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OAKLAND

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

TO: Office of the Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: April 5, 2011

RE: Supplemental Report Regarding:

An Agency Resolution Authorizing:

(1) The Agency Administrator to Negotiate and Execute a Second Amendment to the Exclusive Negotiating Agreement (“ENA”) with AMB Property, L.P./California Capital Group (“AMB/CCG”) for a Development on the Former Oakland Army Base (“Base”) to:

- a) Extend the ENA term from April 22, 2011 to the earlier of April 22, 2012 or the Execution of a Lease Disposition and Development Agreement, with the Provision for an Automatic Extension of the Term of up to April 22, 2013 if there is a Delay in Completing a Certification for the Project Under the California Environmental Quality Act or the National Environmental Policy Act; and**
- b) Provide for: (A) Reimbursement to California Capital Group (“CCG”) of up to a Maximum Amount of \$14,100,000 for the Third Party Consultants Cost of the Planning and Design Work for the Base’s Infrastructure, Public Utilities, and Public Streets; (B) Approval of CCG’s Proposal for a Development Team, Scope of Work, Budget, and Schedule for the Planning and Design Work; (C) Elimination of the Requirement to Accommodate the Oakland Produce Market and the Oakland Film Center as Part of the Development; (D) Expansion of the Development Area to Include the Former Oakland Maritime Support Services ENA Site in the East Gateway Area; and (E) Release of AMB Property, L.P. from Responsibility for the Planning and Design Work, and Designating CCG as the Sole Party Responsible for the Planning and Design Work**

(2) A Waiver of the Advertising and Request for Proposal/Qualifications Process and an Award of the Planning and Design of Infrastructure Improvements for the Port-Oriented Railyard and 7th Street Overpass Work, in an Amount Not-To-Exceed \$3,850,212, to CCG

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A City Resolution Authorizing:

(1) The City Administrator to Negotiate and Execute an Exclusive Negotiating Agreement Between the City of Oakland and AMB/CCG for a Development on the Former Oakland Army Base Without Returning to the City Council

(2) A Waiver of the Advertising and Request for Proposal/Qualifications Process and an Award of the Planning and Design of Infrastructure Improvements for the Port-Oriented Railyard and 7th Street Overpass Work, in an Amount Not-To-Exceed \$3,850,212, to CCG

SUMMARY

This Supplemental Report presents the terms of the fully negotiated final draft of the Second Amendment to the Exclusive Negotiating Agreement (“SAENA”) between the Agency and AMB Property, L.P./California Capital Group (AMB/CCG).

PROJECT DESCRIPTION

The Agency and AMB/CCG concluded negotiation of the SAENA on the same general terms described in the Agenda Report and the Supplemental Report for the March 29, 2011 Community and Economic Development Committee. The terms of the existing ENA remain in place, except to the extent that the SAENA makes modifications. The complete final draft of the SAENA and attendant Exhibits are found in *Attachment A*. The following is a summary of the major terms of the proposed SAENA.

1. Extension of the Exclusive Negotiating Agreement (“ENA”) Term until the earlier of April 22, 2012, the completion of CEQA and execution of a Lease Development and Disposition Agreement, or the termination of the ENA due to a default. In addition, the ENA Term could be extended for up to one additional year in the event there is a delay in completing the environmental analysis required under the California Environmental Quality Act (“CEQA”).
2. Approval of the Developer’s proposed team of consultants, scope of work, schedule, and budget, as represented in Exhibits F, G, H and I to the SAENA.
3. Agreement to reimburse the Developer’s third party consultant costs through the Agency’s Joint Infrastructure Development Fmd, established for the development of the former Oakland Army Base, up to a maximum amount of \$14.1 million, for infrastructure master planning and design work for the entire Oakland Army Base. The Developer will receive no reimbursements or fees for its own costs in the management of the design consultant team. The Developer will be responsible for all costs related to the vertical development planning and any

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site improvement planning on the development sites. The \$14.1 million is for the entire base and is allocated between Agency Infrastructure at \$10.2 million and Port-Oriented Infrastructure at \$3.8 million. The Developer cannot proceed with the Port-Oriented work until authorized by the Agency staff to do so and Agency staff will not do so until certain provisions of the Cost Sharing Agreement between the Agency and the Port of Oakland are satisfied.

4. Elimination of the requirement to accommodate the Film Center and the Produce Market as part of the development.

5. Terms specifying for how the Agency and Developer will coordinate: outside agency negotiations; ongoing property leasing, soil/fill and remediation management; and securing additional federal government funding.

6. Modification of the ENA boundaries to reflect the relocation of the former Oakland Maritime Support Services (OMSS) ENA area from the East Gateway and the possible sale of up to six acres of the current ENA area to Caltrans for relocation of their Maintenance Facility. Agency staff intends to bring forward a recommendation for a new ENA with OMSS for the development of a trucking facility on up to 15 acres to be sited in the master planning process. The Developer is required to cooperate with OMSS, or any other developer the Agency may select for the trucking facility, so that OMSS can participate in the master planning process. Similarly Agency staff hopes to bring forward a recommendation for an ENA with a user or users selected for the Subaru Lot in the North Gateway, so that they too can be at the table throughout the master planning process.

7. The AMB/CCG joint venture has allocated the responsibility for the Infrastructure Planning work to CCG and the vertical and onsite planning to AMB. Therefore the contracts for the Agency and Port-Oriented infrastructure will be with CCG only. CCG's liability under the infrastructure design contracts, with respect to design errors and omissions, will be limited provided all of its design consultants carry adequate errors and omissions liability insurance. All consultant contracts, change orders, and final design decisions for the Agency Infrastructure master planning shall be subject to Agency approval. All Agency Infrastructure shall be subject to City of Oakland standards and a team of Agency staff, Agency review consultants and all the development oriented City departments will participate in every step of the planning process.

The agreement between the Agency and CCG for the design of Agency Infrastructure is a part of the SAENA as Exhibit L – Agency Infrastructure Terms and Condition. Because the Port-Oriented Infrastructure is contingent on future authorization and is for work deemed outside of the Agency ENA area, that work will be handled under a standard Professional Services Agreement (a sample of which is attached to the SAENA as Exhibit K).

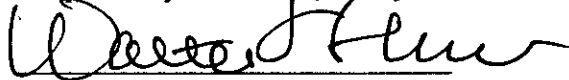
Should the Agency be dissolved and the City enters into an Exclusive Negotiating Agreement ("City ENA") with AMB/CCG for a development on the former Oakland Army Base ("Army Base"), the City ENA would employ the same general language and terms of the SAENA.

ACTION REQUESTED OF THE AGENCY BOARD/CITY COUNCIL

Staff requests that the Agency Board and the City Council adopt the two resolutions to authorize:

- (1) The Agency/City Administrator to negotiate and execute a SAENA/ENA between the Agency/City and AMB/CCG with the terms described in this report.
- (2) A waiver of the advertising and RFP/RFQ process and an award the planning and design of infrastructure improvements for the Port-Oriented Railyard and 7th Street Overpass work, in an amount not-to-exceed \$3,850,212, to CCG.

Respectfully submitted,



Walter S. Cohen, Director

Community and Economic Development Agency

Reviewed by:

Gregory Hunter, Deputy Director

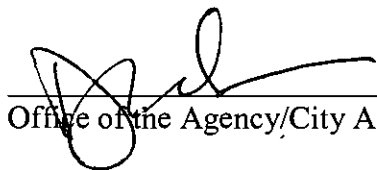
Economic Development and Redevelopment

Prepared by:

Pat Cashman, Project Manger

Redevelopment

FORWARD TO THE
AGENCY BOARD/CITY COUNCIL:



Office of the Agency/City Administrator

Attachments: A. Second Amendment to the ENA and Exhibits

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ATTACHMENT A

Second Amendment to the ENA (SAENA)

Between the Agency and AMB/CCG

and

SAENA Exhibits:

- Exhibit A – Revised Map of ENA Area**
- Exhibit B – Revised Real Estate Terms**
- Exhibit D – Revised Schedule of Performance**
- Exhibit F – Consultant Team**
- Exhibit G1 – Agency Infrastructure Budget**
- Exhibit G2 – Port Infrastructure Budget**
- Exhibit HI – Agency Infrastructure Scope of Services**
- Exhibit H2 – Port Infrastructure Scope of Services**
- Exhibit I – Delivery Schedule**
- Exhibit J – Payment Procedures**
- Exhibit K – Sample Professional Services Agreement**
- Exhibit L – Agency Infrastructure Terms and Conditions**

**SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT
AMB Property, L.P./California Capital Group**

This Second Amendment to the Exclusive Negotiating Agreement ("Second Amendment") is made and entered into this ___ day of April 2011 ("Effective Date"), by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law (the "Agency"), and AMB PROPERTY, L.P., a Delaware limited partnership ("AMB") and CALIFORNIA CAPITAL GROUP, a California general partnership ("CCG") and their successor in interest (collectively, the "Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. 2011-___ C.M.S, adopted on April ___, 2011.

RECITALS

A. The parties have previously entered into that certain Exclusive Negotiating Agreement, dated January 22, 1010, for the potential redevelopment of a portion of the former Oakland Army Base (the "Original Agreement").

B. On August 10, 2010, the parties entered into a First Amendment to the Original Agreement (the "First Amendment"). The Original Agreement, as amended by the provisions of the First Amendment, is referred to herein as the "ENA". Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the ENA.

C. The Term of the ENA currently expires on April 22, 2011.

D. While the parties have made substantial progress under the ENA, it is necessary to extend the Term so that the parties can finalize their respective tasks under the ENA. Further, the parties desire to amend the ENA to clarify and amend certain provisions of the ENA to conform to the parties' further agreements, including modifications to the proposed Project footprint and changes to mandated uses at the Project.

E. The Agency and the Port of Oakland ("Port") are concurrently negotiating a Cost Sharing Agreement ("CSA") whereby the Port and the Agency agree to cooperate with each other to plan, design, and construct certain public infrastructure improvements on their respective Oakland Army Base ("Base") parcels using, in part, grant funds awarded to the Port from the State of California's Trade Corridor Improvement Funds program ("TCIF Grant"), which improvements include (1) infrastructure relating primarily to the Agency's Base property, including Developer's proposed Project ("Agency Infrastructure"), and (2) infrastructure relating to the Port's proposed rail yard and 7th Street Overpass projects ("Port Infrastructure"), each as more particularly described in the CSA.

F. It is imperative that the Port and Agency expeditiously commence planning and design of the Base infrastructure to meet necessary timelines to preserve the TCIF Grant.

G. The Agency desires to retain CCG to oversee and coordinate certain planning and design tasks related to the Agency Infrastructure and, at the Agency's option (and pursuant to approval by the Port under the CSA), also for the Port Infrastructure, all pursuant to the provisions of this Second Amendment ("Master Infrastructure Plan").

H. The Agency Infrastructure and the Port Infrastructure consists of public infrastructure improvements for horizontal development at the Base (herein called "horizontal development"), while vertical development at the Base consists of, among other things, construction of buildings, other development structures, all on-site improvements, including any on-site infrastructure improvements (other than rough grading), and all planning and permits in connection therewith that are not expressly included within the Master Infrastructure Plan ("vertical development").

NOW THEREFORE, the ENA is hereby amended as follows:

1. Property/Project Area. That portion of Recital A of the Original Agreement which reads: "...118 acres (the "Property"), as shown in Exhibit A and as further described in the Request for Proposals for the Property issued by the Agency September 26, 2008 (the "RFP"), is hereby deleted and replaced with the following: "...133 acres (the "Property"), as shown as Exhibit A, subject, however, to possible deletion of a portion of Parcel G-2E pursuant to Section 16 hereof or a portion of the Property for a Truck Operation pursuant to Section 17 hereof" Further, Exhibit A to the Original Agreement is hereby deleted and replaced with Exhibit A to this Second Amendment.

2. Term. Section 1 of the Original Agreement is hereby deleted and replaced with the following:

"1. Effective Date and Term. The effective date of this Agreement is January 19, 2010 (the "Effective Date"). The term of this Agreement (the "Term") shall commence on the Effective Date and expire on the earlier to occur of (a) April 22, 2012 (the "Outside Expiration Date") or (b) the effective date of the LDDA; provided, however, in the event that the City of Oakland has not yet certified the CEQA/NEPA document for the Project prior to April 22, 2012, the Outside Expiration Date shall automatically be extended to the earlier to occur of (x) the effective date of the LDDA, (y) the date that is forty five (45) calendar days after the City of Oakland's certification of a CEQA/NEPA document for the Project or (z) April 22, 2013. Notwithstanding the provisions of the immediately preceding sentence to the contrary, either party shall have the right to terminate this Agreement without liability to the other party upon sixty (60) days' prior written notice to the other party.

3. The following shall be added as Section 4 of the First Amendment:

“4. The Developer’s obligation to reimburse the Agency under this First Amendment for work completed by LSA prior to the expiration of the Term shall survive the expiration or earlier termination of the Agreement; provided, however, if the Agreement is terminated by the Agency or the Developer on sixty (60) days’ notice as provided in Section 1 of the Agreement, Developer’s reimbursement obligation shall be limited to those costs incurred by the Agency prior to the date of the termination notice.

4. Agreed Uses. Section 4 of Exhibit B to the Original Agreement is hereby modified to read as follows: “Logistics facilities, Class A office, research and development facilities, project-serving retail, waterfront open space, JATC job training facility, recycling facilities, Truck Operation, or as further negotiated.” The parties further agree that that the Film Center and Produce Market will no longer constitute mandated uses on the Property. Accordingly, any references to the Film Center or Produce Market in the ENA, including in any Exhibits, is hereby deleted.

5. Negotiations.

5.1 Negotiation of LDDA Terms. The following shall be added after the first sentence of the second paragraph of Section 2 of the Original Agreement:

“To facilitate concluding the negotiations regarding the form of the LDDA to be recommended to the Agency Board as soon as practicable, the parties hereby agree to have their principal negotiators meet on a weekly basis, if practicable and necessary, with the goal of finalizing negotiations within six (6) months after the effective date of the Second Amendment.”

5.2 Property Management. The next to last sentence of the first paragraph of Section 2 of the Original Agreement that begins with: “During the Term, the Agency shall have the right...” is hereby deleted and the following substituted therefor:

“The parties agree that during the Term the Agency will continue to have responsibility for management of the Property and that it is in the interests of all parties to maximize revenue from operation of the Property. Accordingly, during the Term, Agency shall have the right to rent, lease, license, or use all or any portion of the Property for uses that would not have a material, adverse impact on Developer’s rights under this Agreement, as determined by Agency in its reasonable judgment after consultation with Developer as follows:

- (a) The Agency will notify the Developer of activities that the Agency reasonably determines could have a material, adverse impact on the Developer’s rights and responsibilities under this Agreement. Without limiting the foregoing, the parties hereby agree that the Agency shall provide Developer with notice of the following proposed activities: (i) any leasing or licensing activities with a term of more than one (1) year; (ii) the import, export or management of a

material amount of on-site soil, and recycled products (including the Agency's remediation activities pursuant to the RAP/RMP); (iii) any maintenance contracts with a term exceeding one (1) year; and (iv) any building demolitions. Should the Developer not respond within five (5) business days to any notice given under this paragraph, the Agency shall take the lack of a response as concurrence with the planned or pending activity.

- (b) Developer, at its election, shall respond to the Agency's notice within five (5) business days after receipt thereof. Developer's failure to respond shall conclusively be deemed to constitute Developer's approval of the proposed activity. In the event that Developer desires that the Agency not proceed with the proposed activity due to Developer's determination that the proposed activity would have a material, adverse impact on Developer's rights and obligations under this Agreement or that the notice does not sufficiently describe the intended activity to allow the Developer to determine what, if any, impact the proposed activity may have on Developer's rights and obligations, Developer's response to the Agency shall state with specificity the basis for such determination or the need for more specificity.
- (c) The Parties shall meet as soon as practicable after the Agency's receipt of Developer's written objection to the proposed activity to attempt to resolve the issue. If the Parties are unable to resolve the issue, the Agency's reasonable determination shall control.

6. Schedule of Performance. The Schedule of Performance attached to the Original Agreement is hereby deleted and the attached "Revised Schedule of Performance" attached hereto as Exhibit D shall be substituted therefor:

7. The following new Sections are hereby added to the ENA:

16. Parcel G-2E. CalTrans has proposed that the Agency convey to it a portion of the Central Gateway, which likely may be a portion of Parcel G-2E, as shown on Exhibit A, for relocation of its Maintenance Facility. Developer hereby agrees that the Agency shall have the right, upon written notice to Developer, to unilaterally amend the legal description of the Property to exclude any land contracted for by the Agency and CalTrans (not to exceed 6 acres) for such relocation.

17. Mandated Truck Parking. Developer acknowledges that up to 15 acres of the Property may be needed for truck parking and ancillary uses ("Truck Operation") to satisfy certain conditions imposed by the San Francisco Bay Conservation and Development Commission ("BCDC") in a location to be determined in the master planning process conducted pursuant to Section 20 below. The parties acknowledge that the Agency may desire to have a third party develop and operate the Truck Operation. Therefore, so long as such property will be used as a Truck Operation that would satisfy the BCDC condition in effect as of the Effective Date of the Second Amendment, the Agency shall have the right, upon written notice to Developer, to unilaterally amend the legal description of the Property to exclude up to 15 acres to be developed and operated

as the Truck Operation by a third party. Further, to the extent issues related to the Truck Operation would not delay the Project, Developer will cooperate with the Agency and with any other developer selected by the Agency to develop a Truck Operation to coordinate the location of the Truck Operation in the Master Infrastructure Plan and the Project. The parties agree that the foregoing obligation is limited to incorporating the Truck Operation into the Master Infrastructure Plan and that Developer shall not be obligated to incur any other third party costs related to a third parties' development and operation of a Truck Operation. The parties hereby agree that the provisions of this Section 17 are for the sole benefit of the Agency and the Developer and their respective permitted successors and assigns, and that no third party shall have any rights hereunder as a third-party beneficiary.

18. Gateway Park Cooperation. Developer acknowledges that a regional Gateway Park is being planned by multiple agencies. To the extent issues related to the proposed Gateway Park would not delay the Project, Developer agrees to cooperate with the Agency, in the master planning of the Base, with respect to the Gateway Park planning process, in a manner that is mutually beneficial to both Parties. The parties agree that the foregoing obligation shall not obligate Developer to agree to exclude any portion of the Property from the Project or to incur any third party costs related to the Gateway Park.

19. Agency Administrator Discretion to Extend Time. The Agency Administrator, in his/her sole and absolute discretion, and without returning to the Agency Board, may extend the time for any task to be completed hereunder for a reasonable period of time for either party to complete the task; provided, however, that no extension of time shall exceed the Term. All extensions hereunder shall be in writing (including by email or letter), shall include the length of the extension, and shall specify the corresponding revised due date of the task.

20. Master Infrastructure Planning. The parties acknowledge that the economic viability of the Project depends on the ability to access funds from the TCIF Grant to contribute toward the construction of the Agency Infrastructure and, if agreed upon by the Port, the Port Infrastructure. Therefore, in order to meet the deadlines imposed on the use of the TCIF Grant, the parties desire to proceed with the planning and design of the Agency Infrastructure and, if agreed upon by the Port, the Port Infrastructure, prior to the execution of the LDDA. The parties hereby agree that CCG, in its role as one of the Developer parties under the ENA (and, pursuant to Section 20.1 below, expressly excluding AMB) will (a) oversee and coordinate the activities of the various consultants and contractors to enable them to complete, for the Agency's approval, the tasks set forth in Exhibit HI attached hereto (the "Scope of Services") in an organized and efficient manner, on time and on budget; (b) to maintain records regarding the Scope of Services such as insurance certificates, as well as the financial books and records; (c) to keep the Agency apprised of the status of the completion of the Scope of Services; and (d) to be the "point person" to respond to issues as they arise, as more particularly provided for below.

- A. CCG's activities with respect to the portion of the Scope of Services related to the Agency Infrastructure shall be subject to the supplemental terms and conditions set forth in Exhibit L attached hereto (the "Agency Infrastructure Terms and Conditions").
- B. If and when directed by the Agency, the Agency and CCG shall execute a Professional Services Agreement for the Port Infrastructure ("Port Infrastructure PSA") in an amount not to exceed \$3,850,212 in substantially similar form as Exhibit K attached hereto, modified to conform, as applicable, to the amended terms in Exhibit L.
- C. CCG and the Agency hereby approve the following items to be used as the basis for preparation of the appropriate exhibits to the Agency Infrastructure Terms and Conditions and, if directed by the Agency, to the Port Infrastructure PSA:
1. Exhibit F- Proposed Team for Master Infrastructure Plan.
 2. Exhibit G1- Agency Infrastructure Master Planning Budget; Exhibit G2- Port-Oriented Activities Master Planning Budget.
 3. Exhibit H1- Agency Infrastructure Master Planning Scope of Services; Exhibit H2- Port-Oriented Activities Master Planning Scope of Services.
 4. Exhibit I- Delivery Schedule.
 5. Exhibit J- Payment Procedures.
- D. Subject to the prior mutual written approval of Agency staff and Developer, budget allocations can be moved from one approved line item in Exhibit G1 or G2, as the case may be, but at no time can the Agency's obligation exceed the lesser of (1) consultant work authorized and completed; or (2) \$14.1 million, without the approval of the Agency Board in its sole and absolute discretion.
- E. No Agency reimbursement for Agency or Port Infrastructure costs under this ENA, including, without limitation, the Agency Infrastructure Terms and Conditions or the Port PSA, shall modify or otherwise change the Developer's obligation to negotiate a Fair Share contribution pursuant to ENA Exhibit B, Item 25.

F. The Agency's funding for its reimbursement to CCG for the Master Infrastructure Plan is contingent, in part, upon the future availability of tax increment revenue derived from the Army Base Redevelopment Area and use of the Agency's existing fund balance in an Agency-created Joint Infrastructure Account. Should such revenue be diminished, terminated, reversed, or recovered because of changes to California Redevelopment Law, the Agency is under no legal obligation to proceed with the Master Infrastructure Plan, but will make reasonable efforts to fund part or all of the work through other means, such as leasing revenue derived from the former Army Base, grant revenue awarded directly to the City, or OAB land sales proceeds if such funds remain available to the Agency for Master Infrastructure Plan work.

20.1: Acknowledgement. The parties hereby acknowledge and agree that (i) the parties have agreed that AMB shall not participate in the matters set forth in this Section 20, the attached Exhibit L or, if applicable, the Port Infrastructure PSA; (ii) all of the work contemplated under this Section 20, the attached Exhibit L or, if applicable, the Port Infrastructure PSA shall be performed by and between the Agency and CCG only; and (iii) that AMB shall have no right, obligation or liability under the matters set forth in this Section 20, the attached Exhibit L or, if applicable, the Port Infrastructure PSA.

8. The Parties hereby agree that, except as amended by this Second Amendment, all other terms, conditions, and provisions of the ENA remain unchanged and in full force.

9. The persons signing this Second Amendment on behalf of Developer affirm that they are authorized to execute on Developer's behalf

[Signatures on following page]

IN WITNESS WHEREOF, this Second Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and AMB Property, L.P. and California Capital Group has been executed by the Parties as of the date first written above.

DEVELOPER:

AMB PROPERTY, L.P.;
a Delaware limited partnership

By: **AMB PROPERTY CORPORATION,**
a Maryland corporation

By: _____

Its: _____

Dated: _____

CALIFORNIA CAPITAL GROUP,
A California general partnership

By: _____

Its: _____

Dated: _____

AGENCY:

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

By: _____

Dan Lindheim
Agency Administrator

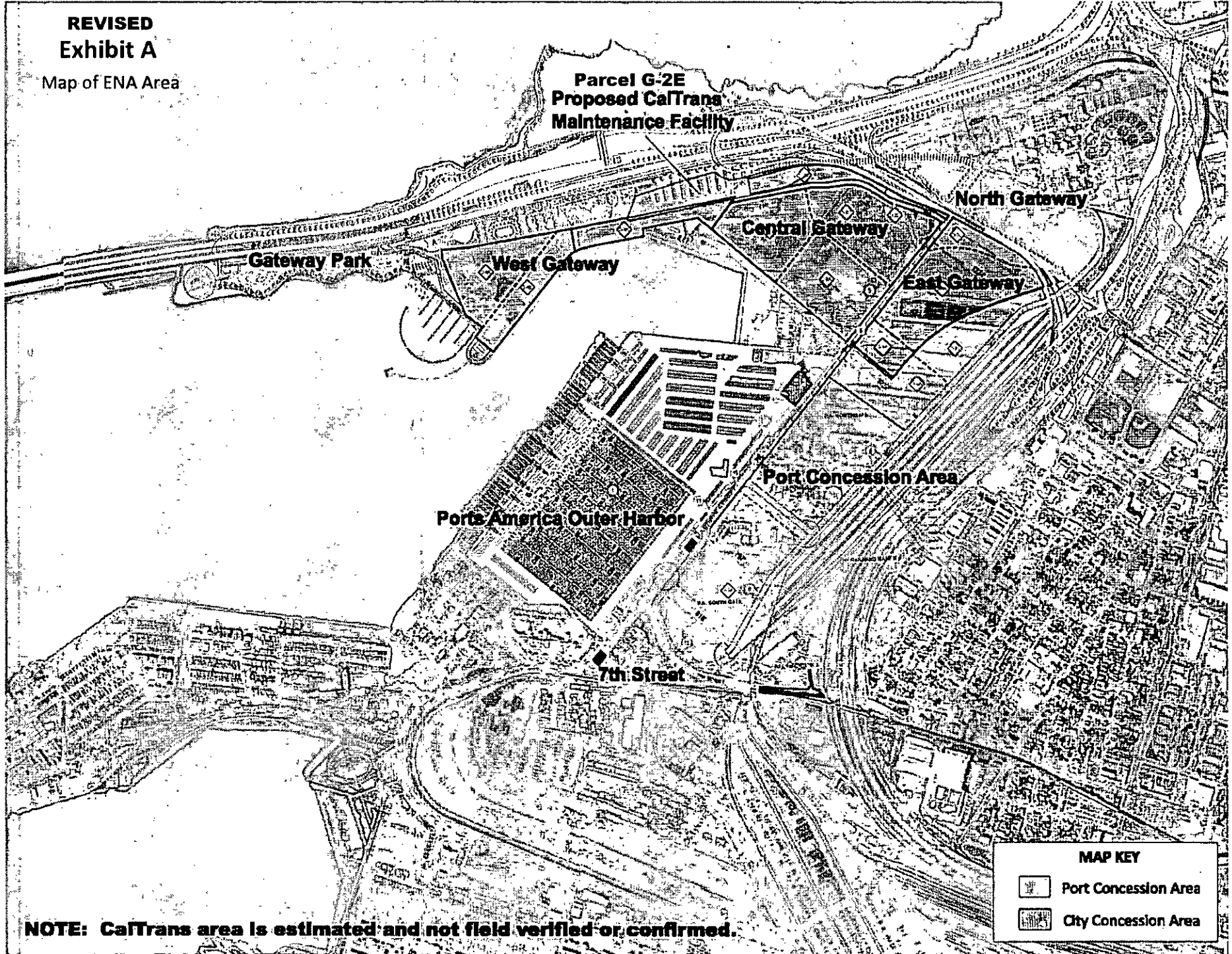
Approved as to form and legality:

By: _____

Diame Millner
Agency Counsel

**REVISED
Exhibit A**

Map of ENA Area



NOTE: CalTrans area is estimated and not field verified or confirmed.

MAP KEY

	Port Concession Area
	City Concession Area

REVISED

THE FOLLOWING EXHIBITS B AND EXHIBIT C ARE NONEXCLUSIVE AND NONBINDING TOPICS FOR FURTHER DISCUSSION AND CONSIDERATION BETWEEN THE PARTIES DURING THE TERM OF THE ENA.

**EXHIBIT B
REAL ESTATE TERMS**

1	LANDLORD:	Redevelopment Agency of the City of Oakland
2	LESSEE:	To be designated by Developer
2A	GUARANTOR FOR LDDA COMPLETION GUARANTY	[Note- Guarantor must be financially strong entity with significant assets to guarantee LDDA Project completion obligation, as determined by Agency]
3	PROPERTY:	Approximately 118 acres of Army Base Property, excluding the OMSS Parcel.
4	AGREED USE:	Logistics facilities, Class A office, research and development facilities, project-serving retail, waterfront open space, JATC job training facility, recycling facilities, Truck Operation, or as further n. The parties further agree that that the Film Center and Produce Market will no longer constitute mandated uses on the Property. Accordingly, any references to the Film Center or Produce Market in the ENA, including in any Exhibits, is hereby deleted.
5	INITIAL TERM:	66 years Term shall commence on lease execution ("Lease Commencement Date")
5A	TERMINATION RIGHTS	Lessee has no right to terminate Lease. Landlord has right to terminate Lease due to Developer default or breach.
6	LEASE COMMENCEMENT DATE	Lease execution date.
7	RENT COMMENCEMENT DATE	One hundred twenty (120) days from execution of the lease.
8	EXTENDED TERM:	Landlord shall grant, at its sole and absolute discretion one (1) additional thirty-three (33) year option to extend the Lease. Option is at Landlord's sole and absolute discretion and may be exercised at least two (2) years in advance of the end of the current term.
9	POSSESSION:	Upon lease execution and no later than eighteen (18) months after execution of an LDDA.
10	RENT:	Fair Market Rent to be determined by the parties during the ENA period.
11	PAYMENT OF RENT:	Rent shall be paid annually on or before July 1 of each and every year of the term. Lessee shall pay prorated annual rent for Year 1 on the Rent Commencement Date.

12	RENTAL RATE ADJUSTMENT	As negotiated during the ENA
13	TAXES/ EXPENSES	Lessee shall pay any and all taxes, including, but not limited to, possessory interest tax. Lessee shall pay any and all expenses associated with the Property.
14	INSURANCE	<p>Lessee pays.</p> <p>Commercial General Liability: \$5,000,000</p> <p>Worker's Compensation: Statutory Limits (no less than \$1,000,000)</p> <p>Employer's Liability: \$1,000,000</p> <p>Automobile Business Liability: \$1,000,000</p> <p>Pollution Limited Liability: \$1,000,000</p> <p>All coverages are subject to periodic increase as determined by the City's Risk Manager</p>
15	CONDITION OF PROPERTY AT DELIVERY	<p>Lessee shall take delivery of the premises in an As-Is condition subject to any and all existing tide exceptions, encumbrances, liens, and real property agreements including, but not limited to, three quitclaim deeds recorded in 2002 by the State of California Department of Transportation and the following unrecorded tenancy agreements: 1) Oakland Maritime Support Services Lease, 2) City of Oakland Winter Shelter License, 3) Oakland Film Center Licenses (sixteen total), 4) Pacific Coast Container Lease. Lessee is responsible for identifying and transferring three acres of land in the OARB to JATC per the MOA between Agency and JATC. Any alternative to the transfer of OARB land to JATC is at the sole expense of Lessee.</p>
16	ENVIRONMENTAL REMEDIATION	<p>Agency and Lessee will negotiate detailed terms of environmental remediation responsibility and liability based upon the RAP/RMP. Remediation will include, but is not limited to, remediating and removing existing utility infrastructure, and receiving closure letters from environmental regulatory agencies with a mutual goal of completing remediation by August 2013. Agency will reimburse specified costs on terms to be detailed in the LDDA. Terms of liability for discovery of unanticipated pre-existing environmental contamination will also be negotiated and detailed in the LDDA.</p>
17	INDEMNIFICATION	<p>Lessee shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and the Redevelopment Agency of the City of Oakland and its employees, officers, directors, shareholders, partners and agents</p>

18	DEED RESTRICTIONS & ENVIRONMENTAL USE RESTRICTIONS	Lessee accepts and acknowledges the Property is subject to: 1) deed restrictions in the transfer deeds, 2) a recorded covenant to restrict use of property, and 3) right of access across the Property to allow for remediation or monitoring by federal and state agencies.
19	UTILITY INFRASTRUCTURE	Landlord does not warrant or guarantee utility service to the Property. Landlord will coordinate with Lessee, Port of Oakland and any other utility service provider the use of existing utility infrastructure. Landlord shall cooperate with Lessee in the development of new utility infrastructure to serve the Property on terms to be negotiated.
20	SECURITY DEPOSIT	To be negotiated
21	LANDLORD'S MAINTENANCE	None. Lessee is responsible for all maintenance.
22	COMMISSION:	Landlord shall not pay or be liable for any commissions or brokerage fees. Lessee shall hold harmless and defend Landlord against any claims for commissions or brokerage fees.
23	SIGNAGE	Lessee may not install or place signage on any existing City street on the Property or within any City street to be created or the public corridor. Lessee may install and place signage on the remaining Property in compliance with City codes
24	TAXES & PUBLIC IMPROVEMENTS MAINTENANCE & INSURANCE	Lessee shall pay all operating expenses to operate the Project in a manner outlined in the lease agreement. Lessee's operation expenses to include all capital expenditures, security and insurance for the Property and Project. Lessee to maintain the Property and Project in first-class condition.
25	FAIR SHARE	Lessee shall be responsible for paying a fair share of any required off-site traffic improvements and/or other mitigations, as determined by the Oakland Army Base Fair Share Allocation Report, pursuant to the Mitigation Monitoring & Reporting Report of the Oakland Army Base Redevelopment Area Plan Environmental Impact Report. Final terms of details of this provision shall be determined prior to entering in the LDDA.
26	LANDLORD ACCESS	Landlord has the right to enter and inspect the Property and Project after reasonable notification to Lessee.
27	CITY/AGENCY PROGRAMS	Lessee to comply with all City/Agency social programs in both construction and operations including, without limitation, labor peace agreement, prevailing wages, living wages, local and small local business, equal benefits, disabled access, and apprenticeship/job training/first source hiring programs. Lessee must agree to comply with compliance monitoring by Agency.

28	GOOD FAITH DEPOSIT	Developer has deposited with Agency a fifty thousand dollar (\$50,000.00) Good Faith Deposit in the form of certified funds or a letter of credit in favor of Agency. If the Parties enter into an LDDA, or Developer negotiates in good faith but fails to reach agreement with Agency, or Agency otherwise declines, in its sole and absolute discretion, to enter into an LDDA, Agency shall return the Good Faith Deposit to Developer. If Developer fails to negotiate in good faith with Agency or fails to fulfill the conditions or meet the obligations set forth in this Agreement as reasonably determined by Agency, Agency may exercise its option to retain the Good Faith Deposit as liquidated damages.
29	PROJECT EXPENSE PAYMENT	To be negotiated.
30	EQUITY PARTICIPATION WITH AGENCY	To be negotiated.

**REVISED
EXHIBIT D**

SCHEDULE OF PERFORMANCE

The Parties shall make all reasonable efforts to perform the following activities during the Negotiation Period and within the time periods set forth herein below to the extent permitted by the schedule. All initial capitalized terms will have the same meaning as in the Exclusive Negotiating Agreement. The performance time shall commence at the approval of the Second Amendment to the Exclusive Negotiating Agreement.

No.	Task	Performance Time	Performance Status
1.0	Developer (including its members, partners and other entities holding an equity interest in Developer) shall execute and deliver Exhibit E (Campaign Contribution Limits Form) to Agency.	Concurrently with execution of ENA	Completed
2.0	Prior to the Execution of the ENA, the Developer worked with the Port and the Agency to establish the baseline for the Trade Corridors Improvement Funds bond allocation, which now includes potential state and federal funding for projects within the East and Central Gateway Areas.	Completed	Completed
2.0 (b)	Developer shall work with the Port and the Agency to seek and apply for federal funding for projects within the East and Central Gateway Areas.	Prior to and following the effective date of the ENA.	On-going
2.1	Developer shall provide Agency with updates of the Conceptual Infrastructure Development Plan on a regular basis until Developer submits to Agency a Final Infrastructure Development Plan.	Throughout ENA period and within 15 days following any substantial modifications of the Plan.	On-going Official Updates: 10/6/2009 10/29/2009 10/31/2009 12/7/2009 1/28/2010 3/1/2010 3/24/2010 4/15/2010 6/11/2010 7/7/2010 9/16/2010 10/15/2010 11/15/2010

2.2	Should the Conceptual Infrastructure or Project plans omit the 15-acre OMSS site from its currently approved location in the East Gateway Area, Developer will submit a proposal for negotiating an alternative location that will allow continuity from this day forward of alternative truck parking on the Army Base.	Within 60 days of execution of ENA.	Completed
2.3	Developer shall work with the Agency and its designated truck facility developer in the planning of a new location for up to 15 acres of truck parking and ancillary support services within its ENA Area.	Prior to and following the effective date of the ENA.	On-going
3.0	Agency shall provide Developer all existing environmental, geological, engineering and other reports, contracts for services, and infrastructure design plans within the Agency's possession, including and not limited to documents procured under OBRA and stored offsite or known, or control pertaining to the Property, subject to Section 13 of the Agreement.	Prior to and following the effective date of the ENA.	Completed
3.1	Agency and Port shall develop a preliminary cost sharing agreement consistent with the existing MOA and TCIF Project.	90 days following the effective date of the ENA.	On-going
4.0	Developer shall submit to Agency: A written statement detailing the status of any current or pending legal matters that might have a material impact on the planning, development or implementation of the Project. Developer shall provide Agency copies of any litigation documents or filings in connection with such litigation within five (5) calendar days of Agency's written request. Should any legal matter that might have a material impact on the planning, development or implementation of the Project arise during the Negotiation Period, Developer shall be obligated to disclose that information to Agency staff in writing within five (5) business days after Developer or its partners become aware of such legal matter.	Within 45 days of commencement of the Negotiation Period	Completed
4.1	Developer shall submit to Agency: An organizational chart of the Developer Team.	Within 45 days of commencement of the Negotiation	Completed

		Period	
4.2	Developer shall submit to Agency: A detailed written legal structure of the proposed development team in a form that reasonably satisfies Agency. This submission shall include a written description of the specific and general roles, responsibilities, and obligations of Developer, Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project. The written description of roles, responsibilities, and obligations shall identify the principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.	Within 120 days of commencement of the ENA	Completed
4.3	All documents related to Developer's corporate, LLC, or partnership status, and the status of its members or partners, including but not limited to articles of incorporation, by-laws, partnership agreements, operating agreements, joint venture agreements, lists of members of board of directors, and proof of good legal standing.	Within 120 days of commencement of the ENA	
4.4	The funding schedule for the entity to be formed under the Joint Venture demonstrating the capitalization of the venture during the ENA.	Within 120 days of commencement of the ENA	Completed
5.0	Developer shall submit to Agency a written proposal of additional geological, engineering or other studies and/or design required for the development of an infrastructure plan for the Property.	Within 90 days of commencement of the ENA	Completed. See Exhibit H
5.1	Developer shall submit to Agency written cost estimates for each of the geological, engineering and other studies and/or design required for development of an infrastructure plan for the Property.	Within 90 days of commencement of the ENA	Completed. See Exhibit G
5.2	Developer shall submit to Agency schedules for each of the geological, engineering and other studies and/or design required for development of an infrastructure plan for the Property.	Within 90 days of commencement of the ENA	Completed. See Exhibit I

5.3	Agency shall approve and appropriate funds for each of the geological, engineering and other studies and/or design required for development of an infrastructure plan for the Property and reimburse the Developer's third-part costs per the Payment Procedures outlined in Exhibit J.	On a contract-by-contract basis	On-gonig
6.0	<p>Developer shall retain environmental and professional design consultants, if necessary, to prepare an environmental site assessment and all necessary environmental documentation required to conduct environmental review under the California Environmental Quality Act (CEQA) for the Project.</p> <p>Agency has the option of contracting directly with CEQA consultants and requiring Developer to pay their fees. Except as otherwise specifically provided for below, all environmental documents shall be prepared within the time periods required by CEQA.</p>	Within 60 days of commencement of the Negotiation Period, the City, in its sole discretion, shall determine the best approach for obtaining CEQA and NEPA clearance to expedite development, subject to consultation with the Developer.	<p>Amended by Amendment 1.</p> <p>Environmental and professional design consultants retained by Agency. Environmental review on-going.</p>
7.0	Developer shall submit conceptual plans and options for the location, configuration, scale, and relationship of the proposed rail and other infrastructure improvements to be developed in connection with the development of the Property, buildings and other improvements, circulation, and Project phasing.	Within 90 days of commencement of the ENA	
8.0	Developer shall hold at least one public meeting in the community to present its proposed Development Plan for the constnction of the Project. Developer shall hold up to three such additional community meetings as reasonably required by the City and Agency and Developer shall be given a minimum of 15 days written notice of the same.	Within 135 days of commencement of the Negotiation Period	36 Meetings Completed to Date

9.0	Developer shall develop a Project Description that is suitable for review under the California Environmental Quality Act (CEQA) as determined by the City of Oakland.	Within 60 days of commencement of the Negotiation Period	Completed
10.0	Developer shall obtain authorization to proceed with environmental review of the Project Description from the Deputy Director of Redevelopment.	Within 165 days of commencement of the Negotiation Period	Completed
11.0	Agency shall submit an "Application for Environmental Review" to the City Planning Department for the development of the Property.	Within 15 days from approval of Project Description by Agency.	Completed
12.0	Developer shall submit to Agency: A detailed feasibility study of the potential reuse of existing warehouse structures (and/or salvage and reuse of building materials) as part of the Project.	Prior to execution of the LDDA.	
12.1	Developer shall submit to Agency: A plan for site preparation that addresses: deconstruction of existing warehouse structures (if applicable), environmental remediation, installation of utilities and other infrastructure, and other site preparation.	Consistent with the schedule included as Exhibit I	
13.0	Developer shall submit to Agency: Detailed and itemized pro formas that are linked to the schedule for construction and lease-up of Phase 1 of the Project. The pro formas shall include a Project development budget, a statement describing the sources and uses of funds, a 20-year cash flow analysis, and an annotated operating budget to a level of detail reasonably acceptable to Agency.	Prior to execution of the LDDA	
13.1	Developer shall submit to Agency: A detailed development schedule for construction of Phase 1 of the Project, which shall include construction and absorption of the Project's Phase 1 industrial, commercial, and retail spaces.	Prior to execution of the LDDA	

13.2	Developer shall submit to Agency: A preliminary Community Benefits funding plan.	Within 240 days of commencement of the Negotiation Period	Completed
13.3	Agency and the Developer shall negotiate a Community Benefits Agreement, to be part of the LDDA, which includes an immediate emphasis on workforce development and hiring for construction and operational phases of the proposed development.	Prior to execution of LDDA	
14.0	Developer shall submit all necessary and applicable zoning permit applications and other land use permit applications for the Vertical Project to the City's Planning Department for processing.	Consistent with the schedule included as Exhibit I	
15.0	Developer shall engage an Appraiser, acceptable to the Agency, to appraise the Fair Market Value of the Property.	Within 120 days of commencement of the Negotiation Period.	Proposal Submitted 6/1/2010, Awaiting Agency Approval
16.0	Developer shall obtain final appraisal from the Appraiser.	Prior to execution of the LDDA	
17.0	For the purpose of Agency staff preparing a recommendation for the terms and conditions of a LDDA and Ground Lease, the Developer shall submit all necessary information, including but not limited to:	By the end of the Negotiation Period	On-going
17.1	Evidence of financing, including letters of intent and other commitments from lenders and equity partners, if any, to provide financing for the development of the Agency-approved Phase 1 of the Project.	Within 120 days of commencement of the Negotiation Period.	

17.2	<p>An updated and refined Project development budget statement describing sources and uses of funds, a 20-year cash flow analysis, and an annotated operating budget for the industrial, commercial, and retail components of the Agency-approved Phase 1 of the Project to a level of detail reasonably acceptable to Agency.</p> <p>Evidence of financing, including letters of intent and other commitments from lenders and equity partners, if any, to provide financing for the development of the Agency-approved Phase 1 of the Project.</p>	<p>Within 120 days of commencement of the Negotiation Period.</p>	
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Exhibit F

Proposed OAB Master Planning, Design Work, and Regulatory Approval Team

<u>Proposed OAB Master Planning, Design Work, and Regulatory Approval Team</u>		<u>LBE</u>	<u>SLBE</u>	<u>MBE</u>	<u>WBE</u>
Program					
Architectural Dimensions	Program Management	X	X		
Turner Construction	Program Team Administration	X			
Acumen Building Enterprise, Inc	Scheduling	X	X	X	
Design					
AECOM	Master Electrical System Planning	X			
Acumen Building Enterprise, inc	Master Electrical System Planning	X	X	X	
Tucker Technology	Master Electrical System Planning	X	X	X	
BKF Engineers	Structural Engineering	X			
McLarand Vasquez Emsiek & Partners	Planning Design Services	X		X	
First American Title Company	Title Work				
Berlogar Geotechnical Consultants	Geotechnical Work				
BKF Engineers	Road Planning	X			
Jacobs Engineering Group, Inc.	7th Street Design	X			
BKF Engineers	7th Street Structural Peer Review	X			
BKF Engineers	Traffic Planning	X			
Industrial Railways Company	Rail Design				
AECOM	Rail Design Peer Review	X			
Kennedy/Jenks Consultants	Utilities Planning	X			
PGAdesign Inc	Landscape Design	X	X		X
Ruggeri-Jensen-Azar	Survey and Parcel Map				
Ruggeri-Jensen-Azar	Grading and Drainage				
Contractors					
Top Grade Construction	Pre Construction				
Flatiron West Inc	7th Pre Construction				
Admin					
Law Office of Mark Stice	Legal Services	X	X		
Finlayson/Williams Adiey	Accounting/Audit	X	X	X	
		68.42%	21.22%	10.92%	2.81%

<u>On-Call Contracts</u>	<u>LBE</u>	<u>SLBE</u>	<u>MBE</u>	<u>WBE</u>
TransSystems	X			
HDR Engineering, Inc.				
URS Corporation	X			
Treadwell Rollo	X			
Dahlin Group				
MACTEC Engineering and Consulting, Inc.	X			
Innovative and Creative Environmental Solutions *				
Northgate Environmental Management Inc.*	X			

* -- Environmental costs not included in the \$14.1 million budget

Exhibit G1

OAS Master Planning, Design Work, and Regulatory Approval Budget Agency Infrastructure

Surveys, Mapping, and Planning	\$2,541,888	
Demolition Planning	\$112,142	
Soils/Grading/Materials Handling	\$2,048,462	
Power Grid/Telecom Planning	\$1,495,228	
Public Roads & Utilities Planning	\$4,052,068	
	<u>\$10,249,788</u>	TOTAL

Note: Necessary environmental remediation activities not included

Exhibit G2

OAB Master Planning, Design Work, and Regulatory Approval Budget Port-Oriented Infrastructure

Rail Yard Design*	\$598,091	
7th Street Design*	<u>\$3,252,121</u>	
	\$3,850,212	TOTAL

*Port-oriented projects

Note: Necessary environmental remediation activities not included

Exhibit H1

Proposed OAB Master Planning, Design Work, and Regulatory Approval Scope of Services Agency Infrastructure Scope of Services

Program Management and Team Building

The program management team members will ensure coordination of the consultants' efforts to produce the deliverables required for the approval of an infrastructure master plan and design bridging documents. The program management team will also include legal support and auditors to ensure compliance with local, state, and federal reporting requirements.

Surveys, Mapping, and Planning

In addition to the coordination of the necessary title work, the planning team will undertake the surveys and mapping necessary for the characterization of the property and the creation of a tentative map and specific plan.

Demolition of Existing Buildings, Wharf

The demolition team will conduct a structural assessment of the existing buildings and a plan for their deconstruction. They will produce plans for the temporary relocation of existing tenants, the preservation of historic elements, the environmental characterization of the materials, and the deconstruction of the buildings are necessary. Also performed will be a structural assessment of the existing wharf in the West Gateway, and, if necessary, the creation of a plan for its deconstruction.

Materials Handling (Import and Surcharging, Rough Grading)

The materials handling consultants will monitor the importing and surcharging of soil, necessary to avoid differential settlement issues, and develop associated handling procedures and a SWPP Plan, as well as investigate other potential remedies for the soil issues on the site. After the surcharging program, the sites will be rough-graded to the appropriate level determined by the soils team.

Power Grid

Future Port developments, including Shore Power and the electrification of the Outer Harbor Marine Terminal, will require study and coordination with the OAB power grid. It is also a goal of the City and Developer to make the development a green, sustainable project. The consultants will study how to address these issues in coordination with the vertical development team.

Roads and Utilities

Maritime Street and Burma Road are in need of replacement, and the existing utility systems across the base are failing. Replacing and realigning the roads will allow for better traffic flow within the former Oakland Army Base, enable the upgrading of the utility systems underneath, and provide access to the future Gateway Park. New utility systems that meet current green standards and can handle the proposed density of the new development are necessary. The consultants will determine the best roadway and utility corridor alignments and designs to meet these goals.

Exhibit H2

Proposed OAB Master Planning, Design Work, and Regulatory Approval Scope of Services Port-Oriented Infrastructure Scope of Services

Program Management and Team Building

The program management team members will ensure coordination of the consultants' efforts to produce the deliverables required for the approval of an infrastructure master plan and design bridging documents. The program management team will also include legal support and auditors to ensure compliance with local, state, and federal reporting requirements.

Rail Yard and Marine Terminal Connection

An independent rail yard will be the centerpiece of the Outer Harbor Intermodal Terminal horizontal infrastructure program. This yard and its connection to the Outer Harbor marine terminals will enable the future expansion of the Port of Oakland to become a "first call" port. The rail yard consultants will explore design alternatives for the proposed rail yard to ensure the efficient use of space and the maximization of revenue. Coordination of the rail yard plans with the vertical development will be a key component of their efforts.

7th Street Grade Separation

It is proposed that 7th Street be elevated above the rail lines to allow future connection of the OHIT independent rail yard to the existing rail facilities. This will improve traffic flow within the Port, enhance air quality, and separate pedestrians and bicyclists heading to Middle Harbor Shoreline Park from the Port truck traffic. The \$3.4 million prescribed during this phase for the 7th Street project should provide a level of planning necessary to coordinate its development with the proposed OAB improvements and attract federal funding to finish the design.

EXHIBIT I: DAKLAND ARMY BASE PROPOSED DELIVERY SOHEDULE 3/22/11

ID	Task Name	Duration	Start	Finish	2011	2012	2013	2014	2015
1	TOTAL HORIZONTAL PROJECT	1498 days	Tue 4/5/11	Mon 5/11/15	4/5				5/11
2	CITY ENA AMENDMENT APPROVAL	0 days	Tue 4/5/11	Tue 4/5/11	4/5	4/5			
3	CITY ENA EXTENSION	366 days	Sat 4/23/11	Sun 4/22/12	4/23	4/22			
4	LDDA NEGOTIATION	180 days	Sat 4/23/11	Ved 10/19/11	4/23	10/19			
5	DROP DEAD TO START CONSTRUCTION FOR TCIF	0 days	Tue 10/15/13	Tue 10/15/13			10/15		
6	DROP DEAD TO USE UP CHUBB MONEY	0 days	Wed 8/7/13	Wed 8/7/13			8/7		
7	LAUNCH TEAM CONTRACTS	30 days	Sat 4/23/11	Sun 5/22/11	4/23	5/22			
8	MANAGEMENT OF PROJECT	1450 days	Sun 5/22/11	Mon 5/11/15	5/22				5/11
9	PLANNING DESIGN SERVICES	420 days	Sun 5/22/11	Sun 7/15/12	5/22	7/15			
10	Key Dates	420 days	Sun 5/22/11	Sun 7/15/12	5/22	7/15			
15	PARCEL MAP	420 days	Mon 5/23/11	Sun 7/15/12	5/23	7/15			
21	SPECIFIC PLAN	240 days	Sat 11/19/11	Sun 7/15/12	11/19	7/15			
25	EIR RATIFICATION	150 days	Mon 5/23/11	Ved 10/19/11	5/23	10/19			
29	VERTICAL PLAN	420 days	Mon 5/23/11	Sun 7/15/12	5/23	7/15			
34	INFRASTRUCTURE PLAN	420 days	Mon 5/23/11	Sun 7/15/12	5/23	7/15			
42	HOT-HORIZONTAL PROJECTS	1210 days	Mon 5/23/11	Sat 9/13/14	5/23				9/13
43	Remediation Project	800 days	Mon 5/23/11	Tue 7/30/13	5/23	7/30			
44	ONGOING RAP/RMP Remediation	800 days	Mon 5/23/11	Tue 7/30/13	5/23	7/30			
45	Pursuit of Unfound HazMat	510 days	Mon 5/23/11	Sat 10/13/12	5/23				
53	Construction	700 days	Sun 10/14/12	Sat 9/13/14			10/14		9/13
54	Soils/Grading/Materials Handling	330 days	Mon 5/23/11	Mon 4/16/12	5/23	4/16			

Project: 3.14.11 ENA Exhibit I
Date: Tue 3/22/11

Task

Milestone

Split

Progress

Summary

Project Summary

External Task

External Milestone

Deadline

This schedule represents a series of concurrent tasks that may affect the start and completion dates of the project. It is not final but is intended to reflect the logic and general flow of a sampling of key milestone tasks.

Page 1

EXHIBIT I: OAKLAND ARMY BASE PROPOSED DELIVERY SCHEDULE 3/22/11

ID	Task Name	Duration	Start	Finish	2011				2012				2013				2014				2015			
					tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr	tr
60	Construction	700 days	Tue 4/17/12	Mon 3/17/14																				
61	Demolition of Warehouses*	360 days	Mon 5/23/11	Wed 5/16/12																				
68	Construction	180 days	Thu 5/17/12	Mon 11/12/12																				
69	HORIZONTAL PROJEGTS	1450 days	Mon 5/23/11	Mon 5/11/15																				
70	Power Grid	965 days	Mon 5/23/11	Sat 1/11/14																				
71	HORIZONTAL TEAM	450 days	Mon 5/23/11	Tue 8/14/12																				
74	DESIGN/BUILD PROCESS	315 days	Wed 8/15/12	Tue 6/25/13																				
79	Construction	200 days	Wed 6/26/13	Sat 1/11/14																				
80	Railyard	956 days	Mon 5/23/11	Thu 1/2/14																				
81	HORIZONTAL TEAM	480 days	Mon 5/23/11	Thu 9/13/12																				
84	DESIGN/BUILD PROCESS	276 days	Fri 9/14/12	Sun 6/16/13																				
89	Construction	200 days	Mon 6/17/13	Thu 1/2/14																				
90	7th Street	1450 days	Mon 5/23/11	Mon 5/11/15																				
91	HORIZONTAL TEAM	540 days	Mon 5/23/11	Mon 11/12/12																				
94	DESIGN/BUILD PROCESS	510 days	Tue 11/13/12	Sun 4/6/14																				
99	Construction	400 days	Mon 4/7/14	Mon 5/11/15																				
100	Roads	1121 days	Mon 5/23/11	Mon 6/16/14																				
101	HORIZONTAL TEAM	450 days	Mon 5/23/11	Thu 9/13/12																				
104	DESIGN/BUILD PROCESS	276 days	Fri 9/14/12	Sun 6/16/13																				
109	Construction	365 days	Mon 6/17/13	Mon 6/16/14																				

Project: 3.14.11 ENA Exhibit I Date: Tue 3/22/11	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	

This schedule represents a series of concurrent tasks that may affect the start and completion dates of the project. It is not final but is intended to reflect the logic and general flow of a sampling of key milestone tasks.
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REGULATORY MATRIX

	7th SGS	Rail YRD	Maritime	Buma Rd	Shroline pk	San Sew	Strm Sew	Dom W	Fire W	Grey W	Power	Gas	Soil Import	RAP	RMP	Truck Parking
EPA																
FHWA																
FTA																
NMFS																
US FISH AND WILDLIFE																
DOT																
WAPA																
US ARMY State Lands Comission																
DTSC																
CTC																
CARB																
Fish and Game Parks and Rec																
PUC																
Cal Trans																
MTC																
BAAQD																
BART																
BATA																
BCDC																
RWQCB																
EBMUD																
EBRPD																
CMA																
CEDA																
OPW																
OFD																
Port of Oakland																
MMA																
P-1A																
P-1B																
P-2A																
P-2B																
G-1A																
G-1B																
G-2A																
G-2B																
G-2C																
G-2D																
G-2E																
G-3A																
G-4A																
G-4B																
Phase 1																

Criteria for Infrastructure prioritization and Horizontal scope development

This regulatory Matrix is conceptual in nature, and includes many but not all of the agencies and quasi-governmental organizations that may have statutory or regulatory jurisdiction over the project.

We provided this matrix as a guide to determine what may be required in attempting any number of conceptual scenarios based on targets and or limited sources of funding. These scenarios contemplate alternative sequencing, funding sources and geographical phasing plans that vary in cost scope and schedule and in all cases deviate from the proposed master plan sequence.

Pre-existing and future regulatory requirements, brought on by changes in regulation and statute may prohibit certain elements from being delivered in isolation or out of sequence and could lead to disqualification for specific grant and programmatic funding if pursued without mitigation or appropriate processes.

It is taken as a general assumption that development or governmental entities cannot arbitrarily, cannot opt out of many regulatory requirements typically pre-requisite to building and or achieving occupancy/operations. Such items include but are not limited to, the MMRP.

Further the market place of future operations (tenants) will need assurances of will serve commitments for utilities in good order and repair and code compliant infrastructure and utilities to operate. And of course the practical reality is that many of the requirements that are symbiotic with the new structures will be able to be placed in service without the various infrastructure systems in a state that will allow making connection as required to serve the proposed development.

EXHIBIT J

Master Planning, Design Work, and Regulatory Approval Payment Procedures

1. Acceptance of Cash Flow Budget

Within fifteen (15) calendar days of the execution of the Second Amendment to the ENA , CCG shall provide the Agency/City staff, for their review and written approval, the following: An initial projected monthly payment schedule and work schedule, generally consistent with the Agency Infrastructure Budget Schedule Exhibit G1 and Delivery Schedule I .

Within fifteen (15) calendar days of the written authorization to proceed with the Port-Oriented Infrastructure, CCG shall provide the Agency/City staff, for their review and written approval, the following: An initial projected monthly payment schedule and work schedule, generally consistent with the Port-Oriented Infrastructure Budget Schedule Exhibit G2 and Delivery Schedule I.

Within sixty (60) calendar days of the execution of the Second Amendment to the ENA, CCG shall provide Agency/City staff, for their review and written approval, the following: A final projected monthly payment schedule and work schedule, generally consistent with the Budget, Delivery Schedule, and Scope of Services.

2. Agency's initial acceptance of consultant contract

CCG shall provide Agency/City, for its review and written approval, the following prior to executing any contract for the performance of a portion of the Scope of Work:

- i. Copy of proposed consultant contract (in a form previously approved by Agency/City), inclusive of scope and schedule
- ii. Copy of consultant City business license
- iii. Copy of consultant's Certificate of Insurance confirming required insurance and naming Agency/City and CCG as additional insureds on the Commercial General Liability policies only
- iv. Consultant's Tax ID information
- v. CCG's Notice of compliance with Federal contracting procedures
- vi. Consultant's Statement and declaration of conflict of interest
- vii. Proof of consultant's compliance with local hire business requirements

3. Payment Procedure

Monthly CCG shall:

- i. Collect Invoices from consultants by the 5th calendar day of the month.
- ii. Approve/dispute such invoices by the 15th working day after receipt thereof.
- iii. Submit undisputed invoices (or portions thereof) to the Agency by the 25th day of each month. Such invoices shall be accompanied by all items required by the consultant contract [Payment Request Sheet, lien waivers from consultant and sub-consultants, and local hire compliance, CCG's certification that it has approved the

- prior work (if applicable) and the requested percentage completion and copy of project checking account register.
- iv. Provide any Record(s) of Negotiation for any changes from previously agreed contracts (see Section 2(b)(iii) of supplemental terms).
 - v. Review the submittal with the Agency representative at the next weekly meeting.
 - vi. Pay consultants for the full amount of undisputed invoices (or undisputed portions thereof) within 20 working days after approval/deemed approval.
 - vii. CCG shall comply with the provisions of Chapter 2.06 of the Oakland Municipal Code in conjunction with the payment of the consultants.

The Agency shall:

- i. Approve/dispute submittal within fifteen (15) working days after receipt thereof.
- ii. The Agency/City shall process the submitted request for payment in accordance with Chapter 2.06 of the Oakland Municipal Code.

Submittals and Invoices shall be sent to:

Mr. Pat Cashman
Project Manger
Redevelopment Agency of the City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, California 94612

During and upon completion of the contract, the Agency may request documentation certifying that the CCG has paid its subcontractors (not more frequently than once per month). The Agency reserves the right to issue joint checks payable both to the CCG and the consultants to ensure proper payment. This provision in no way creates any contractual or third party beneficiary relationship between any consultant and the Agency, nor does it create any liability or duty on the Agency for the CCG's failure to make timely payment to the subcontractor.

EXHIBIT K

**PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
SAMPLE**

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of _____, 2011 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and _____ ("Contractor")

2. Scope of Services

Contractor agrees to perform the services specified in Schedule A, Scope of Services attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. Schedule A includes the manner of payment. The Project Manager for the City shall be «PM Name»

3. Time of Performance

Contractor's services shall begin on (month) (day), (year), and shall be completed by (month) (day), (year).

4. Compensation and Method of Payment

Contractor will be paid for performance of the scope of services an amount that will be based upon actual costs but that will be "Capped" so as not to exceed \$«Amount of Agreement», based upon the scope of services in Schedule A and the budget by deliverable task and billing rates in Schedule A and or B. The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Contractor's actual costs exceed the Capped amount. Invoices shall state a description of the deliverable completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

OR

Contractor will be paid for performance of the entire scope of work set forth in Schedule A an amount not to exceed \$«Amount of Agreement» Payment(s) of the fee(s) or lump sum(s) stated in Schedule A for each of the deliverables, shall be due upon completion and acceptance

of each of the deliverables, at which time Contractor shall submit an invoice. Invoices shall state a description of the deliverable completed and the amount due.

OR

Contractor will be paid for performance of the entire scope of work set forth in Schedule A an amount not to exceed \$«Amount of Agreement». Payment at the rates stated in Schedule A, shall be due upon completion and acceptance of the services, at which time Contractor shall submit an invoice. Invoices shall state a description of the services completed and the amount due.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the contractor has earned during the period for which payment is being made, on the basis of the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in Schedule A.

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. The Contractor warrants that the Contractor, and the Contractor's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal,

state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete Schedule M, Independent Contractor Questionnaire, attached hereto.

c. Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

g. Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may

contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

7. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

9. Audit

Contractor shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

Contractor shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Contractor under this Agreement.

In addition to the above, Contractor agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Contractor shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in Schedule Q, Insurance Requirements. Schedule Q is attached and incorporated herein by reference.

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
 - (iii) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
 - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 above; and
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule C hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

17. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Office of Contract Compliance, upon the filing of a complaint. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, the prime Contractor or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this City of Oakland purchase contract.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <http://cces.oaklandnet.com/cceshome/> by clicking on the rightmost upper tab labeled Prompt Payment Ordinance. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Liaison, 510-238-6261, Office of Contract Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

18. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on «Termination Date».

19. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which

the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

20. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

21. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.
- b. *Good Faith Effort* - In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. *Incentives* - Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for

every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms:

- d. Banking – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.
- h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion,

gender, sexual preference, race, creed, color, national-origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

22. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Schedule N and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$11.15 with health benefits or \$12.82 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1 of each year, rates will be adjusted up according to the Consumer Price Index (CPI). Contractor shall pay adjusted wage rates.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.67 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current EIC guidelines as prescribed by the Internal Revenue Service. and (2) for the 2011 Earned Income Tax Outreach Kit go to <http://eitcoutreach.org/>

- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

23. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors(consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city;

and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1, Equal Benefits-Declaration of Nondiscrimination.

24. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

25. Nuclear Free Zone Disclosure

Contractor represents, pursuant to Schedule P, Nuclear Free Zone Disclosure Form, that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete Schedule P, attached hereto.

26. Arizona and Arizona-Based Businesses

Contractor agrees that in accordance with Resolution No. 82727 C.M.S., passed in May, 2010, neither it nor any of its subsidiaries, affiliates or agents that will provide services under this Agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this Agreement with the City of Oakland or until Arizona rescinds SB 1070, whichever is sooner.

Contractor acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its business entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

27. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Contractor's request. Failure to disclose pending disputes prior to execution of this Agreement shall be a basis for termination of this Agreement.

28. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

29. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

30. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

31. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City,

together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

Should the project or any portion thereof be abandoned, the City shall pay the Contractor for all services performed thereto in accordance with the terms of this Agreement.

32. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

33. Governing Law

This Agreement shall be governed by the laws of the State of California.

34. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

(City of Oakland)
«PM_Name»
City of Oakland

Oakland, CA 94612-2033
Attn: _____

(Name of Contractor)
Address
City, State, Zip«Phone_Number»
Atm: Project Manager

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

-35. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

36. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

37. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

38. Time of the Essence

Time is of the essence in the performance of this Agreement.

39. Commencement, Completion and Close out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Schedule Q

INSURANCE REQUIREMENTS PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location [project].
 - C. If the policy is a "claim made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.
 - 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- ii. Automobile Liability Insurance. Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own

vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

- iii. **Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.**
- iv. **Professional Liability/errors and omissions insurance in the amount of \$1,000,000.00.**

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured): Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and**
- ii. **Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;**
- iii. **Cross-liability coverage as provided under standard ISO forms' separation of insureds clause; and**
- iv. **Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and**
- v. **Insurer shall carry a insurance from an admitted company with a Best Rating of A VII or better.**

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out

and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

EXHIBIT L

AGENCY INFRASTRUCTURE TERMS AND CONDITIONS

Pursuant to Section 20(A) of the Second Amendment, the following terms and conditions apply to CCG's work regarding the Agency Infrastructure:

1. Scope of Services; Retention of Consultants; Primary Representatives

(a) CCG agrees to oversee and coordinate the planning and design by third parties of the items set forth in Exhibit HI to the Second Amendment (the "Scope of Services"), which is incorporated herein by reference, and perform the supplemental services required in Section 20 of the Second Amendment and this Exhibit L in CCG's capacity as one of the Developer parties to the ENA.

(b) **Retention of Consultants.** The Agency acknowledges that CCG is not a licensed design professional and will not actually be preparing the work product required under the Scope of Services. Rather, CCG and its principals have experience in the development of infrastructure and the coordination of design professionals to prepare the necessary plans and specifications for such infrastructure. Therefore, the parties hereby agree that the deliverables set forth in the Scope of Work shall be prepared by third party consultants retained by CCG pursuant to the provisions of this Section 1(b).

(i) Subject to the further provisions of this Section 1(b), CCG shall be entitled to retain any consultant included within Section 1 (primary/initial consultants) or Section 2 (reserve consultants) of Exhibit F to the Second Amendment without further Agency approval. In the event that CCG desires to retain a consultant not included on Exhibit F to the Second Amendment, such retention shall be subject to the Agency's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

(ii) All consultants retained by CCG pursuant to this Section 1 shall be retained pursuant to a written agreement in substantially similar form as the form of the consultant agreement agreed upon by the Agency and CCG prior to the date that is thirty (30) days after the Effective Date of the Second Amendment. The agreed upon form of the consultant contract shall be attached hereto as Exhibit L-1 (the "Approved Contract"). Any material changes to the Approved Contract shall be subject to the Agency's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. At a minimum, the Approved Contract will contain hourly rates/compensation structure and maximum budget, requirement to conform to any conditions of Federal or State grants, required warranty, indemnity and insurance (including professional liability insurance) provisions (with Agency to be an express third party beneficiary thereof) and required assignment provisions.

(iii) CCG may, without the Agency's prior consent, amend a consultant's contract to increase the contract price paid thereunder by an amount not to exceed \$24,999 per contract. Any change order or combination of change orders to any consultant contract shall not exceed \$24,999 without the Agency staff's prior written consent. The Agency shall not unreasonably withhold, condition or delay its consent to CCG's request to amend a consultant contract. CCG shall have the right to request such consent at the weekly meetings described in Section 41 hereof, and Agency staff shall have five (5) business days to review and approve in writing any such request. The Approved Budget (defined below) shall be revised monthly to reflect all changes to consultant contracts and the impact of those changes on a line item contingency.

(c) Phil Tagami shall be the designated CCG representative responsible for communications with the Agency for the duration of the ENA. The Project Manager for the Agency shall be Pat Cashman.

2. Time of Performance

The parties have agreed upon the schedule attached as Exhibit I to the Second Amendment for the performance of the Agency Infrastructure work (the "Schedule"). The parties acknowledge that the ENA, may expire or terminate prior to the latest date set forth in the Schedule. The parties further acknowledge that the ENA includes certain provisions that provide for the extension of the Term and the expiration of the Term is not a date certain. Therefore, it is the parties' intent that CCG shall complete only those tasks included in the Scope of Services that are to be completed (pursuant to the Schedule) prior to the actual expiration/termination date of the ENA.

3. Reimbursement; Budget and Method of Payment

(a) Reimbursement. The parties agree that CCG has agreed to the provisions of Section 20 of the Second Amendment the Second Amendment as partial consideration for the Agency having entered into the Second Amendment. The parties further agree that CCG shall not be entitled to receive compensation of any kind, including without limitation, a referral fee, management fee, consultant fee, or any in-kind consideration for the performance of its duties under, the Second Amendment and that the payments received from the Agency shall be limited to a reimbursement of the third party costs incurred by CCG pursuant to the terms of Section 20 of the Second Amendment and this Exhibit L. The parties agree that the foregoing reimbursement expressly excludes CCG's direct overhead (including administrative and personnel costs) and any markup by CCG.

(b) Budget; Adjustments; Maximum Reimbursement. The parties have agreed upon the budget for the Scope of Services included in Exhibit G1 to the Second Amendment (the "Approved Budget") for each deliverable task. The parties further agree that the reimbursement paid to CCG pursuant to the Second Amendment shall not exceed the then current amount of the Approved Budget, shall be based on actual costs, and shall be "Capped" so as not to exceed Ten Million Two Hundred and Forty Nine Thousand Two Hundred and Twelve Dollars (\$10,249,212). The maximum to be charged for the entire scope of Agency Infrastructure work

will not exceed the Capped amount, even if the actual third party consultants' costs exceed the Capped amount.

(c) Procedure for Reimbursement. CCG shall be entitled to submit for and shall be reimbursed by the Agency pursuant to the procedures set forth in Exhibit J to the Second Amendment.

4. Proprietary or Confidential Information of the Agency

CCG understands and agrees that, in the performance of the work or services under the Second Amendment or in contemplation thereof, CCG may have access to private or confidential information which may be owned or controlled by the Agency and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Agency. CCG agrees that all information disclosed by the Agency to CCG shall be held in confidence and used only in performance of the Agreement. CCG shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Notwithstanding the foregoing to the contrary, in the event that CCG is required pursuant to a final judicial order that is not appealable to disclose any such information, it may do so without liability hereunder.

5. Ownership of Results

Any interest of CCG or the consultants, in specifications, studies, reports, memoranda, computation documents, drawings, plans, sheets, or other documents prepared pursuant to the Second Amendment shall be assigned and transmitted to the Agency. However, CCG and the consultants may retain and use copies for reference and as documentation of its experience and capabilities.

6. Copyright

CCG shall execute appropriate documents to assign to the Agency the copyright to works created pursuant to this Second Amendment.

7. Audit

CCG shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under the Second Amendment; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with the Second Amendment.

CCG shall (a) permit the Agency or the City of Oakland Auditor to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to the Second Amendment; and (b) maintain such records for a period of four years following the last fiscal year during which the Agency paid an invoice to CCG under the Second Amendment.

8. Agents/Brokers

CCG warrants that CCG has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of CCG working solely for CCG, to solicit or secure the Second Amendment, and that CCG has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of the Second Amendment. For breach or violation of this warranty, the Agency shall have the right to rescind the Second Amendment without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

9. Assignment

- (a) CCG shall not assign or otherwise transfer any rights, duties, obligations or interest in the Second Amendment or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the Agency and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.
- (b) In the event the ENA is terminated or expires without the parties having entered into an LDDA, or if the Agency terminates under Section 43 hereof, CCG shall assign all of the contracts executed pursuant to Section 1 of this Exhibit L pursuant to a form reasonably acceptable to the Agency within five (5) business days after CCG's receipt of the Agency's written request therefor.

10. Publicity

Any publicity generated by CCG for the project funded pursuant to the Second Amendment, during the term of the Second Amendment or for one year thereafter, will make reference to the contribution of the Agency in making the project possible. The words "Redevelopment Agency of the City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

Agency staff will be available whenever possible at the request of CCG to assist CCG in generating publicity for the project funded pursuant to the Second Amendment. CCG further agrees to cooperate with authorized Agency officials and staff in any Agency-generated publicity or promotional activities undertaken with respect to this project.

11. Title of Property

Title to all property, real and personal, acquired by the CCG from Agency funds shall vest in the name of the Redevelopment Agency of the City of Oakland and shall be accounted for by means of a formal set of property records. CCG acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the Agency

during the term of the Agreement. The CCG shall, upon expiration of termination of the Second Amendment, deliver to the Agency all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the CCG shall immediately notify the Police Department, obtain a written police report and notify the Agency in accordance with "Notice" section of the Second Amendment.

CCG shall provide to the City of Oakland Auditor all property-related audit and other reports required under the Second Amendment. In the case of lost or stolen items or equipment, the CCG shall immediately notify the Police Department, obtain a written police report and notify the Agency in accordance with the "Notice" section of the Second Amendment.

Prior to the disposition or sale of any real or personal property acquired with Agency funds, CCG shall obtain approval by the Agency Board and Agency Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

12. Insurance

Unless a written waiver is obtained from the City's Risk Manager, CCG must provide the insurance listed in Schedule Q, Insurance Requirements. Schedule Q is attached and incorporated herein by reference.

13. Indemnification

- a. Subject to the provisions of Section 13(h) below, CCG shall indemnify and hold harmless (and at Agency's request, defend) Agency, and its Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) ("Claims") caused by or arising out of any:
 - (i) Breach of CCG's express or implied obligations, representations or warranties under Section 20 of the Second Amendment and this Exhibit L;
 - (ii) Negligent or willful acts or omissions in the course of performance by CCG of its obligations under Section 20 of the Second Amendment and this Exhibit L ;
 - (iii) Unauthorized use or disclosure by CCG of Confidential Information as provided in Section 4 above; and
 - (iv) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trade mark, or service mark or other proprietary or intellectual property rights of any third party.

- b. For purposes of the preceding Subsections (i) through (iv), the term "CCG" includes CCG, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. Agency shall give CCG prompt written notice of any such claim of loss or damage and shall cooperate with CCG, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with Agency's interests.
- d. Notwithstanding the foregoing, Agency shall have the right if CCG fails or refuses to defend Agency with Counsel acceptable to Agency to engage its own counsel for the purposes of participating in the defense. In addition, Agency shall have the right to withhold any payments due CCG in the amount of anticipated defense costs plus additional reasonable amounts as security for CCG's obligations under this Section 13. In no event shall CCG agree to the settlement of any claim described herein without the prior written consent of Agency.
- e. CCG acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to CCG by Agency and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, CCG's liability under the Second Amendment shall not apply to any action or claim arising from the sole active negligence or willful misconduct of an Indemnitee. Therefore, in the event that it is ultimately determined by a settlement (to which the Agency consents) or pursuant to a final court judgment that is not appealable, that the Claim arose out of the sole active negligence or willful misconduct of an Indemnitee, the Agency shall reimburse CCG for the defense costs advanced under this Section 13 within ninety (90) calendar days after the final determination of liability.
- f. All of CCG's obligations under this Section 13 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of the Second Amendment.
- g. The indemnity set forth in this Section 13 shall not be limited by the Agency's insurance requirements contained in Schedule C hereof, or by any other provision of the Second Amendment. Agency's liability under the Second Amendment shall be limited to payment of CCG in accord to the terms and conditions under the Second Amendment and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.
- h. Notwithstanding the provisions of Section 13(a) to the contrary, the Agency hereby agrees that CCG shall have no liability to the Agency or any other Indemnitee for Claims arising out of or related to errors and omissions of the design work prepared by the consultants pursuant to the Second Amendment, and that the Agency and the Indemnitees shall look solely to the

applicable consultant(s) for defense and indemnity for such matters pursuant to the applicable provisions of the consultant's contract.

15. Right to Offset Claims for Money

All claims for money due or to become due from Agency shall be subject to deduction or offset by Agency from any monies due CCG by reason of any claim or counterclaim arising out of the Second Amendment.

17. Conflict of Interest

a. CCG

The following protections against conflict of interest will be upheld:

- i. CCG certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in the Second Amendment or in any benefit arising therefrom.
- ii. CCG certifies that no member, officer, or employee of the Agency or its designees or agents, and no other public official of the Agency who exercises any functions or responsibilities with respect to the programs or projects covered by the Second Amendment, shall have any interest, direct or indirect in the Second Amendment, or in its proceeds during his/her tenure or for one year thereafter.
- iii. CCG shall immediately notify the Agency of any real or possible conflict of interest between work performed for the Agency and for other clients served by CCG.
- iv. CCG warrants and represents, to the best of its present knowledge, that no public official or employee of Agency who has been involved in the making of the Second Amendment, or who is a member of a Agency or City board or commission which has been involved in the making of the Second Amendment whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in the Second Amendment in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. CCG shall exercise due diligence to ensure that no such official will receive such an interest.
- v. CCG further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by CCG to Agency, that (1) no public official of Agency who has participated in decision-making concerning the Second Amendment or has used his or her official position to influence decisions regarding the Second Amendment, has an economic interest in CCG or the Second Amendment, and (2) the Second

Amendment will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. CCG agrees to promptly disclose to Agency in writing any information it may receive concerning any such potential conflict of interest. CCG's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. CCG understands that in some cases CCG or persons associated with CCG may be deemed an "Agency officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. CCG further understands that, as a public officer or official, CCG or persons associated with CCG may be disqualified from future Agency or City contracts to the extent that CCG is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under the Second Amendment.
- vii. CCG shall incorporate or cause to be incorporated into all subcontracts for work to be performed under the Second Amendment a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the Agency under the Second Amendment and under federal, state and local law, CCG understands and agrees that, if the Agency reasonably determines that CCG has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the Agency may (1) suspend payments under the Second Amendment, (2) terminate the Second Amendment, (3) require reimbursement by CCG to the Agency of any amounts disbursed under the Second Amendment. In

addition, the Agency may suspend payments or terminate the Second Amendment whether or not CCG is responsible for the conflict of interest situation.

18. Non-Discrimination/Equal Employment Practices

CCG shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of the Second Amendment, CCG agrees as follows:

- a. CCG and CCG's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. CCG and CCG's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of CCG that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. CCG shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, CCG will send to each labor union or representative of workers with whom CCG has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of CCG's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

19. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. CCGs shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.

- b. Good Faith Effort – In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. Incentives – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. Banking – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. CCG shall submit information concerning the ownership and workforce composition of CCG's firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of the Second Amendment.
- h. All affirmative action efforts of CCG are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by CCG to hire and/or contract with the individual or entity in question.

- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

20. Living Wage Ordinance

If the contract amount of the Second Amendment is equal to or greater than \$25,000 annually, then CCG must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Schedule N and made part of the Second Amendment, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to the Second Amendment:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$11.15 with health benefits or \$12.82 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1 of each year, rates will be adjusted up according to the Consumer Price Index (CPI). CCG shall pay adjusted wage rates.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.67 per hour. CCG shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid

holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current EIC guidelines as prescribed by the Internal Revenue Service. and (2) for the 2011 Earned Income Tax Outreach Kit go to <http://eitcoutreach.org/>

- e. CCG shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. CCG shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under the Second Amendment.
- g. Reporting – CCG shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. CCG shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. CCG shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. CCG shall require subcontractors that provide services under or related to the Second Amendment to comply with the above Living Wage provisions. CCG shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

21. Equal Benefits Ordinance

The Second Amendment is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1, Equal Benefits-Declaration of Nondiscrimination.

22. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If the Second Amendment requires Council approval, CCG must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

23. Nuclear Free Zone Disclosure

CCG represents, pursuant to Schedule P, Nuclear Free Zone Disclosure Form, that CCG is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, CCG shall complete Schedule P, attached hereto.

24. Arizona and Arizona-Based Businesses

CCG agrees that in accordance with Resolution No. 82727 C.M.S., passed in May, 2010, neither it nor any of its subsidiaries, affiliates or agents that will provide services under the

Second Amendment is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of the ENA with the City of Oakland or until Arizona rescinds SB 1070, whichever is sooner.

CCG acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its business entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

27. Dispute Disclosure

CCG agrees to disclose, and has disclosed, any and all pending disputes to the Agency prior to execution of this agreement. The Agency will provide a form for such disclosure upon CCG's request. Failure to disclose pending disputes prior to execution of the Second Amendment shall be a basis for termination of the Second Amendment.

28. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to the Second Amendment shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

29. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

30. Business Tax Certificate

CCG shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of the Second Amendment.

31. Abandonment of Project

The Agency may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the Agency shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, CCG shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, CCG shall present to the Agency a complete report of said proposed job closure and its costs, and the Agency may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the Agency, together with any other charges outstanding at the time of termination, shall be payable by the Agency within thirty (30) days following submission of a final statement by CCG.

Should the project or any portion thereof be abandoned, the Agency shall pay the CCG for all services performed thereto in accordance with the terms of the Second Amendment.

32. [INTENTIONALLY OMITTED]

33. Governing Law

This Agreement shall be governed by the laws of the State of California.

34. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland
One Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: Lamont Ewell Interim, Agency and City Administrator

Copy to:
Redevelopment Agency of the City of Oakland
City of Oakland, Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
Attn: Walter Cohen, Agency Director
(510) 238-2226 (Fax)

Redevelopment Agency of the City of Oakland
City of Oakland, Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
Attn: Gregory Hunter, Deputy Director of Redevelopment
(510) 238-6455 (Fax)

Redevelopment Agency of the City of Oakland
City of Oakland, Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
Attn: Al Auletta, Area Manager
(510) 238-6391 (Fax)

Redevelopment Agency of the City of Oakland
City of Oakland, Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 5313

Oakland, CA 94612
Attn: Pat Cashman, Army Base Project Manager
(510) 238-6281
(Fax) (510) 238 6391

Redevelopment Agency Counsel
c/o Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Dianne Millner, Supervising Deputy City Attorney for Redevelopment
(510) 238-6839
(510) 238-6500 (Fax)

California Capital Group
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA, 94612
Attn: Phil Tagami
(510) 834-5380 (Fax)

Copy to:
Law Office of Marc Stice
2201 Broadway, Suite 604
Oakland, CA 94612
Attn: Marc Stice
(510) 251-1030

Any party to the Second Amendment may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

35. Entire Agreement of the Parties

Section 20 of the Second Amendment, including without limitation, the terms of this Exhibit L, supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by CCG for the Agency Infrastructure and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to the Second Amendment acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not contained in the Second Amendment, and that no other agreement, statement or promise not contained in the Second Amendment will be valid or binding.

36. Modification

Any modification of the Second Amendment will be effective only if it is in a writing signed by all parties to the Second Amendment.

37. Severability/Partial Invalidity

If any term or provision of the Second Amendment, or the application of any term or provision of the Second Amendment to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Second Amendment or the application of the Second Amendment to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of the Second Amendment or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend the Second Amendment to carry out its intent.

38. Time of the Essence

Time is of the essence in the performance of the Second Amendment.

39. [INTENTIONALLY OMITTED]

40. Inconsistency

If there is any inconsistency between this Exhibit L and the attachments/exhibits, the text of this Exhibit L shall prevail.

41. Coordination with Third Party Agencies

The parties acknowledge that the performance of the work under Section 20 of the Second Amendment will require the parties to coordinate with certain third-party agencies. The parties intend that such coordination shall be jointly carried out by the parties as much as reasonably possible. Therefore, each party shall attempt in good faith to provide the other party with three (3) business days' prior written notice of all scheduled meetings (whether conducted in person or telephonically) with a third-party agency where a party anticipates to hold material, substantive discussions related to the work hereunder to afford the other party the opportunity to participate in the meeting. The scheduling party shall not be required to reschedule the meeting to accommodate the noticed party's schedule unless, under the circumstances, it is reasonable to do so. If a party is unable to attend a meeting with a third party agency where material, substantive discussions related to the work hereunder occurred, the attending party shall provide a written summary to the absent party within five (5) business days after the meeting.

Before any meeting with a third-party environmental or other regulatory agency, the parties

shall meet internally to discuss mutually agreed upon strategy and preparation for the meeting.

Notwithstanding the foregoing: the obligation set forth in this Section: (1) excludes meetings between Developer and the Port related to the proposed Developer-Port LDDA until such document become a matter of public record; (2) apply only to meetings on the Agency's behalf conducted by the Agency's senior Base personnel assigned to the Project which are (with the name of the current position holder in parentheses): the CEDA Director (Waher Cohen), Deputy Director of Redevelopment (Gregory Hunter), Base Project Manager (Pat Cashman), Base Area Manager (Al Auletta), Base Environmental Protection Specialist (Mark Amiola), and Base Property Manager (John Monetta); (3) do not apply to internal meetings among City, Agency or Port personnel; and (4) excludes meetings that the Agency's legal counsel determines are legally required to be confidential.

41. Progress Meetings

During the course of the work hereunder, the Agency staff and CCG agree to hold periodic progress meetings (but not less often than [parties to agree on: [e.g., weekly, biweekly, monthly, etc], as appropriate considering the progress of the work, to coordinate the preparation of, submission to, and review of, any documents by the Agency and to review and discuss other items related to the work. The Agency staff and CCG agree to communicate and consult informally as frequently as is reasonably necessary to ensure that the formal submittal of any required documents to the Agency can receive prompt and speedy consideration.

42. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out the Second Amendment, CCG shall be, and is, an independent contractor, and is not an employee of the Agency or the City of Oakland (the "City"). CCG has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting CCG in the performance of CCG's services hereunder. CCG shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for CCG's own acts and those of CCG's subordinates and employees. CCG will determine the method, details and means of performing the services described in the Scope of Services.

b. CCG's Qualifications

CCG represents that CCG has the qualifications and skills necessary to perform the services under the Second Amendment in a competent and professional manner without the advice or direction of the Agency. This means CCG is able to fulfill the requirements of the Second Amendment. Failure to perform all of the services required

under the Second Amendment will constitute a material breach of the Agreement and may be cause for termination of the Agreement. CCG has complete and sole discretion for the manner in which the work under the Second Amendment is performed. Prior to execution of this agreement, CCG shall complete Schedule M (Independent Contractor Questionnaire”), attached hereto.

c. Payment of Income Taxes

Agency shall have no obligation to pay any income or other taxes on reimbursement paid to CCG or its third party consultants.

d. Non-Exclusive Relationship

CCG may perform services for, and contract with, as many additional clients, persons or companies as CCG, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

CCG will supply all tools, materials and equipment required to perform the services under the Second Amendment.

f. Cooperation of the Agency

The Agency agrees to comply with all reasonable requests of CCG necessary to the performance of CCG’s duties under the Second Amendment.

g. Extra Work

CCG will do no extra work under the Second Amendment without first receiving prior written authorization from the Agency.

43. Termination on Notice.

The Agency may terminate CCG’s work under the Second Amendment immediately for cause or without cause upon giving (30) calendar days’ written notice to CCG. Unless otherwise terminated as provided in the ENA, the Second Amendment, or this Exhibit L, CCG’s work under the Second Amendment will terminate on the date that the ENA is terminated or expires.

44. Commencement, Completion and Close out

It shall be the responsibility of the CCG to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of the Second Amendment.

Any time extension granted to CCG to enable CCG to complete the work must be in writing and shall not constitute a waiver of rights the Agency may have under the Second Amendment.

Within thirty (30) days of completion of the performance under this Agreement, the CCG shall make a determination of any and all final costs due under the Second Amendment and shall submit a requisition for such final and complete reimbursement (including without limitations any and all claims relating to or arising from the Second Amendment) to the Agency. Failure of the CCG to timely submit a complete and accurate requisition for final reimbursement shall relieve the Agency of any further obligations under the Second Amendment, including without limitation any obligation for payment of work performed or payment of claims by CCG.

[Signatures on following page]

Redevelopment Agency of the City of Oakland
A municipal corporation

CCG

Agency Administrator Date

Agency Director Date

Approved for form and legality

City Attorney's Office Date

California Capital Group, a California
general partnership /

Signature Date

Print Name

Title

Resolution No: _____

Account No. _____

Business Tax License _____

Schedule Q

INSURANCE REQUIREMENTS
PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS
[NOTE- City requirements under this Schedule Q apply to the Agency]

a. General Liability, Automobile, Worker's Compensation and Professional Liability

CCG shall procure, prior to commencement of service, and keep in force for the term of this contract, at CCG's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, CCG shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

i. Commercial General Liability insurance, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.

A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by the Second Amendment).

B. Limits of liability: CCG shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.

C. If the policy is a "claim made" type policy, the following should be included as endorsements:

- 1) The retroactive date shall be the effective date of the Second Amendment or a prior date.
- 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.

ii. Automobile Liability Insurance. CCG shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the CCG does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable

with a signed statement from CCG stating that only non-owned and hired vehicles are used in the course of the contract.

- iii. **Worker's Compensation** insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The CCG certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The CCG shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under the Second Amendment and thereafter as required by that code.
- iv. **Professional Liability/errors and omissions** insurance in the amount of \$1,000,000.00.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** CCG shall provide insured status using ISO endorsement CG 20 10 10 93 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If CCG submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 10 93 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. **Cancellation Notice:** 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;
- iii. **Cross-liability coverage** as provided under standard ISO forms' separation of insureds clause; and
- iv. **Certificate holder** is to be the same person and address as indicated in the "Notices" section of the Second Amendment; and
- v. **Insurer** shall carry a insurance from an admitted company with a Best Rating of A VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of the Second Amendment, the City may, at the City's option, take out and maintain at the expense of CCG, such insurance in the name of CCG as is required pursuant to the Second Amendment, and may deduct the cost of

taking out and maintaining such insurance from any sums which may be found or become due to CCG under the Second Amendment.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of the Second Amendment.

e. Proof of Insurance

CCG will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of CCG's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the CCG subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the CCG may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the CCG shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City.

h. Waiver of Subrogation

CCG waives all rights against the Agency, the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice if the City reasonably determines that such changes are necessary based on current insurance requirements for comparable projects.

2011 MAR 29 PM 6:12

REVISED APRIL 5, 2011

Approved as to form and legality:


Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S

RESOLUTION AUTHORIZING:

- (1) THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH AMB PROPERTY, L.P./CALIFORNIA CAPITAL GROUP ("AMB/CCG") FOR A DEVELOPMENT ON THE FORMER OAKLAND ARMY BASE ("BASE") TO:
 - A. EXTEND THE ENA TERM FROM APRIL 22, 2011 TO THE EARLIER OF APRIL 22, 2012 OR THE EXECUTION OF A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, WITH THE PROVISION FOR AN AUTOMATIC EXTENSION OF THE TERM OF UP TO APRIL 22, 2013 IF THERE IS A DELAY IN COMPLETING A CERTIFICATION FOR THE PROJECT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OR THE NATIONAL ENVIRONMENTAL POLICY ACT; AND
 - B. PROVIDE FOR: (A) REIMBURSEMENT TO CALIFORNIA CAPITAL GROUP ("CCG") OF UP TO A MAXIMUM AMOUNT OF \$14,100,000 FOR THE THIRD PARTY CONSULTANTS COST OF THE PLANNING AND DESIGN WORK FOR THE BASE'S INFRASTRUCTURE, PUBLIC UTILITIES, AND PUBLIC STREETS; (B) APPROVAL OF CCG'S PROPOSAL FOR A DEVELOPMENT TEAM, SCOPE OF WORK, BUDGET, AND SCHEDULE FOR THE PLANNING AND DESIGN WORK; (C) ELIMINATION OF THE REQUIREMENT TO ACCOMMODATE THE OAKLAND PRODUCE MARKET AND THE OAKLAND FILM CENTER AS PART OF THE DEVELOPMENT; (D) EXPANSION OF THE DEVELOPMENT AREA TO INCLUDE THE FORMER OAKLAND MARITIME SUPPORT SERVICES ENA SITE IN THE EAST GATEWAY AREA; AND (E) RELEASE OF AMB PROPERTY, L.P. FROM RESPONSIBILITY FOR THE PLANNING AND DESIGN WORK, AND DESIGNATING CCG

**AS THE SOLE PARTY RESPONSIBLE FOR THE PLANNING
AND DESIGN WORK**

(2) A WAIVER OF THE ADVERTISING AND REQUEST FOR PROPOSAL/QUALIFICATIONS PROCESS AND AN AWARD OF THE PLANNING AND DESIGN OF INFRASTRUCTURE IMPROVEMENTS FOR THE PORT-ORIENTED RAILYARD AND 7TH STREET OVERPASS WORK, IN AN AMOUNT NOT-TO-EXCEED \$3,850,212, TO CCG

WHEREAS, the Oakland Army Base Reuse Plan and 2002 Environmental Impact Report document the need to install all new public utilities and streets to serve new development of the former Oakland Army Base; and

WHEREAS, the Request for Proposals issued by the Agency that subsequently led to the selection of AMB Property, L.P./California Capital Group (“AMB/CCG”) clearly articulated the expectation that the master developer would be responsible for all aspects of the development of the Army Base site including site planning, engineering, and other pre-development activities; and

WHEREAS, on January 19, 2009, the Agency executed an Exclusive Negotiating Agreement (“ENA”) with AMB/CCG for the potential redevelopment of a portion of the former Army Base identified as the Gateway Development Area and which included all of the Central and West Gateway Areas and part of the East Gateway Area; and

WHEREAS, extensive planning and design work for areas outside the ENA Development Area is required for the planning and design of the ENA Development Area; and

WHEREAS, the infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass are not essential to the planning and design of the ENA Development Area but are necessary to preserve the \$242,000,000 in Trade Corridor Improvement Funds (“TCIF”) which were awarded to the Port of Oakland but may be lost if the Railyard and the 7th Street Overpass are not designed in a timely manner; and

WHEREAS, the Amended and Restated Memorandum of Agreement between the Agency and the Port contemplates a unified approach to the design of the Army Base; and

WHEREAS, the Cost Sharing Agreement pending between the Agency and the Port calls for the Agency to invest \$14,100,000 toward the design of the entire Army Base, including the Railyard and the 7th Street Overpass, in exchange for the Port supporting a \$62,000,000 allocation of the TCIF award for infrastructure development in the Agency-owned portion of the Base; and

WHEREAS, planning and design work that is not essential to the ENA Development Area should be awarded pursuant to the Agency’s purchasing processes—advertising and request for proposal/qualifications requirements – unless the Agency Board determines that it is in the Agency’s best interests to waive such processes; and

WHEREAS, the ENA required AMB/CCG to propose a Development Team, Scope, Schedule, and Budget for the planning and design work required for the construction of infrastructure, public utilities, and public streets on the former Army Base; and

WHEREAS, the partnership agreement between AMB and CCG designates CCG as the party responsible for the planning and design work for the Base's infrastructure, public utilities, and public streets; and

WHEREAS, CCG has submitted the required proposal that includes a Budget of \$14,100,000 for master planning public infrastructure improvements for the former Army Base; and

WHEREAS, the Budget includes \$3,850,212 for the planning and design of infrastructure improvements for the Port-oriented Railyard and the 7th Street Overpass; and

WHEREAS, the Agency established a Joint Infrastructure Development Fund (9572) with \$16,300,000 for the development of the former Oakland Army Base, including the planning and design of public improvements; and

WHEREAS, CCG's proposed Development Team is ready to begin preparing infrastructure planning and design documents for the Army Base and use of this Development Team is the surest and most timely way to accomplish the work and meet state and federal funding deadlines; and

WHEREAS, Oakland Municipal Code section 2.04.051.B authorizes the Agency Board to dispense with advertising and the request for proposal/qualifications process for planning and design services upon a finding that it is in the Agency's best interests to do so; and

WHEREAS, staff recommends that it is in the Agency's best interests to waive the advertising and request for proposal/qualifications process for the planning and design of infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass work because the work will help the Port preserve its TCIF award and secure for the Agency a \$62,000,000 allocation of the award; and

WHEREAS, the Agency Administrator has determined that the Port planning and design work awarded hereunder is of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service; and

WHEREAS, on July 20, 2010, the Agency and AMB/CCG entered into a First Amendment to the ENA to allow the Agency to contract with a consultant to prepare all documentation necessary for environmental review under the California Environmental Quality Act (CEQA), and to share the costs of that contract with AMB/CCG; and

WHEREAS, the environmental review which is necessary for final approval to redevelop the Army Base is still underway; and

WHEREAS, the ENA, as amended, expires April 22, 2011; now, therefore be it

RESOLVED: That the Agency Administrator is authorized to negotiate and execute a Second Amendment to the ENA on the general terms set forth in the Agenda Report and the Supplemental Agenda Report for this item, and specifically including the following terms:

- (1) Extension of the ENA term from April 22, 2011 to the earlier of April 22, 2012 or the execution of a Lease Disposition and Development Agreement, with the provision for an automatic extension of the term of up to April 22, 2013 if there is a delay in completing a certification for the project under the California Environmental Quality Act or the National Environmental Policy Act; and
- (2) As to the infrastructure master planning and design work, approval of the CCG's proposed team of consultants, scope of work, schedule, and budget, as represented in the Second Amendment to the ENA; and
- (3) Agreement to reimburse CCG's third party consultant costs for Army Base infrastructure master planning and design work up to a maximum amount of \$14.1 million through the Agency's Joint Infrastructure Development Fund and TIGER II grant funding. CCG will receive no reimbursements or fees for its own costs in the management of the design consultant team. All final design decisions for the public infrastructure portions shall be made by the Agency and other City departments. The Developer will be responsible for all costs related to the vertical development planning and any site improvement planning on the development sites; and
- (4) Elimination of the requirement to accommodate the Film Center and the Produce Market as part of the development, and expansion of the Developer's development site to include approximately 15 acres of the East Gateway that formerly was covered by the now-expired ENA with Oakland Maritime Support Services (OMSS); and
- (5) Terms specifying how the Agency and Developer will coordinate regarding outside agency negotiations, ongoing property management during the design phase, and securing additional other government funding; and
- (6) Release of AMB Property, L.P. from responsibility for the planning and design work, and designating CCG as the sole party responsible for the planning and design work;
- (7) Terms limiting CCG's liability for the design professionals' design errors or omissions, but retaining indemnity provisions against CCG for its negligence in performing its obligations for coordinating and managing the design and planning work; and
- (8) Additional terms as follows:
 - (A) The Agency and CCG will prioritize locating Oakland Maritime Support Services on the Base as soon as possible in the master planning process;

(B) CCG will require its third party consultants to track and report to the Agency the number of Oakland residents the consultants employ;

(C) CCG will encourage its third party consultants to voluntarily create openings for internships and summer jobs for Oakland youth and young adults; and

(D) CCG is encouraged to make an accommodation for the Oakland Film Center at market rate rents in the master planning process; and

FURTHER RESOLVED: That Agency staff shall bring back to the CED Committee and the Agency Board a progress report regarding ENA implementation approximately six (6) months before the ENA Term is set to expire; and

FURTHER RESOLVED: That up to \$14,100,000 for infrastructure planning and design work will come from the following sources and be appropriated into new Projects to be established in Fund (9572):

- \$9,490,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Army Base Joint Infrastructure Development Project (S415810)
- \$3,010,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S415820)
- \$1,600,000 from the OBRA Federal and State Grant Fund (9577), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S433810)

and be it

FURTHER RESOLVED: That the Agency shall maintain control over the infrastructure master planning process and CCG cannot proceed with planning for Port elements, such as the Railyard and 7th Street Overpass, until directed to do so by Agency staff; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code section 2.04.051.B and for the reasons stated above and in the Agency Administrator's report accompanying this Resolution, the Agency Board finds that it is in the Agency's best interests to waive advertising and the request for proposal/qualifications process for the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass work and so waives the requirements; and be it

FURTHER RESOLVED: That the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass work is awarded to CCG in an amount not-to-exceed \$3,850,212 and be it

FURTHER RESOLVED: This action is exempt from the requirements of the California Environmental Quality Act (CEQA) for the reasons stated in the Agency Board Agenda Report and the Environmental Review Officer shall cause to be filed appropriate Notices of Exemption/Determination; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to take whatever other action is necessary to implement the Second Amendment to the ENA; and be it

FURTHER RESOLVED: That the Agency Counsel shall review and approve the agreement(s) authorized hereunder for form and legality and a copy or copies shall be placed on file in the Office of the City Clerk.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST:

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

REVISED APRIL 5, 2011

Approved as to form and legality

D. Wilson

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING:

- (1) **THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF OAKLAND AND AMB PROPERTY, L.P./CALIFORNIA CAPITAL GROUP (AMC/CCG) FOR A DEVELOPMENT ON THE FORMER OAKLAND ARMY BASE WITHOUT RETURNING TO CITY COUNCIL; AND**
- (2) **A WAIVER OF THE ADVERTISING AND REQUEST FOR PROPOSAL/QUALIFICATIONS PROCESS AND AN AWARD OF THE PLANNING AND DESIGN OF INFRASTRUCTURE IMPROVEMENTS FOR THE PORT-ORIENTED RAILYARD AND 7TH STREET OVERPASS WORK, IN AN AMOUNT NOT-TO-EXCEED \$3,850,212, TO CCG**

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") owns parcels of the former Oakland Army Base ("Base"); and

WHEREAS, the City of Oakland ("City") may assume ownership of the Agency's Base properties, including the assumption of assets and liabilities associated with the economic redevelopment of the property; and

WHEREAS, the Agency adopted Resolution 2010-0088 C.M.S, authorizing the establishment of the Army Base Joint Infrastmcture Development Fund in the initial amount of \$16,300,000 specifically for the development of infrastmcture on the Base; and

WHEREAS, the Agency has been awarded a \$2,000,000 TIGER II grant from the U.S. Department of Transportation, \$1,600,000 of which will go directly towards infrastmcture planning and design for the Base, with a match requirement of up to \$3,010,000; and

WHEREAS, the Oakland Army Base Reuse Plan and 2002 Environmental Impact Report document the need to install all new public utilities and streets to serve new development of the former Oakland Army Base; and

WHEREAS, the Request for Proposals issued by the Agency that subsequently led to the selection of AMB Property, L.P./California Capital Group (AMB/CCG) clearly articulated the expectation that the master developer would be responsible for all aspects of the development of the Army Base site including site planning, engineering, and other pre-development activities; and

WHEREAS, on January 19, 2009, the Agency executed an Exclusive Negotiating Agreement (ENA) with AMB/CCG for the potential redevelopment of a portion of the former Army Base identified as the Gateway Development Area and which included all of the Central and West Gateway Areas and part of the East Gateway Area; and

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WHEREAS, on July 20, 2010, the Agency and AMB/CCG entered into a First Amendment to the ENA to allow the Agency to contract with a consultant to prepare all documentation necessary for environmental review under the California Environmental Quality Act (CEQA), and to share the costs of that contract with AMB/CCG; and

WHEREAS, the environmental review which is necessary for final approval to redevelop the Army Base is still underway; and

WHEREAS, extensive planning and design work for areas outside the ENA Development Area is required for the planning and design of the ENA Development Area; and

WHEREAS, the infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass are not essential to the planning and design of the ENA Development Area but are necessary to preserve the \$242,000,000 in Trade Corridor Improvement Funds (TCIF) which were awarded to the Port of Oakland but may be lost if the Railyard and the 7th Street Overpass are not designed in a timely manner; and

WHEREAS, the Amended and Restated Memorandum of Agreement between the Agency and the Port contemplates a unified approach to the design of the Army Base; and

WHEREAS, the Cost Sharing Agreement pending between the Agency and the Port calls for the Agency to invest \$14,100,000 toward the design of the entire Army Base, including the Railyard and the 7th Street Overpass, in exchange for the Port supporting a \$62,000,000 allocation of the TCIF award for infrastructure development in the Agency-owned portion of the Base; and

WHEREAS, planning and design work that is not essential to the ENA Development Area should be awarded pursuant to the City's purchasing processes – advertising and request for proposal/qualifications requirements, unless the City Council determines that it is in the City's best interests to waive such these processes; and

WHEREAS, the ENA required AMB/CCG to propose a Development Team, Scope, Schedule, and Budget for the planning and design work required for the construction of infrastructure, public utilities, and public streets on the former Army Base; and

WHEREAS, the partnership agreement between AMB and CCG designates CCG as the party responsible for the planning and design work for the Base's infrastructure, public utilities, and public streets; and

WHEREAS, CCG has submitted the required proposal that includes a Budget of \$14,100,000 for master planning public infrastructure improvements for the former Army Base; and

WHEREAS, the Budget includes \$3,850,212 for the planning and design of infrastructure improvements for the Port-oriented Railyard and the 7th Street Overpass; and

WHEREAS, CCG's proposed Development Team is ready to begin preparing infrastructure planning and design documents for the Army Base and use of this Development Team is the surest and most timely way to accomplish the work and meet state and federal funding deadlines; and

WHEREAS, Oakland Municipal Code section 2.04.051.B authorizes the City Council to dispense with advertising and the request for proposal/qualifications process to secure planning and

WHEREAS, staff recommends that it is in the City's best interests to waive the advertising and request for proposal/qualifications process for the planning and design of infrastructure improvements for the Port-oriented Railyard and 7th Street Overpass work because the work will help the Port preserve its TCIF award and secure for the Agency a \$62,000,000 allocation of the award; and

WHEREAS, the City Administrator has determined that the Port planning and design work awarded hereunder is of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service; and

WHEREAS, the Agency established a Joint Infrastructure Development Fund (9572) with \$16,300,000 for the development of the former Oakland Army Base, including the planning and design of public improvements; and

WHEREAS, \$3,010,000 of the Joint Infrastructure Development Fund (9572), Infrastructure Master Plan Project (S415820) has been appropriated as match funding for a TIGER II grant award, and both the match and \$1,600,000 of the TIGER II grant are sources of funding for the Base infrastructure planning and design work; and

WHEREAS, if tax increment from Fund (9570) were used in lieu of Fund (9572) as the source of match funding for the TIGER II grant, then additional funds would be available for the development of Base infrastructure; now therefore be it

RESOLVED: That the City Administrator is authorized to negotiate and execute an Exclusive Negotiating Agreement ("City ENA") with AMB/CCG for a development on the Base on the same general terms as the ENA between the Agency and AMB/CCG, as amended by the First Amendment, and the terms of a proposed Second Amendment to the ENA, as described in the Agenda Report, the Supplemental Agenda Report, and the Agency Resolution for this item, without returning to City Council; and be it

FURTHER RESOLVED: That staff shall bring back to the CED Committee and the City Council a progress report regarding ENA implementation approximately six (6) months before the ENA Term is set to expire; and

FURTHER RESOLVED: That the City ENA shall provide for: (A) reimbursement to CCG's third-party consultant costs up to a maximum amount of \$14,100,000 for the planning and design work for the Base's Infrastructure, Public Utilities, and Public Streets, and (B) approval of CCG's Proposal for a Development Team, Scope of Work, Budget, and Schedule for the Planning and Design Work; and be it

FURTHER RESOLVED: That up to \$14,100,000 will come from following sources and be appropriated into new Projects to be established in Fund (9572):

- \$9,490,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Army Base Joint Infrastructure Development Project (S415810)
- \$3,010,000 from the Joint Infrastructure Development Fund (9572), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S415820)
- \$1,600,000 from OBRA Federal and State Grant Fund (9577), Oakland Army Base Organization (88679), Infrastructure Master Plan Project (S433810)

FURTHER RESOLVED: That the City through its role as the successor to the Redevelopment Agency of the City of Oakland shall appropriate and allocate up to \$3,010,000 in Army Base Redevelopment Area Tax funds (9570) over the course of FY 2010-2011 through FY 2017-2018 and replace Fund (9572) Project (S415810) as the match funding source for the TIGER II grant award; and be it

FURTHER RESOLVED: That the City shall maintain control over the infrastructure master planning process and AMB/CCG cannot proceed with planning for Port elements, such as the Railyard and 7th Street Overpass, until directed to do so by City staff; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code section 2.04.051.B and for the reasons stated above and in the City Administrator's report accompanying this Resolution, the City Council finds that it is in the City's best interests to waive advertising and the request for proposal/qualifications process for the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass, and so waives the requirements; and be it

FURTHER RESOLVED: That the planning and design of infrastructure improvements for the Railyard and the 7th Street Overpass work is awarded to CCG in an amount not-to-exceed \$3,850,212 and be it

FURTHER RESOLVED: This action is exempt from the requirements of the California Environmental Quality Act (CEQA) for the reasons stated in the City Council Agenda Report, and the Environmental Review Officer shall cause to be filed appropriate Notices of Exemption/Determination; and be it

FURTHER RESOLVED: That the City Administrator is authorized to take whatever other action is necessary to implement the City ENA; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve the agreement(s) authorized hereunder for form and legality and a copy or copies shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California