Party. Each Party promptly will notify the other Party in writing of any responses it receives from Chubb; the notification will include a copy of any written responses from Chubb. The Parties shall confer when any Party believes that eighty five percent (85%) of the Insurance Attachment Point has been reached. The Parties shall reasonably cooperate and confer with Chubb to reconcile the status of the self-insured retention and allowable costs under the Insurance Policy.

(b) Cost Cap Insurance Policy Claims. After the date the Insurance Attachment Point is reached, each Party shall be entitled to make claims under the cost cap portion of the Insurance Policy to fulfill its obligations under Section 5.1 of the Restated MOA. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time as it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall be responsible for its costs, legal or otherwise, in pursuing any claim. After Chubb agrees that the Insurance Attachment Point has been reached, each Party shall advance its own costs of remediation in accordance with its obligations under Section 5.1 of the Restated MOA, submit its own claim to Chubb, and be entitled to the sole benefit from any reimbursement from Chubb for that Party's claims. Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(c) Liability Claims Under Insurance Policy. Each Party shall be entitled to make claims under the liability portion of the Insurance Policy in the event such Party incurs a loss resulting from a pollution incident associated with the EDC Property. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall (1) be responsible for payment of any deductible associated with the claim and its costs, legal or otherwise, in pursuing any claim, and (2) benefit from any reimbursement from claims paid, and bear the risk that Chubb will not fully reimburse such Party for all or any portion of the claim.

Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(d) Insurance Policy Term and Limits. The Parties shall meet and confer at the earlier of either the time when Twenty Million Dollars (\$20,000,000) of the cost cap limits under the Insurance Policy have been paid by Chubb, or by August 7, 2012 which is one year before the expiration of the Insurance Policy term, to assess whether at such time there is a reasonable possibility that required activities necessary to comply with the Regulatory Requirements will, in the aggregate, exceed the cost cap limits or extend beyond August 7, 2013, the expiration of the Insurance Policy term. If the Parties agree that an increase in cost cap limits and/or an extension or replacement of the Insurance Policy is appropriate or necessary, all costs of securing that increase or extension (excluding the Port's and City's in-house costs and outside legal costs), including, but not limited to, any insurance premium for any increase in limits or extension or replacement of the Insurance Policy, shall be allocated to the City and the Port in accordance with the Allocation Proportion. If the Parties do not reach agreement with regard to securing an increase in the cost cap limits and/or an extension of the term of the Insurance Policy within a reasonable time before the cost cap limits or term of the Insurance Policy are likely to be exceeded, then the matter shall be resolved as an MOA Dispute subject to Article 10 of the Restated MOA. Any costs (excluding the Port's and City's in-house costs and outside legal costs) incurred for securing increased limits under, or replacement insurance for, or an extended term of, the Insurance Policy as a result of, or pursuant to, the resolution of the MOA Dispute shall be allocated to the City and the Port in accordance with the Allocation Proportion.

(e) The provisions and procedures of this Amendment 1 shall apply to any increased limits under, or extension of, the Insurance Policy or any insurance secured at or before the end of the Insurance Policy term to replace the Insurance Policy. If there is a successor insurer other than, or in addition to, Chubb, the term "Chubb" as used in this Amendment 1 shall apply to such successor insurer to the extent that there is a mechanism in the successor insurance policy under which costs submitted to the insurer shall be "deemed reasonable" within a reasonable time after submission to the successor insurer as currently set out in the Insurance Policy. To the extent that, for whatever reason, there is no longer a mechanism under the Insurance Policy or any successor insurance policy for submitted costs to be "deemed reasonable" within a reasonable time, any issues as to the reasonableness and/or necessity of any submitted costs shall be deemed an MOA Dispute under Article 10."

5. Except as otherwise provided in this Amendment 1, in consideration of the foregoing agreements in this Amendment 1, the City and the Port hereby mutually release one another from any and all actions, causes of action, claims, or demands arising out of or relating to prior submissions, or failures to submit, Section F Remediation Costs for ESCA Funds reimbursement or credit toward the Insurance Attachment Point.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment 1 on the date(s) shown below:

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Omar R. Benjamin  
Title: Executive Director

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Dan Lindheim  
Title: City Administrator

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**REDEVELOPMENT AGENCY OF THE  
CITY OF OAKLAND**

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

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Agency Counsel

**THIS AGREEMENT SHALL  
NOT BE VALID OR EFFECTED  
FOR ANY PURPOSE UNLESS  
AND UNTIL IT IS SIGNED BY  
THE PORT ATTORNEY.**

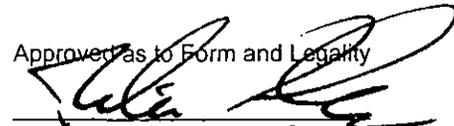
Approved as of form and legality  
this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
David L. Alexander  
Port Attorney

Port Resolution No. \_\_\_\_\_

P.A.# \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2010 MAR 11 PM 6:29

Approved as to Form and Legality  
  
Agency Counsel

REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND

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

**RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO: 1) EXECUTE AMENDMENT 1 TO THE 2008 AMENDED AND RESTATED MEMORANDUM OF AGREEMENT BETWEEN CITY OF OAKLAND, OAKLAND REDEVELOPMENT AGENCY AND PORT OF OAKLAND FOR THE OAKLAND ARMY BASE WHICH PRIMARILY MODIFIES THE MANNER IN WHICH REIMBURSEMENTS FOR REMEDIATION COSTS ARE SUBMITTED TO AND PAID FROM REMEDIATION ACCOUNTS, 2) CREATE A NEW FUND FOR THE ARMY BASE JOINT ENVIRONMENTAL REMEDIATION ACCOUNT, 3) APPROPRIATE FIVE MILLION SEVEN HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED SEVENTY-SEVEN DOLLARS (\$5,741,477) FROM THE OBRA LEASING & UTILITY FUND (9575) INTO THE ARMY BASE JOINT ENVIRONMENTAL REMEDIATION ACCOUNT FUND, 4) ACCEPT FIVE MILLION SEVEN HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED SEVENTY-SEVEN DOLLARS (\$5,741,477) FROM THE PORT OF OAKLAND FOR DEPOSIT INTO THE ARMY BASE JOINT REMEDIATION ACCOUNT FUND, AND 5) APPROPRIATE AND EXPEND UP TO ELEVEN MILLION FOUR HUNDRED EIGHTY-TWO THOUSAND NINE HUNDRED FIFTY-THREE DOLLARS (\$11,482,953) FOR THE ARMY BASE JOINT REMEDIATION PROGRAM ACTIVITIES**

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

**WHEREAS**, On June 27, 2006, pursuant to Agency Resolution 2006-0049 and City Resolution 80001, the Agency accepted any and all of OBRA's rights and obligations and OBRA was dissolved;

**WHEREAS**, the City, the Agency and the Port (the "Parties") amended and restated the Army Base MOA on February 27, 2008 as the Amended and Restated Memorandum of Agreement for the Oakland Army Base ("ARMOA") following the conveyance of the Army Base properties and completion of various Army Base MOA actions; and

**WHEREAS**, the Parties desire to further amend the ARMOA to: (a) Place a \$5 million cap on future reimbursement of remedial cover costs by each party ("remedial covers" are caps that are put over contaminated areas); (b) Revise the remediation costs standard to a "deemed reasonable" standard to qualify for Joint Environmental Remediation Fund submittal; (c) Require the party incurring them to cover any claimed remediation costs not ultimately covered by ESCA funds or qualified under the Insurance Policy; and (d) Agency and Port would submit their respective remediation costs independently to the insurance company rather than jointly; and

**WHEREAS**, pursuant to the terms and conditions of the ARMOA, the Parties must create a new fund to utilize Agency and Port funds to continue the remediation activities at the Army Base; and

**WHEREAS**, in order to utilize the new fund, the Agency needs authorization from the Agency Board to accept, appropriate, and expend the Agency and Port funds; now therefore be it

**RESOLVED**: That the Agency Administrator is authorized to negotiate and execute Amendment 1 to the 2008 Amended and Restated Memorandum of Agreement for the Oakland Army Base substantially in the form set out in *Exhibit A*; and be it

**FURTHER RESOLVED**: the Agency Administrator is authorized to create a new fund (fund number to be determined) for the Army Base Joint Environmental Remediation Account; and be it

**FURTHER RESOLVED**: the Agency Administrator is authorized to accept Five Million Seven Hundred Forty-One Thousand Four Hundred Seventy-Seven Dollars (\$5,741,477) from the Port of Oakland, for deposit into the Army Base Joint Environmental Remediation Fund; and be it

**FURTHER RESOLVED**: the Agency Administrator is authorized to appropriate Five Million Seven Hundred Forty-One Thousand Four Hundred Seventy-Seven Dollars (\$5,741,477) from OBRA Leasing & Utility Fund (9575) into the Army Base Joint Environmental Remediation Account Fund.; and be it

**FURTHER RESOLVED**: the Agency Administrator is authorized to accept, appropriate and expend up to Eleven Million Four Hundred Eighty-Two Thousand Nine Hundred Fifty-Three Dollars (\$11,482,953) of the Army Base Joint Environmental Remediation Fund for Army Base Environmental Remediation Program Activities; and be it

**FURTHER RESOLVED**: That the Agency Administrator or his designee is hereby authorized to take whatever other actions are necessary with respect to the ARMOA and Army Base Joint Environmental Remediation Account consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

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

LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
of the City of Oakland, California

**EXHIBIT A**

**AMENDMENT 1**

**TO THE AMENDED AND RESTATED**

**MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**

**AMONG**

**THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,**

**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**

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This Amendment 1 to the Amended and Restated Memorandum of Agreement for Oakland Army Base ("Amendment 1"), dated for reference purposes only as of \_\_\_\_\_, 2010, and effective as of \_\_\_\_\_, 2010 ("Amendment 1 Effective Date") is the first written amendment to the Amended and Restated Memorandum of Agreement for Oakland Army Base, dated as of February 27, 2008 (hereinafter, "Restated MOA"). This Amendment 1 is entered into by and among the Redevelopment Agency of the City of Oakland, 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"), and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port"), in the following factual context:

A. The terms used in this Amendment 1 shall have the same meanings assigned to them in the Restated MOA.

B. ORA and the City Council are together referred to herein as the "City". The City and the Port (each a "Party" and, collectively, the "Parties") intend to work cooperatively to pursue their respective goals, objectives, and legal and fiduciary obligations with respect to the environmental remediation and development of the OARB, all as set out more fully in the Restated MOA, the terms of which are incorporated herein by reference.

C. The Parties have had discussions regarding, among other things, ways to streamline the process of submitting costs for reimbursement out of the ESCA Funds and reporting to Chubb Custom Insurance Company ("Chubb") so that they can be credited toward the Insurance Attachment Point of the Insurance Policy issued by Chubb under which both the City and the Port are insureds.

D. As a result of those discussions, the Parties have agreed to amend the Restated MOA, pursuant to Section 11.2 of the Restated MOA, through this Amendment 1.

E. To effectuate this agreement, the City sent an email to Chubb dated June 11, 2009, a copy of which is attached as Exhibit "A" to this Amendment 1 and incorporated herein by reference, advising Chubb that the Parties are separately submitting their respective remediation cost reports to Chubb with respect to the costs described in Section F of this Amendment 1 in order to expedite matters.

F. After sending the e-mail mentioned in Section E of this Amendment 1, the City and the Port prepared and transmitted to Chubb their separate submissions for any remediation costs incurred up to the Amendment 1 Effective Date which the City or the Port believed should be credited toward the Insurance Attachment Point of the Insurance Policy but which had not yet been so credited ("Section F Remediation Costs") so that they could be credited toward the Insurance Attachment Point of the Insurance Policy.

G. The Parties also desire to amend certain provisions of the Restated MOA as set forth in this Amendment 1.

H. The Restated MOA was executed by the Mayor of the City of Oakland and the President of the City Council on behalf of the City Council, and was executed by the Agency Administrator on behalf of ORA. Since the City Council has adopted Resolution No. authorizing the City Administrator of the City of Oakland to execute this Amendment 1 on behalf of the City Council, and the City Attorney has confirmed that the City Administrator's signature fully binds the City Council in this Amendment 1, the Mayor of the City of Oakland and the President of the City Council are not required to execute this Amendment 1.

**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. Except to the extent amended by this Amendment 1, all other provisions of the Restated MOA (including all Exhibits and Schedules to the Restated MOA) shall remain in full force and effect.

2. Based on ESCA funding requests submitted to the Army as of the Amendment 1 Effective Date, and once the City submits the Port's Section F Remediation Costs to the Army for reimbursement out of the ESCA Funds, which the City agrees to do within five (5) days after the Port Attorney executes this Amendment 1, the Parties agree that upon receipt of all requested amounts from the Army, at least the Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) in ESCA Funds referenced in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1, will have been "expended". Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the City and the Port shall proceed to make the deposits called for in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1. The rights of the Parties to make withdrawals from the Remediation Account, however, shall be modified to the extent set forth herein.

3. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.3 of the Restated MOA is hereby rescinded in its entirety and replaced by the following, new Section 5.3:

**“5.3. Unfunded Remediation Costs.**

(a) Generally. The Parties acknowledge and agree that the following costs and expenses associated with the investigation and remediation of the EDC Property in accordance with the Regulatory Requirements shall be considered “Unfunded Remediation Costs”: (1) any such costs incurred after the ESCA Funds are expended and before the Insurance Attachment Point is reached; (2) any such costs that exceed the total of the ESCA Funds and the limits of the Insurance Policy even after the Insurance Attachment Point is reached; and (3) such costs, if any, which are ultimately determined, whether before or after reimbursement from the ESCA Funds or the Insurance Policy, not to be covered by the ESCA Funds or the Insurance Policy.

(b) Allocation. All Unfunded Remediation Costs as described in Sections 5.3(a)(1) and (2) of the Restated MOA shall be allocated to the City and the Port in accordance with the Allocation Proportion, provided that:

(1) Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party undertaking the demolition; provided, however, that if there are Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition associated with a building that straddles the boundary of properties owned by both the Port and the City, then such Unfunded Remediation Costs will be shared by the Parties owning the contiguous properties proportionately, based on the amount of square footage of the building being demolished that is located on the property owned by the Port and on the property owned by the City;

(2) Unfunded Remediation Costs associated with Marine Sediments shall be the responsibility of the Port in accordance with Section 5.5 of the Restated MOA;

(3) all future costs for applications of covers after the Amendment 1 Effective Date for which either Party seeks reimbursement from the Remediation Account shall be limited to a total of Five Million Dollars (\$5,000,000.00) for each of the City and the Port, so that the aggregate amount for application of covers after the Amendment 1 Effective Date for which reimbursement is sought from the Remediation Account by the City and the Port will not exceed Ten Million Dollars (\$10,000,000.00); provided, however, that the limitation described above shall not prohibit each Party from seeking credit toward the Insurance Attachment Point or coverage under the Insurance Policy for future costs for applications of covers after the Amendment 1 Effective Date;

(4) except as required by DTSC or another Governmental Authority, or as necessary to achieve the stated remedial objectives of the RAP and/or RMP, the costs associated with a Party’s decision to excavate and transport off of the EDC Property soil with concentrations of chemicals of concern below remedial goals described in the RAP and/or RMP, which Regulatory

Requirements would permit re-use of the soil on the EDC Property, shall be deemed Unfunded Remediation Costs and shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party electing to excavate and dispose of the soil off of the EDC Property; and

(5) in the event that Chubb finally disallows a Section F Remediation Cost application toward the Insurance Attachment Point or coverage under the Insurance Policy, or the Army finally denies reimbursement of a Section F Remediation Cost reimbursement from the ESCA Funds solely because of a delay in submitting the cost information to the Army, or Chubb, then the Party incurring such cost shall be entitled to payment for such cost from the Remediation Account, but the Parties first shall be obliged to diligently pursue all appropriate remedies and efforts to dispute the disallowance of the cost based on the alleged delay.

Except as provided in Section 5.3(b)(5), the Unfunded Remediation Costs described in Section 5.3(a)(3) shall be the sole responsibility of the Party incurring them, and said Party shall not claim any reimbursement from the Remediation Account for said Unfunded Remediation Costs. If the Party has initially been reimbursed for such Unfunded Remediation Cost from the ESCA Funds or the Remediation Account, such Party shall reimburse the ESCA Funds or the Remediation Account in the amount it received for the unsuccessfully disputed Unfunded Remediation Cost plus, in the case of reimbursement to the Remediation Account, interest thereon at the annual rate of six percent (6%). Moreover, in the event that the Remediation Account has been closed, any Party who later becomes obliged to reimburse the Remediation Account shall instead pay to the other Party directly the Allocation Proportion (*i.e.*, 50%) of the amount that it is obliged to reimburse the Remediation Account.

(c) Allocation Procedure. Pursuant to Section 2 of Amendment 1, the Parties agree that at least Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) of the ESCA Funds have been "expended" (including amounts subject to outstanding funding requests under Army Grants Officer review). Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the Parties shall deposit in the aggregate One Million Dollars (\$1,000,000) in the Remediation Account in accordance with the Allocation Proportion (*i.e.*, Five Hundred Thousand Dollars (\$500,000) from the Port and Five Hundred Thousand Dollars (\$500,000) from the City). Each Party may draw from the Remediation Account to fulfill its remediation obligations as set forth in Section 5.1 of the Restated MOA, subject to, and consistent with, the draw procedures set forth in Section 5.3(d) of the Restated MOA. The Remediation Account Manager shall notify the Parties in writing each time the Remediation Account balance falls below Two Hundred Fifty Thousand Dollars (\$250,000). Within thirty (30) days after receipt of such notice from the Remediation Account Manager, the Remediation Account shall be funded by the Parties in aggregate One Million Dollar (\$1,000,000) increments in accordance with the Allocation Proportion. Such incremental payments shall continue until the aggregate amount paid for

environmental remediation from ESCA Funds and from Remediation Account funds equals the Insurance Attachment Point.

(d) Remediation Account Draws. Once any Unfunded Remediation Costs have been “deemed reasonable” under Paragraph 33 of the Insurance Policy because sixty (60) days have elapsed after Chubb’s receipt of the City’s and/or the Port’s submissions of costs and/or any “additional information or back up documentation” requested by Chubb and Chubb has not rejected or denied the costs, any Party seeking to withdraw funds from the Remediation Account shall make a request to the Remediation Account Manager specifying in sufficient detail the amount of funds requested, including a reasonable itemization of costs, and a description of how the funds will be used to comply with the obligations set forth in Section 5.1 of the Restated MOA, and the Remediation Account Manager shall pay the funds requested to the Party requesting them. The Parties may, if they mutually agree, arrange for claimed Unfunded Remediation Costs (including all or any portion of the Section F Remediation Costs) deemed to merit or require faster payment from the Remediation Account to be paid from the Remediation Account before they have been “deemed reasonable” under the Insurance Policy, subject to the reimbursement provisions herein. The Parties anticipate that draws generally will be based on invoices from third party service providers payable on a thirty (30) day cycle, and will comprise only costs that are Unfunded Remediation Costs as described in Section 5.3(a) of the Restated MOA, subject to the exceptions provided in Section 5.3(b) of the Restated MOA. Draws will not be made on the basis of estimates of future costs to be incurred. Therefore, the draw request will include an invoice in sufficient detail to determine the service provider and the services performed.

(e) Allocation Accounting. The Port and the City shall establish the Remediation Account and will require the Remediation Account Manager to provide a statement on a monthly basis that reflects the account balance, the cumulative contributions to the Remediation Account by each Party and specific draws on the Remediation Account. The Parties, with the assistance of the Remediation Account Manager, shall, on a monthly basis, reconcile the Remediation Account to ensure that each Party’s contribution to the Remediation Account was consistent with the Allocation Proportion. If a Party underfunded its Allocation Proportion of the Remediation Account, it shall reimburse the Party that overfunded the Remediation Account in an amount that reconciles the cumulative Remediation Account contributions with the Allocation Proportion.

(f) Demonstration of Financial Assurance for Conveyance. The City and the Port cooperated in submitting to DTSC a financial assurance demonstration in accordance with the Allocation Proportion, under which the City demonstrated financial capabilities of funding fifty percent (50%) of the anticipated remediation funding gap, and the Port demonstrated financial capabilities of funding the remaining fifty percent (50%) of the remediation funding gap.”

4. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.4 is hereby rescinded in its entirety and replaced by the following, new Section 5.4:

**“5.4. Insurance Policy.**

(a) Insurance Attachment Point. Prior to the Amendment 1 Effective Date, and before the Insurance Attachment Point under the Insurance Policy is reached, the Parties were obligated by the Restated MOA to jointly submit the reports required by the Insurance Policy to Chubb, executed by the Port and by OBRA or ORA, and specifying allowable costs incurred during the reporting period. In addition to the agreed separate submission of Section F Remediation Costs described in Section F above, on and after the Amendment 1 Effective Date, each Party shall separately transmit the submissions to Chubb required by the Insurance Policy, specifying allowable remediation costs incurred by that Party. Each Party promptly will notify the other Party in writing of any responses it receives from Chubb; the notification will include a copy of any written responses from Chubb. The Parties shall confer when any Party believes that eighty five percent (85%) of the Insurance Attachment Point has been reached. The Parties shall reasonably cooperate and confer with Chubb to reconcile the status of the self-insured retention and allowable costs under the Insurance Policy.

(b) Cost Cap Insurance Policy Claims. After the date the Insurance Attachment Point is reached, each Party shall be entitled to make claims under the cost cap portion of the Insurance Policy to fulfill its obligations under Section 5.1 of the Restated MOA. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time as it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall be responsible for its costs, legal or otherwise, in pursuing any claim. After Chubb agrees that the Insurance Attachment Point has been reached, each Party shall advance its own costs of remediation in accordance with its obligations under Section 5.1 of the Restated MOA, submit its own claim to Chubb, and be entitled to the sole benefit from any reimbursement from Chubb for that Party's claims. Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(c) Liability Claims Under Insurance Policy. Each Party shall be entitled to make claims under the liability portion of the Insurance Policy in the event such Party incurs a loss resulting from a pollution incident associated with the EDC Property. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall (1) be responsible for payment of any deductible associated with the claim and its costs, legal or otherwise, in pursuing any claim, and (2) benefit from any reimbursement from claims paid, and bear the risk that Chubb will not fully reimburse such Party for all or any portion of the claim.

Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(d) Insurance Policy Term and Limits. The Parties shall meet and confer at the earlier of either the time when Twenty Million Dollars (\$20,000,000) of the cost cap limits under the Insurance Policy have been paid by Chubb, or by August 7, 2012 which is one year before the expiration of the Insurance Policy term, to assess whether at such time there is a reasonable possibility that required activities necessary to comply with the Regulatory Requirements will, in the aggregate, exceed the cost cap limits or extend beyond August 7, 2013, the expiration of the Insurance Policy term. If the Parties agree that an increase in cost cap limits and/or an extension or replacement of the Insurance Policy is appropriate or necessary, all costs of securing that increase or extension (excluding the Port's and City's in-house costs and outside legal costs), including, but not limited to, any insurance premium for any increase in limits or extension or replacement of the Insurance Policy, shall be allocated to the City and the Port in accordance with the Allocation Proportion. If the Parties do not reach agreement with regard to securing an increase in the cost cap limits and/or an extension of the term of the Insurance Policy within a reasonable time before the cost cap limits or term of the Insurance Policy are likely to be exceeded, then the matter shall be resolved as an MOA Dispute subject to Article 10 of the Restated MOA. Any costs (excluding the Port's and City's in-house costs and outside legal costs) incurred for securing increased limits under, or replacement insurance for, or an extended term of, the Insurance Policy as a result of, or pursuant to, the resolution of the MOA Dispute shall be allocated to the City and the Port in accordance with the Allocation Proportion.

(e) The provisions and procedures of this Amendment 1 shall apply to any increased limits under, or extension of, the Insurance Policy or any insurance secured at or before the end of the Insurance Policy term to replace the Insurance Policy. If there is a successor insurer other than, or in addition to, Chubb, the term "Chubb" as used in this Amendment 1 shall apply to such successor insurer to the extent that there is a mechanism in the successor insurance policy under which costs submitted to the insurer shall be "deemed reasonable" within a reasonable time after submission to the successor insurer as currently set out in the Insurance Policy. To the extent that, for whatever reason, there is no longer a mechanism under the Insurance Policy or any successor insurance policy for submitted costs to be "deemed reasonable" within a reasonable time, any issues as to the reasonableness and/or necessity of any submitted costs shall be deemed an MOA Dispute under Article 10."

5. Except as otherwise provided in this Amendment 1, in consideration of the foregoing agreements in this Amendment 1, the City and the Port hereby mutually release one another from any and all actions, causes of action, claims, or demands arising out of or relating to prior submissions, or failures to submit, Section F Remediation Costs for ESCA Funds reimbursement or credit toward the Insurance Attachment Point.

IN WITNESS WHEREOF, the Parties have executed this Amendment 1 on the date(s) shown below:

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Omar R. Benjamin  
Title: Executive Director

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Dan Lindheim  
Title: City Administrator

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**REDEVELOPMENT AGENCY OF THE  
CITY OF OAKLAND**

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

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Agency Counsel

**THIS AGREEMENT SHALL  
NOT BE VALID OR EFFECTED  
FOR ANY PURPOSE UNLESS  
AND UNTIL IT IS SIGNED BY  
THE PORT ATTORNEY.**

Approved as of form and legality  
this \_\_\_\_ day of \_\_\_\_\_, 2010.

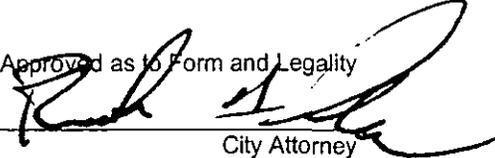
\_\_\_\_\_  
David L. Alexander  
Port Attorney

Port Resolution No. \_\_\_\_\_

P.A.# \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2010 MAR 11 PM 6:29

Approved as to Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

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

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AMENDMENT 1 TO THE 2008 AMENDED AND RESTATED MEMORANDUM OF AGREEMENT BETWEEN CITY OF OAKLAND, OAKLAND REDEVELOPMENT AGENCY AND PORT OF OAKLAND FOR THE OAKLAND ARMY BASE WHICH PRIMARILY MODIFIES THE MANNER IN WHICH REIMBURSEMENTS FOR REMEDIATION COSTS ARE SUBMITTED TO AND PAID FROM REMEDIATION ACCOUNTS**

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

**WHEREAS**, On June 27, 2006, pursuant to Agency Resolution 2006-0049 and City Resolution 80001, the Agency accepted any and all of OBRA's rights and obligations and OBRA was dissolved; and

**WHEREAS**, the City, the Agency and the Port (the "Parties") amended and restated the Army Base MOA on February 27, 2008 as the Amended and Restated Memorandum of Agreement for the Oakland Army Base ("ARMOA") following the conveyance of the Army Base properties and completion of various Army Base MOA actions; and

**WHEREAS**, the Parties desire to further amend the ARMOA to: (a) Place a \$5 million cap on future reimbursement of remedial cover costs by each party ("remedial covers" are caps that are put over contaminated areas); (b) Revise the remediation costs standard to a "deemed reasonable" standard to qualify for Joint Environmental Remediation Fund submittal; (c) Require the party incurring them to cover any claimed remediation costs not ultimately covered by ESCA funds or qualified under the Insurance Policy; and (d) Agency and Port would submit their respective remediation costs independently to the insurance company rather than jointly; now therefore be it

**RESOLVED**: That the City Administrator is authorized to negotiate and execute Amendment 1 to the 2008 Amended and Restated Memorandum of Agreement for the Oakland Army Base substantially in the form set out in *Exhibit A*; and be it

**FURTHER RESOLVED:** That the City Administrator or his designee is hereby authorized to take whatever other actions are necessary with respect to the ARMOA and Army Base Joint Environmental Remediation Account consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**EXHIBIT A**

**AMENDMENT 1**

**TO THE AMENDED AND RESTATED**

**MEMORANDUM OF AGREEMENT FOR OAKLAND ARMY BASE**

**AMONG**

**THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,**

**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**

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This Amendment 1 to the Amended and Restated Memorandum of Agreement for Oakland Army Base ("Amendment 1"), dated for reference purposes only as of \_\_\_\_\_, 2010, and effective as of \_\_\_\_\_, 2010 ("Amendment 1 Effective Date") is the first written amendment to the Amended and Restated Memorandum of Agreement for Oakland Army Base, dated as of February 27, 2008 (hereinafter, "Restated MOA"). This Amendment 1 is entered into by and among the Redevelopment Agency of the City of Oakland, 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"), and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port"), in the following factual context:

A. The terms used in this Amendment 1 shall have the same meanings assigned to them in the Restated MOA.

B. ORA and the City Council are together referred to herein as the "City". The City and the Port (each a "Party" and, collectively, the "Parties") intend to work cooperatively to pursue their respective goals, objectives, and legal and fiduciary obligations with respect to the environmental remediation and development of the OARB, all as set out more fully in the Restated MOA, the terms of which are incorporated herein by reference.

C. The Parties have had discussions regarding, among other things, ways to streamline the process of submitting costs for reimbursement out of the ESCA Funds and reporting to Chubb Custom Insurance Company ("Chubb") so that they can be credited toward the Insurance Attachment Point of the Insurance Policy issued by Chubb under which both the City and the Port are insureds.

D. As a result of those discussions, the Parties have agreed to amend the Restated MOA, pursuant to Section 11.2 of the Restated MOA, through this Amendment 1.

E. To effectuate this agreement, the City sent an email to Chubb dated June 11, 2009, a copy of which is attached as Exhibit "A" to this Amendment 1 and incorporated herein by reference, advising Chubb that the Parties are separately submitting their respective remediation cost reports to Chubb with respect to the costs described in Section F of this Amendment 1 in order to expedite matters.

F. After sending the e-mail mentioned in Section E of this Amendment 1, the City and the Port prepared and transmitted to Chubb their separate submissions for any remediation costs incurred up to the Amendment 1 Effective Date which the City or the Port believed should be credited toward the Insurance Attachment Point of the Insurance Policy but which had not yet been so credited ("Section F Remediation Costs") so that they could be credited toward the Insurance Attachment Point of the Insurance Policy.

G. The Parties also desire to amend certain provisions of the Restated MOA as set forth in this Amendment 1.

H. The Restated MOA was executed by the Mayor of the City of Oakland and the President of the City Council on behalf of the City Council, and was executed by the Agency Administrator on behalf of ORA. Since the City Council has adopted Resolution No. authorizing the City Administrator of the City of Oakland to execute this Amendment 1 on behalf of the City Council, and the City Attorney has confirmed that the City Administrator's signature fully binds the City Council in this Amendment 1, the Mayor of the City of Oakland and the President of the City Council are not required to execute this Amendment 1.

**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. Except to the extent amended by this Amendment 1, all other provisions of the Restated MOA (including all Exhibits and Schedules to the Restated MOA) shall remain in full force and effect.

2. Based on ESCA funding requests submitted to the Army as of the Amendment 1 Effective Date, and once the City submits the Port's Section F Remediation Costs to the Army for reimbursement out of the ESCA Funds, which the City agrees to do within five (5) days after the Port Attorney executes this Amendment 1, the Parties agree that upon receipt of all requested amounts from the Army, at least the Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) in ESCA Funds referenced in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1, will have been "expended". Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the City and the Port shall proceed to make the deposits called for in Section 5.3(c) of the Restated MOA, as said Section is amended in this Amendment 1. The rights of the Parties to make withdrawals from the Remediation Account, however, shall be modified to the extent set forth herein.

3. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.3 of the Restated MOA is hereby rescinded in its entirety and replaced by the following, new Section 5.3:

**“5.3. Unfunded Remediation Costs.**

(a) Generally. The Parties acknowledge and agree that the following costs and expenses associated with the investigation and remediation of the EDC Property in accordance with the Regulatory Requirements shall be considered “Unfunded Remediation Costs”: (1) any such costs incurred after the ESCA Funds are expended and before the Insurance Attachment Point is reached; (2) any such costs that exceed the total of the ESCA Funds and the limits of the Insurance Policy even after the Insurance Attachment Point is reached; and (3) such costs, if any, which are ultimately determined, whether before or after reimbursement from the ESCA Funds or the Insurance Policy, not to be covered by the ESCA Funds or the Insurance Policy.

(b) Allocation. All Unfunded Remediation Costs as described in Sections 5.3(a)(1) and (2) of the Restated MOA shall be allocated to the City and the Port in accordance with the Allocation Proportion, provided that:

(1) Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party undertaking the demolition; provided, however, that if there are Unfunded Remediation Costs for abatement of asbestos or lead based paint in connection with building demolition associated with a building that straddles the boundary of properties owned by both the Port and the City, then such Unfunded Remediation Costs will be shared by the Parties owning the contiguous properties proportionately, based on the amount of square footage of the building being demolished that is located on the property owned by the Port and on the property owned by the City;

(2) Unfunded Remediation Costs associated with Marine Sediments shall be the responsibility of the Port in accordance with Section 5.5 of the Restated MOA;

(3) all future costs for applications of covers after the Amendment 1 Effective Date for which either Party seeks reimbursement from the Remediation Account shall be limited to a total of Five Million Dollars (\$5,000,000.00) for each of the City and the Port, so that the aggregate amount for application of covers after the Amendment 1 Effective Date for which reimbursement is sought from the Remediation Account by the City and the Port will not exceed Ten Million Dollars (\$10,000,000.00); provided, however, that the limitation described above shall not prohibit each Party from seeking credit toward the Insurance Attachment Point or coverage under the Insurance Policy for future costs for applications of covers after the Amendment 1 Effective Date;

(4) except as required by DTSC or another Governmental Authority, or as necessary to achieve the stated remedial objectives of the RAP and/or RMP, the costs associated with a Party’s decision to excavate and transport off of the EDC Property soil with concentrations of chemicals of concern below remedial goals described in the RAP and/or RMP, which Regulatory

Requirements would permit re-use of the soil on the EDC Property, shall be deemed Unfunded Remediation Costs and shall not be subject to the Allocation Proportion, but instead (as between the Parties) will be the entire responsibility of the Party electing to excavate and dispose of the soil off of the EDC Property; and

(5) in the event that Chubb finally disallows a Section F Remediation Cost application toward the Insurance Attachment Point or coverage under the Insurance Policy, or the Army finally denies reimbursement of a Section F Remediation Cost reimbursement from the ESCA Funds solely because of a delay in submitting the cost information to the Army, or Chubb, then the Party incurring such cost shall be entitled to payment for such cost from the Remediation Account, but the Parties first shall be obliged to diligently pursue all appropriate remedies and efforts to dispute the disallowance of the cost based on the alleged delay.

Except as provided in Section 5.3(b)(5), the Unfunded Remediation Costs described in Section 5.3(a)(3) shall be the sole responsibility of the Party incurring them, and said Party shall not claim any reimbursement from the Remediation Account for said Unfunded Remediation Costs. If the Party has initially been reimbursed for such Unfunded Remediation Cost from the ESCA Funds or the Remediation Account, such Party shall reimburse the ESCA Funds or the Remediation Account in the amount it received for the unsuccessfully disputed Unfunded Remediation Cost plus, in the case of reimbursement to the Remediation Account, interest thereon at the annual rate of six percent (6%). Moreover, in the event that the Remediation Account has been closed, any Party who later becomes obliged to reimburse the Remediation Account shall instead pay to the other Party directly the Allocation Proportion (*i.e.*, 50%) of the amount that it is obliged to reimburse the Remediation Account.

(c) Allocation Procedure. Pursuant to Section 2 of Amendment 1, the Parties agree that at least Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000) of the ESCA Funds have been "expended" (including amounts subject to outstanding funding requests under Army Grants Officer review). Accordingly, within thirty (30) days after the Amendment 1 Effective Date, the Parties shall deposit in the aggregate One Million Dollars (\$1,000,000) in the Remediation Account in accordance with the Allocation Proportion (*i.e.*, Five Hundred Thousand Dollars (\$500,000) from the Port and Five Hundred Thousand Dollars (\$500,000) from the City). Each Party may draw from the Remediation Account to fulfill its remediation obligations as set forth in Section 5.1 of the Restated MOA, subject to, and consistent with, the draw procedures set forth in Section 5.3(d) of the Restated MOA. The Remediation Account Manager shall notify the Parties in writing each time the Remediation Account balance falls below Two Hundred Fifty Thousand Dollars (\$250,000). Within thirty (30) days after receipt of such notice from the Remediation Account Manager, the Remediation Account shall be funded by the Parties in aggregate One Million Dollar (\$1,000,000) increments in accordance with the Allocation Proportion. Such incremental payments shall continue until the aggregate amount paid for

environmental remediation from ESCA Funds and from Remediation Account funds equals the Insurance Attachment Point.

(d) Remediation Account Draws. Once any Unfunded Remediation Costs have been “deemed reasonable” under Paragraph 33 of the Insurance Policy because sixty (60) days have elapsed after Chubb’s receipt of the City’s and/or the Port’s submissions of costs and/or any “additional information or back up documentation” requested by Chubb and Chubb has not rejected or denied the costs, any Party seeking to withdraw funds from the Remediation Account shall make a request to the Remediation Account Manager specifying in sufficient detail the amount of funds requested, including a reasonable itemization of costs, and a description of how the funds will be used to comply with the obligations set forth in Section 5.1 of the Restated MOA, and the Remediation Account Manager shall pay the funds requested to the Party requesting them. The Parties may, if they mutually agree, arrange for claimed Unfunded Remediation Costs (including all or any portion of the Section F Remediation Costs) deemed to merit or require faster payment from the Remediation Account to be paid from the Remediation Account before they have been “deemed reasonable” under the Insurance Policy, subject to the reimbursement provisions herein. The Parties anticipate that draws generally will be based on invoices from third party service providers payable on a thirty (30) day cycle, and will comprise only costs that are Unfunded Remediation Costs as described in Section 5.3(a) of the Restated MOA, subject to the exceptions provided in Section 5.3(b) of the Restated MOA. Draws will not be made on the basis of estimates of future costs to be incurred. Therefore, the draw request will include an invoice in sufficient detail to determine the service provider and the services performed.

(e) Allocation Accounting. The Port and the City shall establish the Remediation Account and will require the Remediation Account Manager to provide a statement on a monthly basis that reflects the account balance, the cumulative contributions to the Remediation Account by each Party and specific draws on the Remediation Account. The Parties, with the assistance of the Remediation Account Manager, shall, on a monthly basis, reconcile the Remediation Account to ensure that each Party’s contribution to the Remediation Account was consistent with the Allocation Proportion. If a Party underfunded its Allocation Proportion of the Remediation Account, it shall reimburse the Party that overfunded the Remediation Account in an amount that reconciles the cumulative Remediation Account contributions with the Allocation Proportion.

(f) Demonstration of Financial Assurance for Conveyance. The City and the Port cooperated in submitting to DTSC a financial assurance demonstration in accordance with the Allocation Proportion, under which the City demonstrated financial capabilities of funding fifty percent (50%) of the anticipated remediation funding gap, and the Port demonstrated financial capabilities of funding the remaining fifty percent (50%) of the remediation funding gap.”

4. In order to carry out the purposes of this Amendment 1, as of the Amendment 1 Effective Date, Section 5.4 is hereby rescinded in its entirety and replaced by the following, new Section 5.4:

**“5.4. Insurance Policy.**

(a) Insurance Attachment Point. Prior to the Amendment 1 Effective Date, and before the Insurance Attachment Point under the Insurance Policy is reached, the Parties were obligated by the Restated MOA to jointly submit the reports required by the Insurance Policy to Chubb, executed by the Port and by OBRA or ORA, and specifying allowable costs incurred during the reporting period. In addition to the agreed separate submission of Section F Remediation Costs described in Section F above, on and after the Amendment 1 Effective Date, each Party shall separately transmit the submissions to Chubb required by the Insurance Policy, specifying allowable remediation costs incurred by that Party. Each Party promptly will notify the other Party in writing of any responses it receives from Chubb; the notification will include a copy of any written responses from Chubb. The Parties shall confer when any Party believes that eighty five percent (85%) of the Insurance Attachment Point has been reached. The Parties shall reasonably cooperate and confer with Chubb to reconcile the status of the self-insured retention and allowable costs under the Insurance Policy.

(b) Cost Cap Insurance Policy Claims. After the date the Insurance Attachment Point is reached, each Party shall be entitled to make claims under the cost cap portion of the Insurance Policy to fulfill its obligations under Section 5.1 of the Restated MOA. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time as it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall be responsible for its costs, legal or otherwise, in pursuing any claim. After Chubb agrees that the Insurance Attachment Point has been reached, each Party shall advance its own costs of remediation in accordance with its obligations under Section 5.1 of the Restated MOA, submit its own claim to Chubb, and be entitled to the sole benefit from any reimbursement from Chubb for that Party's claims. Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(c) Liability Claims Under Insurance Policy. Each Party shall be entitled to make claims under the liability portion of the Insurance Policy in the event such Party incurs a loss resulting from a pollution incident associated with the EDC Property. The Party making a claim shall provide a copy of the claim notice to the other Parties at the same time it submits the claim to Chubb. The Parties shall reasonably cooperate with respect to claims submitted to Chubb. The Party making the claim shall (1) be responsible for payment of any deductible associated with the claim and its costs, legal or otherwise, in pursuing any claim, and (2) benefit from any reimbursement from claims paid, and bear the risk that Chubb will not fully reimburse such Party for all or any portion of the claim.

Each Party will promptly notify each other Party in writing of the response received from Chubb in connection with a claim, including a detailed accounting as to the particular costs reimbursed or not reimbursed by Chubb.

(d) Insurance Policy Term and Limits. The Parties shall meet and confer at the earlier of either the time when Twenty Million Dollars (\$20,000,000) of the cost cap limits under the Insurance Policy have been paid by Chubb, or by August 7, 2012 which is one year before the expiration of the Insurance Policy term, to assess whether at such time there is a reasonable possibility that required activities necessary to comply with the Regulatory Requirements will, in the aggregate, exceed the cost cap limits or extend beyond August 7, 2013, the expiration of the Insurance Policy term. If the Parties agree that an increase in cost cap limits and/or an extension or replacement of the Insurance Policy is appropriate or necessary, all costs of securing that increase or extension (excluding the Port's and City's in-house costs and outside legal costs), including, but not limited to, any insurance premium for any increase in limits or extension or replacement of the Insurance Policy, shall be allocated to the City and the Port in accordance with the Allocation Proportion. If the Parties do not reach agreement with regard to securing an increase in the cost cap limits and/or an extension of the term of the Insurance Policy within a reasonable time before the cost cap limits or term of the Insurance Policy are likely to be exceeded, then the matter shall be resolved as an MOA Dispute subject to Article 10 of the Restated MOA. Any costs (excluding the Port's and City's in-house costs and outside legal costs) incurred for securing increased limits under, or replacement insurance for, or an extended term of, the Insurance Policy as a result of, or pursuant to, the resolution of the MOA Dispute shall be allocated to the City and the Port in accordance with the Allocation Proportion.

(e) The provisions and procedures of this Amendment 1 shall apply to any increased limits under, or extension of, the Insurance Policy or any insurance secured at or before the end of the Insurance Policy term to replace the Insurance Policy. If there is a successor insurer other than, or in addition to, Chubb, the term "Chubb" as used in this Amendment 1 shall apply to such successor insurer to the extent that there is a mechanism in the successor insurance policy under which costs submitted to the insurer shall be "deemed reasonable" within a reasonable time after submission to the successor insurer as currently set out in the Insurance Policy. To the extent that, for whatever reason, there is no longer a mechanism under the Insurance Policy or any successor insurance policy for submitted costs to be "deemed reasonable" within a reasonable time, any issues as to the reasonableness and/or necessity of any submitted costs shall be deemed an MOA Dispute under Article 10."

5. Except as otherwise provided in this Amendment 1, in consideration of the foregoing agreements in this Amendment 1, the City and the Port hereby mutually release one another from any and all actions, causes of action, claims, or demands arising out of or relating to prior submissions, or failures to submit, Section F Remediation Costs for ESCA Funds reimbursement or credit toward the Insurance Attachment Point.

IN WITNESS WHEREOF, the Parties have executed this Amendment 1 on the date(s) shown below:

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Omar R. Benjamin  
Title: Executive Director

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

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Name: Dan Lindheim  
Title: City Administrator

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**REDEVELOPMENT AGENCY OF THE  
CITY OF OAKLAND**

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

Resolution No.: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Agency Counsel

**THIS AGREEMENT SHALL  
NOT BE VALID OR EFFECTED  
FOR ANY PURPOSE UNLESS  
AND UNTIL IT IS SIGNED BY  
THE PORT ATTORNEY.**

Approved as of form and legality  
this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
David L. Alexander  
Port Attorney

Port Resolution No. \_\_\_\_\_

P.A.# \_\_\_\_\_