

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2011 MAR 17 PM 5:34

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

Re: 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

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

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**SUMMARY**

Staff requests that the Agency Board and the City Council adopt resolutions authorizing the Agency/City Administrator to negotiate and execute a Cost Sharing Agreement with the Port of Oakland to expedite the development of infrastructure on the former Oakland Army Base.

On July 15, 2010, the Agency Board adopted Resolution No. 2010-0089 C.M.S. authorizing the Agency Administrator to negotiate a Cost Sharing Agreement with the Port of Oakland for the development of the former Oakland Army Base. *Attachment A* to this report is a draft Term Sheet that describes the fundamental provisions of the Cost Sharing Agreement recommended by staff. The final agreement is in draft form as of this writing so staff requests authorization to negotiate any last minute changes that do not alter the fundamental provisions of the Agreement as summarized on the Term Sheet.

Staff is recommending Agency Board and City Council authorization to expedite the execution of the Cost Sharing Agreement among the Agency, City and the Port, which includes a commitment of up to \$10,000,000 in future tax revenue in addition to \$16,300,000 already approved by the Agency Board for a Joint Infrastructure Development Fund and \$5,700,000 for a Joint Environmental Remediation Fund. These funding commitments total \$32,000,000 from the Agency/City for infrastructure development planning, design and site preparation. In return, the Port, through its Trade Corridor Improvement Fund, will provide the Agency/City up to \$62,000,000 for reimbursement of infrastructure construction costs allowable by Caltrans within the East and Central Gateway Areas.

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Staff is recommending that the Cost Sharing Agreement be among the Agency, City and Port in the event the Agency is dissolved by the state legislature and the City assumes ownership of the Army Base property. In the event Tax Increment revenue is negatively impacted in any way due to State budget actions, the Agreement will contain provisions for reducing or eliminating the \$10,000,000 additional funding commitment accordingly.

## FISCAL IMPACT

The Army Base Joint Environmental Remediation Fund of \$5,741,477 was adopted by the Agency Board on March 11, 2010 through Resolution No. 2010-0049 C.M.S. and established as Fund 9579. The Army Base Joint Infrastructure Development Fund of \$16,300,000 was adopted by the Agency Board on July 15, 2010 through Resolution No. 2010-0089 C.M.S. and established as Fund 9572. These funds represent the Agency's initial contribution of \$22,000,000 towards the preparation of Army Base site for development of infrastructure.

Should the Redevelopment Agency be dissolved, the City will assume ownership of the Army Base property and all assets and liabilities associated with it.

The Army Base Redevelopment Area experienced a \$2,900,000 increase in Tax Increment in Fiscal Year 2010-2011 due to substantial tenant improvements made by Ports America. Staff had anticipated this increase in Tax Increment revenue and is assured that there will be sufficient net Tax Increment revenue going forward to meet a commitment of \$10,000,000 over the next seven years to contribute to the planning, design and construction of infrastructure necessary to support commercial development on the former Army Base. The Cost Sharing Agreement will have a provision for reducing or eliminating altogether the additional \$10,000,000 contribution depending on what happens with Redevelopment based on the Governor's budget proposal.

To cover future costs of public street and utility maintenance and replacement, the project team may form a Community Facilities District or create some other kind of mechanism to assess fees from project site tenants.

## BACKGROUND

The Cost Sharing Agreement with the Port of Oakland is essential to prepare the former Oakland Army Base for commercial development. Milestones achieved to date towards the development of the Army Base include the following:

- Selection of AMB/CCG as the master developer and the execution and amendment of their exclusive negotiating agreement;
- Amendment of the Port of Oakland's Baseline Agreement with the California Transportation Commission for the allocation of the \$242 million in Trades Corridor

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Improvement Funds (TCIF) to include Agency property and public infrastructure improvements;

- Decision to relocate the 15-acre Ancillary Maritime Support Services component in order to free up the East Gateway Area for development by AMB/CCG to support Port cargo movement;
- Decision to master develop infrastructure for the entire Army Base, particularly the North Gateway Area, to prepare the site for the possible relocation of two recyclers from West Oakland;
- The establishment of the \$11.4 million Joint Environmental Remediation Fund in conjunction with the Port to continue remediation work required to prepare the site for industrial development;
- The establishment of the \$16.3 million Joint Infrastructure Development Fund to master plan infrastructure development for the entire area and to design major public utility and street improvements with AMB/CCG and the Port;
- The initiation of CEQA and NEPA review required to clear the project for long-term lease agreements and the commencement of construction; and
- The award the Department of Transportation TIGER II grant, \$1.6 million of which is targeted for Army Base infrastructure development.

The Cost Sharing Agreement with the Port is crucial given the potential for the Agency to receive up to \$62 million in TCIF revenue to support construction of utilities and streets on Agency-owned property. The TCIF agreement requires a dollar-for-dollar match from the Agency and private sources, which is supported by a proposed investment of \$32,000,000 from the Redevelopment Agency over the next seven years. To retain the TCIF allocation, the Port must break ground by December 2013. Substantial environmental review, planning, design and construction drawings are required to get to construction. Given that the infrastructure is predominately for public improvements, it is essential that the Redevelopment Agency commit to supporting this work.

The development of new infrastructure, including expanded rail service, more efficient streets and intersections, and new public utilities, will create conditions which will attract subsequent private investment with an estimated value of \$225,000,000. The total project value of roughly \$750,000,000, including all public and private investment into the site, will create thousands of construction and permanent jobs, and the substantial economic and community benefits that come with those jobs. The vision is a thriving Port and a new industrial district that benefits Oakland, the region and the nation.

## **KEY ISSUES AND IMPACTS**

### **Potential Dissolution of the Redevelopment Agency**

At the time of this writing, it appears as if the State will dissolve Redevelopment Agencies as of July 1, 2011. The Agency and City have taken actions to preserve Agency assets and resources in order to continue redevelopment activities to the extent possible under the direction of the

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City. This report and resolutions are intended to enable the Agency and City to continue to prepare the Army Base for commercial development and to comply with our obligations to the Department of the Army and the State Department of Toxic Substances Control.

#### Port Trade Corridor Improvement Fund (TCIF) Allocation

The Port's \$242,000,000 TCIF allocation requires a dollar-for-dollar match. The TCIF allocation requires both the Agency and private sources of funding to meet this match requirement. The Baseline Agreement between the Port and the California Transportation Commission for the TCIF allocation identifies the Agency's \$32,000,000 matching investment. The Cost Sharing Agreement is intended to reinforce the commitment of the Port to investing \$62,000,000 in TCIF funds for development construction on the Agency's Army Base property, including remediation, site preparation, public streets and infrastructure. This strong display of local and state support for the project positions the Agency and Port for federal grants, most of which require matching. The combination of local, state and federal funding to prepare the former Army Base for development should attract hundreds of millions of dollars in private investment as well. Overall, approximately 72% of the total infrastructure investments for the project will go towards the improvement of Agency/City land and assets.

#### Investments

The Agency's initial investment of \$22,000,000 (\$5,700,000 for the Joint Remediation Account and \$16,300,000 for the Joint Infrastructure Development Fund) will reap lasting benefits and comes with minimal risk. The Agency and Port must complete the environmental remediation work as required by the State-approved Remedial Action Plan (RAP) and the Risk Management Plan (RMP) by August 2013 per our agreement with the Army, but preferably much sooner to access our environmental remediation insurance policy. In addition to environmental remediation, the Agency's initial contribution will be used to design the expanded rail, public streets, and public utilities to serve the entire Base. Detailed construction drawings and CEQA and NEPA clearance will pave the way for an infusion of State TCIF and federal funding for construction. Without the design work and environmental clearances, there is no construction money.

Based upon projections of new investments in the Army Base and Maritime Sub-districts, net tax increment will increase. Apart from the Wood Street Subarea projected tax increment, staff has concluded that it is feasible to commit an additional investment of \$10,000,000 over seven years towards the Army Base development project.

Part of the Agency's investment includes a TIGER II grant award of \$2,000,000, 80% of which is specifically for Army Base infrastructure master planning and design. This portion of the grant award requires a match of up to \$3,010,000, which may come from future tax revenue as part of the \$10,000,000 commitment, depending upon what occurs with the Agency and the succession process.

### Assurances

The terms of the Cost Sharing Agreement with the Port (see *Attachment A*) are based on the assurance that Caltrans will reimburse the Agency for construction costs consistent with the goals of the California Transportation Commission as described in the Proposition 1-B Goods Movement Program authorizing legislation. The Port agrees that the Cost Sharing Agreement will be null and void should there not be an amendment to the Baseline Agreement between the Port and the California Transportation Commission, which specifically recognizes the Agency as a matching fund source with an allocation of \$62,000,000 for infrastructure and public improvements on ORA and City property and facilities on the former Army Base.

### California Environmental Quality Act

The actions called for in this report comply with the requirements of the California Environmental Quality Act (CEQA) for the following reasons, each of which provides a separate and independent basis for CEQA compliance: (1) some activities covered under 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 proposed 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 is merely a funding mechanisms that is 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 project 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 will return to the Agency Board for its consideration based upon the foregoing.

## PROJECT DESCRIPTION

### Cost Sharing Agreement

The Cost Sharing Agreement is the engine that enables the use of TCIF funds. Agency and Port staff members have determined that it is best to use a stand-alone agreement rather than an

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amendment to the Amended and Restated Memorandum of Agreement (ARMOA) among the City, Agency and Port because of the possibility of including other parties, such as AMB/CCG, in the agreement in the future. For the time being, the Cost Sharing Agreement would be between the Agency and the Port, but could be amended without opening the ARMOA if needed.

The Cost Sharing Agreement as outlined on *Attachment A* covers the following key elements:

1. The Agency's estimated commitment over a period of seven years is \$32,000,000. This commitment includes the \$5,700,000 already approved for the Joint Environmental Remediation Fund, the requested \$16,300,000 for the Joint Infrastructure Development Fund, and up to \$10,000,000 over seven years in net tax increment revenue (should the Agency no longer exist, the \$10 million will not become a City obligation). The transfer of tax increment funds to the Joint Infrastructure Remediation Fund will require Agency Board approval each time.
2. Project priorities for the design and eventual development of (a) the build-out of Maritime Street, which is the utility "spine" for the East and Outer Harbor portions of the Base; (b) the build-out of Burma Road, which is the utility "spine" for the Central and West Areas, as well as the access road to the West Area and Shoreline and Gateway Parks; (c) the expanded rail, which is essential for the City's new industrial district and the Port's future success; and (d) the 7<sup>th</sup> and Maritime Street Grade Separation project, which is essential for relieving congestion, reducing emissions, and enhancing safety for pedestrians and bicyclists.
3. The commitment of up to \$62,000,000 in TCIF investments for construction of Maritime Street, Burma Road, public utilities, and other projects specifically on Agency Army Base property.
4. The coordination of other fund development efforts with the Port and AMB/CCG, with a framework for how these new funds will be managed and invested to advance the project.
5. The Cost Sharing Agreement will be null and void without an amended Baseline Agreement between the Port and the California Transportation Commission, which must recognize the Agency's matching funds of \$32,000,000 and allocate \$62,000,000 for infrastructure construction costs on Agency property and City facilities.

#### North and West Gateway Areas

The North and West Gateway Areas are not within the boundaries for the Port's TCIF allocation. The Joint Infrastructure Development Fund and Cost Sharing Agreement do not at this time take the development of those two areas into account.

That said, Agency staff is considering options for preparing the North Area for development simultaneously with the East and Central Areas. New utilities installed in the East and Central Gateway Areas will serve the North and West Areas. Sequencing and phasing will be critical for

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the success of the entire Army Base project. Contemplated uses for the North Area are no less important than the East and Central. Staff will continue to work on maximizing revenue-generating opportunities on the former Army Base beyond the Reinvestment Period (which extends until August 7, 2013 to support development of the North and West Areas. Lease, utility, land sale, and grant proceeds are all being contemplated to raise the required funds needed to prepare the North Area for development.

The West Area is the last phase being considered for development. At this juncture, there has been limited thought and time invested in its development, which cannot occur until Caltrans completes construction of the new Bay Bridge and deconstructs the old bridge. That will not happen until 2015 or beyond.

## SUSTAINABLE OPPORTUNITIES

***Economic:*** The redevelopment of the former Oakland Army Base will create thousands of temporary and permanent jobs, substantially increase the City's tax base, and support the long-term competitiveness of the Port of Oakland.

***Environmental:*** The improvements planned for the development of the former Army Base will reduce air pollution with the expansion of rail service and the improvement of major intersections. The Agency will ensure that development projects adhere to the City's sustainable development guidelines, which include criteria for green building technologies, site selection and preparation, water, energy, indoor environmental quality and human health factors, materials selection with recycled content or health considerations, and waste and recycling procedures.

***Social Equity:*** Social equity is ensured through the City's and Port's local hiring and contracting requirements. Community benefits associated with the project will be substantial, including contributions to the West Oakland Community Fund and support for workforce development programs. Staff will return to the Agency Board at a later date with options and recommendations for how to meet most effectively the Agency's, Port's and master developer's community benefits goals and priorities.

## DISABILITY AND SENIOR CITIZEN ACCESS

Any projects and programs implemented in this project area will be required to comply with applicable City, State, and Federal disabled access requirements.

## RECOMMENDATION AND RATIONALE

Staff recommends that the Agency Board/City Council adopt the attached resolutions authorizing the Agency/City Administrator to negotiate and execute, without returning to the Agency Board/City Council, a Cost Sharing Agreement between the Redevelopment Agency, City and

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the Port of Oakland for the development of infrastructure, public utilities and public streets on the former Oakland Army Base committing a total of thirty-two million dollars (\$32,000,000) of Agency funds to the development. This commitment includes an allocation of \$10,000,000 in tax revenue generated from the Oakland Army Base Redevelopment Area over the next seven years.

The Cost Sharing Agreement is an essential administrative mechanism for guaranteeing a substantial amount of funding from the Port through its TCIF allocation for the construction of public improvements and development on Agency/City property.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Agency Board/City Council adopt the Resolutions.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

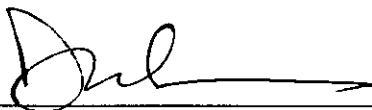
Reviewed by:

Gregory Hunter, Deputy Director of Economic  
Development and Redevelopment

Prepared by:

Al Auletta, Redevelopment Area Manager

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City/Agency Administrator

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OAKLAND ARMY BASE  
JOINT INFRASTRUCTURE DEVELOPMENT  
COST SHARING AGREEMENT

OAKLAND REDEVELOPMENT AGENCY/CITY OF OAKLAND  
&  
PORT OF OAKLAND

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.

II. Funding

ORA/City

The ORA/City commits a total of \$32,000,000 towards the completion of certain regulated environmental compliance work, and the design of certain railroad infrastructure, public utilities and public streets to be agreed upon between the ORA and the Port. 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 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.

### 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.

A) \$62,000,000: Through its Trade Corridor Improvement Fund (TCIF) allocation for (i) the Outer Harbor Intermodal Terminals ("OHIT") project and (ii) the 7<sup>th</sup> Street Grade Separation and Roadway Improvements project ("7<sup>th</sup> 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 \$1.5 million in TIGER II grant funding which will provide the initial contribution to the Agency's \$10,000,000 funding obligation. The remaining \$8.5 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 \$8.5 million, the Parties will renegotiate the TCIF commitment to the Agency/City.

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 7<sup>th</sup> 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. 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. 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 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 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 Port agrees that this agreement is null and void should there not be an amendment to the Baseline Agreements it has with the CTC 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 IB 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 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 7<sup>th</sup> 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 7<sup>th</sup> Street grade separation. Unless otherwise agreed between the ORA/City and the Port, the Port will be responsible for managing the construction of the 7<sup>th</sup> 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.

## 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 IB 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]

2011 MAR 17 PM 5:34

## OAKLAND CITY COUNCIL

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

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**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**

**WHEREAS**, the Redevelopment Agency and the Port of Oakland own respective parcels of the former Oakland Army Base; and

**WHEREAS**, the City may assume ownership of the Agency's portion of the former Oakland Army Base, including the assumption assets and liabilities associated with the environmental remediation and economic redevelopment of the property; 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 cost for new rail and street systems, utilities, streets, open space, and safe public access is estimated at \$500,000,000; and

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0088 C.M.S., authorizing the establishment of an Army Base Joint Infrastructure Development Fund in the initial amount of \$16,300,000; and

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0049 C.M.S., authorizing the establishment of a Army Base Joint Environmental Remediation Fund with an Agency contribution of \$5,741,477, matched by Port of Oakland contributions of an additional \$5,741,477 to share the costs of required environmental remediation on the former Oakland Army 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 infrastructure planning and design for the former Army Base, with a match requirement of up to \$3,010,000; and

**WHEREAS**, the Port of Oakland has been awarded an allocation of more than \$242,000,000 in State Trades Corridor Improvement Funds to be used for the construction of infrastructure improvements within the East and Central Areas of the former Oakland Army Base;

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0089 C.M.S., authorizing the Agency Administrator to negotiate a Cost Sharing Agreement with the Port of Oakland to improve rail and surface transportation systems and public utilities that are essential to attract private investment for the development of the former Army Base to its best and highest use; now, therefore be it

**RESOLVED:** That the City Administrator is authorized to execute a Cost Sharing Agreement with the Port of Oakland for the development of infrastructure and other improvements on the former Oakland Army Base committing an initial total Sixteen Million Three Hundred Thousand dollars (\$16,300,000) of Agency Fund 9572 to the development, in addition to the \$5,700,000 already approved for the Joint Environmental Remediation Fund 9579; and be it

**FURTHER RESOLVED:** That the City shall appropriate and allocate up to an additional \$10,000,000 in Army Base Redevelopment Area Tax funds (9570) over the course of FY 2011-2012 through FY 2018-2019 through its role as the successor to the Oakland Redevelopment Agency for specific infrastructure planning, design and construction projects within the East and Central Gateway Areas of the former Army Base; and be it

**FURTHER RESOLVED:** That up to \$3,010,000 of the \$10,000,000 will be used to Match the Federal TIGER II grant award for infrastructure development master planning; and be it

**FURTHER RESOLVED:** That the City is authorized by way of the Cost Sharing Agreement to accept up to \$62,000,000 in Port of Oakland Trades Corridor Improvement Funds over the course of the Agreement for the construction of infrastructure and other site preparation projects within East and Central Gateway Areas; and be it

**FURTHER RESOLVED:** That this action complies with the California Environmental Quality Act (CEQA) for the following reasons, each of which provides a separate and independent basis for CEQA compliance: (1) some activities covered under 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 proposed 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 includes 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 project may have a significant effect on the environment; and be it

**FURTHER RESOLVED:** That the Environmental Review Officer shall cause to be tiled appropriate Notices of Exemption/Determination; and be it

**FURTHER RESOLVED:** That the City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing a Cost Sharing Agreement with the Port of Oakland in support of the development of public improvements on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

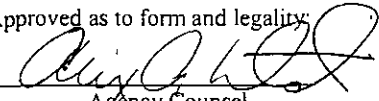
ABSTENTION -

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

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

2011 MAR 17 PM 5:36

Approved as to form and legality

  
Agency Counsel

**REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND**

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

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**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**

**WHEREAS**, the Redevelopment Agency and the Port of Oakland own respective parcels of the former Oakland Army Base; 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 cost for new rail and street systems, utilities, streets, open space, and safe public access is estimated at \$500,000,000; and

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0088 C.M.S., authorizing the establishment of an Army Base Joint Infrastructure Development Fund in the initial amount of \$16,300,000; and

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0049 C.M.S., authorizing the establishment of a Army Base Joint Environmental Remediation Fund with an Agency contribution of \$5,741,477, matched by Port of Oakland contributions of an additional \$5,741,477 to share the costs of required environmental remediation on the former Oakland Army 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 infrastructure planning and design for the former Army Base, with a match requirement of up to \$3,010,000; and

**WHEREAS**, the Port of Oakland has been awarded an allocation of more than \$242,000,000 in State Trades Corridor Improvement Funds to be used for the construction of infrastructure improvements within the East and Central Areas of the former Oakland Army Base;

**WHEREAS**, the Agency Board adopted Resolution No. 2010-0089 C.M.S., authorizing the Agency Administrator to negotiate a Cost Sharing Agreement with the Port of Oakland to improve rail and surface transportation systems and public utilities that are essential to attract private investment for the development of the former Army Base to its best and highest use; now, therefore be it

**RESOLVED:** That the Agency Administrator is authorized to execute a Cost Sharing Agreement with the Port of Oakland for the development of infrastructure and other improvements on the former Oakland Army Base committing an initial total Sixteen Million Three Hundred Thousand dollars (\$16,300,000) of Agency Fund 9572 to the development, in addition to the \$5,700,000 already approved for the Joint Environmental Remediation Fund 9579; and be it

**FURTHER RESOLVED:** That the Agency shall appropriate and allocate up to an additional \$10,000,000 in Army Base Redevelopment Area Tax Increment funds (9570) over the course of FY 2011-2012 through FY 2018-2019 through the Redevelopment Agency Policy Budget process for specific infrastructure planning, design and construction projects within the East and Central Gateway Areas of the former Army Base; and be it

**FURTHER RESOLVED:** That up to \$3,010,000 of the \$10,000,000 will be used to Match the Federal TIGER II grant award for infrastructure development master planning; and be it

**FURTHER RESOLVED:** That the Agency is authorized by way of the Cost Sharing Agreement to accept up to \$62,000,000 in Port of Oakland Trades Corridor Improvement Funds over the course of the Agreement for the construction of infrastructure and other site preparation projects within East and Central Gateway Areas; and be it

**FURTHER RESOLVED:** That this action complies with the California Environmental Quality Act (CEQA) for the following reasons, each of which provides a separate and independent basis for CEQA compliance: (1) some activities covered under 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 proposed 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 includes 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 project may have a significant effect on the environment; and be it

**FURTHER RESOLVED:** That the Environmental Review Officer shall cause to be filed appropriate Notices of Exemption/Determination; and be it

**FURTHER RESOLVED:** That the Agency Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing a Cost Sharing Agreement with the Port of Oakland in support of the development of public improvements on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST:

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