

REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND
AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND

2011 MAR 24 PM 5:21

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: March 29, 2011

Re: Supplemental Report for An Agency Resolution Authorizing the Agency Administrator to Negotiate and Execute a Cost Sharing Agreement Between the Redevelopment Agency and the Port of Oakland for the Development of Infrastructure Including Public Utilities and Public Streets on the Former Oakland Army Base

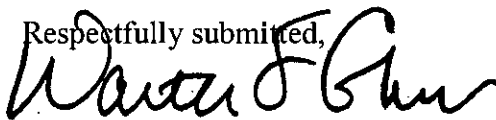
Supplemental Report for A City Resolution Authorizing the City Administrator to Negotiate and Execute a Cost Sharing Agreement Between the City and the Port of Oakland for the Development of Infrastructure Including Public Utilities and Public Streets on the Former Oakland Army Base

SUMMARY

This Supplemental Report introduces a revised Term Sheet (*Attachment A*), which describes the terms and conditions of a Cost Sharing Agreement between the Oakland Redevelopment Agency/City of Oakland and the Port of Oakland for the development of infrastructure on the former Oakland Army Base.

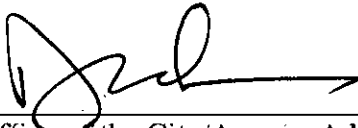
It should be noted that attorneys for the Agency/City and the Port have not had the opportunity to review the revisions to the Term Sheet prior to the deadline to submit this Supplemental Report. Any further changes or revisions to the Term Sheet will be read into the record during the March 29, 2011 special meeting of the Community and Economic Development Committee.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City/Agency Administrator

Item: _____
CED Committee
March 29, 2011

OAKLAND ARMY BASE
JOINT INFRASTRUCTURE DEVELOPMENT
COST SHARING AGREEMENT

OAKLAND REDEVELOPMENT AGENCY/CITY OF OAKLAND
&
PORT OF OAKLAND

DRAFT

TERM SHEET

I. Intention of this Agreement

A) A stand alone agreement among the Oakland Redevelopment Agency/City of Oakland (sometimes referred to herein as the "ORA", the "ORA/City", the "Redevelopment Agency", the "Agency", or the "City") and the Port of Oakland (Port) separate from the Amended and Restated Memorandum of Agreement (ARMOA). Nothing in this Term Sheet or future agreement is intended to modify the terms and conditions of the ARMOA with respect to any funds subject to the ARMOA, including without limitation, any funds to be deposited into the Joint Environmental Remediation Fund.

B) This will be a binding agreement to commit specific funds and take other actions for the redevelopment of portions of the former Oakland Army Base separately owned by the Port and the ORA/City.

C) The full execution of this Cost Sharing Agreement is contingent upon the terms and conditions of the amended Baseline Agreement with the California Transportation Commission regarding allowable uses of Trades Corridor Improvement Funds, specifically for infrastructure improvement and site preparation work on ORA/City property.

II. Funding

ORA/City

The ORA/City commits up to a total of \$32,000,000 towards the completion of certain regulated environmental compliance work consistent with the Remediation Action Plan and Risk Management Program (RAP/RMP), and the design of certain railroad infrastructure, public utilities and public streets to be agreed upon between the ORA and the Port and their respective Boards. ORA/City funding will be provided as follows:

A) \$5,700,000: Joint Environmental Remediation Fund—approved by the Agency Board to support work per the RAP/RMP Remediation Action Plan/Risk Management Program (RAP/RMP); Resolution No. 2010-0049 C.M.S., 4/20/10, as required under the ARMOA.

B) \$16,300,000: Joint Infrastructure Development Fund—approved by the Agency Board for the development of certain railroad infrastructure, public utilities, and public streets to be agreed upon between the ORA and the Port on the former Oakland Army Base, Resolution No. 2010-0088 C.M.S., 7/20/10.

C) \$10,000,000: Investment over a seven year period FY 10-11 to FY 16-17 which was approved by the Agency Board as part of the total \$32,000,000 for the Cost Sharing Agreement, Resolution No. 2010-0089 C.M.S., July 20, 2010. Such \$10,000,000 will be used for the design and development of certain railroad infrastructure, public utilities, and public streets to be agreed upon between the ORA and the Port on the former Oakland Army Base. This \$10,000,000 commitment is contingent upon the future availability of tax increment revenue derived from the Army Base Redevelopment Area. Should tax increment revenue be diminished or terminated with changes to California Redevelopment Law, the City is under no legal obligation to meet this \$10,000,000 commitment, but will make every effort to meet part or all of the commitment through other means, such as leasing revenue derived from the former Army Base, or grant revenue awarded directly to the City, or OAB land sales proceeds.

Port

The Port agrees to use commercially reasonable efforts to provide the ORA/City with access to certain state grant funds by incorporating the redevelopment of certain ORA/City portions of the OAB into the Port's grant funded projects.

The Port currently has a Baseline Agreement with the California Transportation Commission (CTC) for a Trades Corridor Improvement Fund allocation of \$242,000,000 for the purpose of enhancing trade through the northern California trade corridor and consistent with the goals of the CTC in strict accordance with the Proposition 1B Goods Movement Program Authorizing Legislation.

A) \$62,000,000: Through its Trade Corridor Improvement Fund (TCIF) allocation for (i) the Outer Harbor Intermodal Terminals ("OHIT") project and (ii) the 7th Street Grade Separation and Roadway Improvements project ("7th Street Project" and collectively with the OHIT, the "TCIF Projects"), the Port will work in good faith with the ORA/City and use commercially reasonable efforts with the state to obtain reimbursement of up to \$62,000,000 for the construction of certain railroad and street infrastructure improvements as more specifically described in the respective Baseline Agreements as each may be amended from time to time for the purpose of enhancing trade through the northern California

trade corridor and consistent with the goals of the California Transportation Commission (CTC) in strict accordance with the Proposition 1B Goods Movement Program Authorizing Legislation.

B) \$5,700,000: Joint Environmental Remediation Fund—As required under the ARMOA, the Port is obligated to fund an equal amount as the ORA/City towards environmental compliance work identified in the RAP/RMP.

III. Uses and Conditions

A) The ORA/City's Joint Infrastructure Development Fund of \$16,300,000 will be used primarily for the design of certain railroad infrastructure, public utilities, and public streets, all as agreed upon in writing between the ORA/City and the Port.

B) The ORA/City Joint Environmental Remediation Fund of \$5,700,000 and the Port's equal contribution will go towards identified RAP/RMP sites on Agency and Port property conveyed by the Army in accordance with the terms and conditions of the ARMOA.

C) The \$10,000,000 over seven years has not been specifically assigned, and will be agreed upon in writing between the ORA/City and the Port. Note that this commitment is based upon anticipated net tax increment and the amount of tax increments available is subject to modification in the event of unforeseen reductions in tax increment collected from the Army Base and Maritime sub-areas and/or other requirements imposed by future amendments to the Community Redevelopment Law by the State legislature. If sufficient tax increments are not available, the City may use other sources of funds to meet all or a portion of the \$10,000,000 target, including net lease proceeds and grants secured exclusively by the City. The Agency has already secured \$1.56 million in TIGER II grant funding, which will provide the initial contribution to the Agency's \$10,000,000 funding obligation. The remaining \$8.45 million will be provided as possible over the seven year period identified above. In the event the Agency/City is unable to contribute all or part of the remaining \$8.54 million, the Parties will renegotiate the TCIF commitment to the Agency/City using a pro rata methodology.

D) The TCIF program rules limit funding to construction costs on a reimbursement basis, and require a minimum dollar-for-dollar match from other public and private sources before it can be drawn upon. Baseline Agreements between the Port and the state require the Port to provide a 50% match for the 7th Street Grade Separation project and a 52% match for the OHIT project. The ORA/City and the Port will cooperate in good faith to seek TCIF reimbursement of construction costs for the agreed upon railroad infrastructure, public utilities and public streets improvements on the ORA/City's portion of the Army Base.

E) Both parties acknowledge that the current project described in the Baseline Agreements is not fully funded, and requires approximately \$22600,000,000 in additional funding for design and construction. The Port and the ORA/City agree to work in good faith to solicit additional funds such that the projects, as described in the TCIF Baseline Agreements, would be successfully completed, including the expanded rail, the 7th Street Project, and new project serving infrastructure and utilities within the East and Central Gateway Areas consistent with the CTC Baseline Agreement. Such good faith effort shall include soliciting federal funds, additional state funds, private sector investments, available tax increment revenues, etc. If the good faith effort of both the Port and the ORA/City are unsuccessful in securing additional funding, then the Port and the ORA/City agree to work collaboratively and reduce the scope of work for the projects, subject to the approval of CTC through modifications to the Baseline Agreements. If such a reduction would make the development goals and objectives infeasible or impractical for either party, then that party may choose not to move forward independently with its portion of the development. The other party would then be provided with the opportunity to proceed with what portions of the projects it was capable to complete, subject to the prior written approval of the CTC and other state agencies responsible for the TCIF funds. In the case that ORA/City is able to move forward and the Port is not, the Port shall continue to act as the local agency under the Baseline Agreements, however, it shall work with CTC to have the agreements assigned to the ORA/City and the ORA/City designated as the lead agency. If both parties are unwilling neither party is willing to proceed forward under a reduced funding scenario, then the parties shall agree not to proceed with the work described in the Baseline Agreements. If either party, or both parties, elect not to proceed with the Baseline Agreements, neither party shall be responsible for prior costs incurred as contemplated under this Agreement or as part of a good faith effort to attempt to deliver the projects described in the Baseline Agreements. In the event that one party elects to move forward with development and the other elects not to, the party electing to move forward shall indemnify, defend, and hold harmless the party not moving forward for any and all costs, damages, losses, penalties, or other actions arising out of the TCIF program and Baseline Agreements as a result of the moving forward party's decision to move forward.

F) ~~The parties agree that this Cost Sharing Agreement is contingent upon Port agrees that this agreement is null and void should there not be an amendment to the Baseline Agreements the Port it has with the CTC. The amended Baseline Agreement shall~~ identifying the ORA/City as a funding source and a TCIF project budget allocation of \$62,000,000 for agreed upon improvements on ORA/City -Army Base property and facilities as set forth elsewhere in this Term Sheet. If the Baseline Agreements are amended as described herein, the ORA/City agrees to (i) use such TCIF funds in strict compliance with the requirements of the Baseline Agreements, and (ii) use and develop Agency's and City's portions of the Army Base property only for purposes that are consistent with and in furtherance of the Baseline Agreements and the Proposition IB Goods

Movement Program. Should either party use the TCIF monies for its project and later, those monies be deemed ineligible or unqualified, the responsible party shall indemnify, defend, and hold the other party harmless and resolve the issue with CTC.

G) The Port agrees that, in exchange for the ORA/City's commitment to expend the \$16.3 million in funds needed to produce the Master Infrastructure Development Plan, priority will be given to the construction of back bone utility and street improvements required in Maritime Street to the extent permitted under the applicable Baseline Agreements and the Proposition 1B Goods Movement Program. TCIF-funded construction will be subject to agreement between the ORA/City and the Port on the design, phasing and sequencing of work of the public infrastructure improvements.

IV. Scope of Work

Environmental Remediation: The parties acknowledge and agree that, as anticipated, remediation costs have exceeded the funding provided by the Army pursuant to the Environmental Services Cooperative Agreement (ESCA) executed September 27, 2002 between the Army and the Oakland Base Reuse Authority. The Port and the City used a portion of the Army monies to purchase cost cap and pollution legal liability insurance policies which protect both the Port and the Redevelopment Agency from significant environmental liabilities beyond each party's means. The ARMOA provides for funding environmental remediation by either party for environmental compliance activities on the property. Neither the Port nor the Redevelopment Agency are proposing in this agreement additional funding or an additional mechanism for sharing costs associated with environmental compliance activities on the Oakland Army Base. This does not mean an additional mechanism can not be added under another agreement. The allocation procedure set forth in section 5.3 of the ARMOA shall continue to determine how certain remediation costs referenced in such section 5.3 are funded, which remediation costs may be eligible as TCIF matching funds. The responsibility to perform environmental compliance activities will likewise be as described in the ARMOA. However, each party has decided to identify its funding obligation by reference in this agreement, which may include the use of federal matching funds and TCIF funds to the extent allowable.

California Environmental Quality Act / National Environmental Policy Act Review: The City is currently undertaking an environmental review for the proposed redevelopment project, both on the ORA/City property and Port property, including preparation of a project description, determining the necessary documentation required, and performing all analysis necessary to properly evaluate the project described. The City is working closely with the Port on this review. The Port is currently the land-use authority for its OAB property and other property within the Port Area Line, and nothing in this term sheet or agreement shall be construed to waive the Port's responsibilities over its lands under CEQA. However, the City and the Port may enter into an agreement

designating the City as the lead agency under CEQA for purposes of this joint project. The Port and the ORA/City shall make a good faith effort to reach agreement on the project description by May 15, 2011. Should the Port and the ORA/City fail to reach agreement on the project description by May 15, 2011, either party may elect to terminate this Cost Sharing Agreement.

Master Infrastructure Development Planning: Prior to proceeding with detailed design and construction, the Port and the City will jointly prepare a comprehensive site study which considers roadway access, intermodal rail terminal footprint including a track layout, utility service demands and infrastructure needs, a grading and drainage plan for the site, a grade separation plan for linking the intermodal terminal with the Port's existing Joint Intermodal Terminal, a geotechnical evaluation of soil stability for the general development concepts, and preliminary development cost estimates for the project. This work would be funded directly by the ORA/City's Joint Infrastructure Development Fund. The ORA/City shall be responsible for selecting the appropriate professionals to perform this work and shall advise the Port of its proposed consultant team to perform each task. The Port shall have the right to review and approve within ten (10) working days the qualifications of each team member prior to their commencement of any work. Certain components of the Master Infrastructure Development Planning require critical input and design decisions from the Port, particularly the 7th Street Grade Separation and the rail layout. The Port and the ORA/City agree to cooperate and coordinate their decision making, design review and approvals in a timely fashion. The ORA/City and the Port shall promptly deliver to the other copies of their respective components of such site study for the other's review and comment.

Detailed Design: Following completion of the master infrastructure development planning tasks, the Port and the City will separately be responsible for detailed design on a phase-by-phase basis. The Port will be responsible for performing detailed design for each of its development stages, while the Redevelopment Agency will be responsible for its own detailed design as well. Given that the Agency and Port plan to engage development partners to perform the actual construction of infrastructure, the level of detail for the design of each phase of the site will vary, with the exception of work that either the Agency or Port elect to perform directly at their own risk.

Construction Activities: Construction activities may include building demolition/deconstruction, site clearing, grading, soil import, utility construction, roadway improvements, rail improvements, building construction, paving and other related activities. To the extent that it is able do so through the generation of matching funds in addition to the \$32,000,000 identified in this Agreement, the Agency will commit to funding for the Maritime Street reconstruction, backbone utility infrastructure, and the 7th Street grade separation. Unless otherwise agreed between the ORA/City and the Port, the Port will be responsible for managing the construction of the 7th Street grade separation project, while the ORA/City will be responsible for managing the Maritime Street reconstruction and backbone utility infrastructure, each subject to the requirements of the TCIF Baseline Agreements. The Port will be responsible for the funding and construction of the intermodal rail improvements. The Port and the City agree to manage

their respective construction projects in a manner that minimizes any interference or disruption of existing businesses and/or tenant operations on the OAB during construction.

Redevelopment Agency and City OAB Project(s): Provided that the ORA and/or City comply with all requirements of the TCIF and/or Baseline Agreements, the Port will submit reimbursement requests on behalf of the ORA and/or City to CTC up to \$62 million in TCIF funds. Should the state deem these costs ineligible, or reduce the Port's funding allocation, or refuse to provide funding to the Port for any reason, the Port shall have no further obligation to provide the Redevelopment Agency with compensation. To prevent such disallowed construction cost reimbursements, the Parties agree to obtain pre-approval from Caltrans, as the administrator of TCIF on behalf of the CTC, for specific construction projects.

V. Master Infrastructure Development Planning

Before the Agency and the Port can forge ahead with specific projects, a Master Plan must be developed that the Agency and the Port both agree to in writing to ensure that all site characteristics, physical constraints, regulatory requirements, and funding restrictions are fully known and plotted. Following are among the activities the master planning process will include:

- A) Conceptual design of the necessary infrastructure up to rough grading
- B) Circulation and traffic plan
- C) Conceptual rail terminal plan
- D) Site utility relocation, vacation, and construction plan
- E) Preliminary cost estimates for design and construction
- F) Geotechnical analysis and soil stabilization plan
- G) Value engineering recommendations
- H) Green and sustainable development plan

VI. Management of Funds

A) Cash Flow and Match Analysis. The ORA and the Port will engage the services of an independent economic consulting firm acceptable to both the ORA and the Port to create and update cash flow and match requirement models. This service is essential to ensure that there are sufficient matching funds on record to access the State TCIF at the time needed to cover construction costs, and that there are sufficient cash reserves to support construction costs as required under and in accordance with the requirements of the TCIF Baseline Agreements.

B) Cost Reimbursements. Based upon work performed within an approved Scope of Work, all funding will be disbursed by the ORA and the Port on a reimbursement basis of actual costs incurred by professional services consultants and construction contractors.

C) ORA Fund Management. The ORA will manage its share of the Cost Sharing contribution as established through the Joint Environmental Remediation Fund as set forth in the ARMOA, the Joint Infrastructure Development Fund, and the provisions of this Cost Sharing Agreement. Both parties recognize that the ORA has limited resources, \$17.8 million (\$16.3 million initial commitment to the Joint Infrastructure Development Fund, plus \$1.5 million from the TIGER II grant) of which is scheduled to be expended up front for planning and design to trigger reimbursement from TCIF for construction. If and when the Baseline Agreements are amended, the ORA shall agree to comply with all provisions of the Baseline Agreements and the purposes of the Proposition 1B Goods Movement Program and the development of its portion of the Army Base.

D) TCIF Fund Management. The Port is responsible for managing the TCIF grant with the CTC and Caltrans, and will instruct the ORA in a timely manner regarding match reporting and other grant administration requirements. The ORA will comply with all such TCIF match reporting and other grant administration requirements.

E) Use of Third Party Entities. The ORA and the Port agree that each shall have the right to work cooperatively with other entities, with pre-approval from the other Party in writing, to expedite the accomplishment of the project.

F) Allocation Accounting. The Parties shall, on a quarterly basis, reconcile their respective funds to ensure that each Party's contribution was consistent with the agreed upon allocations.

G) Mutual Indemnification. Each party will agree to indemnify the other for each party's failure to manage its applicable funds in accordance with all applicable laws, including without limitation, the Community Redevelopment Law (as it may be amended from time to time), the TCIF program, and the Baseline Agreements.

VII. CEQA and NEPA

The City, as the Lead Agency under California Environmental Quality Act (CEQA) for its portion of the OAB, has initiated a CEQA review process for the Port-ORA OAB redevelopment project. The Port of Oakland, having land use jurisdiction over its portion of the Oakland Army Base, is working closely with City in its CEQA review process. The Port and the ORA/City may enter into a separate agreement whereby the Port would designate the City as lead agency for that portion of the joint project which lies within the Port Area Line. This would allow a single CEQA review to be performed for the joint project.

The actions contemplated herein comply with the requirements of the CEQA for the following reasons, each of which provides a separate and independent basis for CEQA compliance: (1) some activities covered under the proposed Cost Sharing Agreement have already been evaluated by the previously certified 2002 EIR, such as hazardous materials remediation; (2) certain activities covered under the Cost Sharing Agreement are statutorily exempt from CEQA, such as Planning and Feasibility Studies, including detailed design and engineering efforts, pursuant to CEQA Guidelines section 15262; (3) the proposed Cost Sharing Agreement are merely funding mechanisms that are not subject to CEQA, pursuant to CEQA Guidelines section 15378(b)(4); and (4) this action is exempt from CEQA pursuant CEQA Guidelines section 15061(b)(3), where it can be seen with certainty that there is no possibility that the agreement may have a significant effect on the environment.

Specifically, the proposed Cost Sharing Agreement does not constitute an approval by the Agency of the proposed project and the subsequent approval of any specific project by the Agency Board is subject to CEQA, where applicable. In particular, the Agency reserves all of its rights and duties under CEQA with respect to the proposed Army Base project, including without limitation the authority to do any and all of the following: (a) prepare an environmental study evaluating the impacts of the proposed project, feasible alternatives to the project, and feasible mitigation measures; (b) adopt any feasible alternatives and/or feasible mitigation measures to lessen any significant environmental impacts resulting from the proposed project; (c) determine that any significant environmental impacts of the proposed project that cannot be mitigated are acceptable due to project benefits overriding any significant unavoidable impacts; and/or (d) decide to modify or deny its approval of the proposed project, and not to proceed with the project, due to the results/findings of the CEQA process. After completion of the CEQA process, the specific project shall return to the Agency Board for its consideration based upon the foregoing.

VIII. Future Federal, State and Other Funds

The ORA and the Port agree to cooperate with one another and with the ORA master developer (and at such time as the Port selects a master developer, the Port's master developer) in making application for future federal and state funding to match the TCIF funds. The ORA and Port agree to cooperate in seeking to obtain private investments in the OAB that could further leverage TCIF funds. The ORA and the Port each agree that such cooperation shall not require either party to make any expenditure of funds or resources without the prior approval of such party's legislative body.

IX. General

While this term sheet summarizes certain essential terms of the proposed Cost Sharing Agreement, it does not set forth all of the material terms and conditions of the Agreement. This term sheet is not intended to be, and will not become, contractually binding on the Agency or the Port, and no legal obligation will exist unless and until the parties have negotiated, executed and delivered a mutually acceptable Cost Sharing Agreement based upon the express approval of each such governing body.

[End]