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April 6, 2004

**HONORABLE CITY COUNCIL**  
Oakland, California

President De La Fuente and Members of the City Council:

**Subject:***City of Oakland v. City of Alameda, et al.,*  
*Alameda County Superior Court*  
*No. RG-03133599*  
*Our Matter No. X02129 (CEDA/Alameda Point Project)*

**I. Purpose of Report**

Pursuant to Section 401 of the Charter, the City Attorney recommends settlement of the above-entitled matter. The City filed a petition for writ of mandate challenging the City of Alameda's May 20, 2003 certification of an environmental impact report for and its approval of the Alameda Point General Plan Amendment.

**II. Introduction**

The City Council authorized settlement terms in closed session on February 3, 2004; however, the settlement could not be finalized until the City of Alameda and other litigants, Asian Health Services and Oakland Chinatown Chamber of Commerce, resolved certain outstanding issues that do not involve the City of Oakland. Recently, those issues were resolved.

**III. Terms of the Settlement Agreement**

The settlement requires Alameda to contribute: (1) \$75,000 to establish and administer an Oakland Chinatown advisory committee to study and advise Oakland and Alameda on Oakland Chinatown development and environmental review issues and (2) \$500,000 for traffic and pedestrian safety improvements for Oakland Chinatown when Alameda issues permits for Phase I of the Alameda Point development project. The

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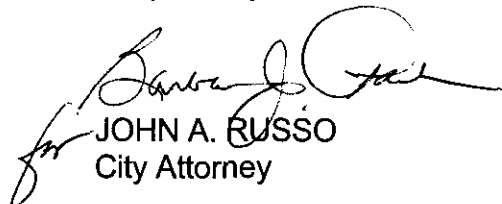
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settlement also requires that Oakland provide \$462,000 for traffic and pedestrian safety improvements for Chinatown; staff must first endeavor to obtain funding for the settlement agreement from applicants for pending and/or future Oakland development projects that will impact the Oakland Chinatown area. To the extent that the City does not obtain a portion or all of the required funding from development projects, staff must fund the settlement with proceeds of a planned Central District Redevelopment Area Bond Series 2004 A that the City intends to issue no later than September 2004. The settlement also specifies that Alameda and Asian Health Services and Oakland Chinatown Chamber of Commerce will not file lawsuits on specified Oakland development projects, and Oakland will not file further litigation challenging the Alameda Point project.

#### **IV. Recommendation**

For the reasons discussed above, the City Attorney's Office recommends that the City Council approve the resolution authorizing settlement of the litigation.

Respectfully submitted,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Heather B. Lee

*Hee*

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RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**Resolution Authorizing and Directing the City Attorney to Compromise and Settle the Case of City of Oakland v. City of Alameda (Alameda Point General Plan Amendment) on the Following Terms: City will Provide \$462,000 in Traffic and Pedestrian Safety Improvements in Oakland Chinatown; City of Alameda will Provide an Additional \$500,000 for Such Improvements in Oakland Chinatown; and the City of Alameda will Provide \$75,000 to cover the cost of establishing and administering an Oakland Chinatown Advisory Committee that will Advise Oakland and Alameda on Chinatown Development and Environmental Review Issues (Alameda County Superior Court Case No. RG-03133599)**

**WHEREAS**, on or about May 20, 2003 the respondents/defendants in the above-entitled action, Alameda City Council/City of Alameda ("Respondents") took actions to certify a Final Environmental Impact Report (the "EIR" or "FEIR") for and to approve the Alameda Point General Plan Amendment for redevelopment of a substantial area within the City of Alameda that historically was occupied as the Alameda Naval Air Station (the "Project"); and

**WHEREAS**, the City of Oakland repeatedly had expressed its concerns regarding the potential adverse effects the Project would have on the City of Oakland, particularly on issues of traffic and pedestrian safety with the Chinatown area of Oakland; and

**WHEREAS**, on or about December 24, 2003 the City of Oakland filed a lawsuit in Alameda County Superior Court (Case No. RG-03133599) challenging the EIR and the Project, because it had not been able to resolve issues pertaining to the Project; and

**WHEREAS**, on or about January 9, 2004, Asian Health Services and the Oakland Chinatown Chamber of Commerce (collectively, "AHS/OCCC") also filed a lawsuit in Alameda County Superior Court (Case No. RG-04135696) challenging the EIR and the Project due to its potentially adverse effects on the Oakland Chinatown area; and

**WHEREAS**, the City of Oakland, the City Council, Respondents and AHS/OCCC wish to fully and completely resolve their disagreements relating to the Project; **Now, therefore, be it**

**RESOLVED:** that the City Council authorizes and directs the City Attorney to compromise and settle the case of City of Oakland v. City of Alameda, et al, (Alameda County Superior Court Case No. No. RG-03133599) for the amount of \$462,000.00; and be it

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**FURTHER RESOLVED:** that City staff shall attempt to obtain the aforesaid \$462,000.00 from applicants for pending and/or future Oakland development projects that will impact the Oakland Chinatown area; and be it

**FURTHER RESOLVED:** that to the extent that City staff is not able to obtain the required funding from pending and/or future Oakland development projects that will impact the Oakland Chinatown area, staff shall fund the settlement from the proceeds of a planned Central District Redevelopment Area Bond Series 2004 A that the City anticipates issuing no later than September 2004; and be it

**FURTHER RESOLVED:** that the City Attorney and staff are authorized to take whatever steps may be necessary to effect said settlement, including without limitation entering into a settlement agreement in substantial conformity with **Attachment A**; and be it

**FURTHER RESOLVED:** that the settlement agreement shall be approved as to form and legality by the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

10. FCC

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ATTACHMENT A

AGREEMENT BETWEEN THE CITY OF ALAMEDA, THE CITY OF OAKLAND,  
THE OAKLAND CHINATOWN CHAMBER OF COMMERCE AND ASIAN  
HEALTH SERVICES REGARDING  
COOPERATION TO STUDY AND MITIGATE TRAFFIC AND RELATED  
IMPACTS IN ALAMEDA, OAKLAND, AND SPECIFICALLY IN OAKLAND  
CHINATOWN

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**AGREEMENT BETWEEN THE CITY OF ALAMEDA, THE CITY OF  
OAKLAND, THE OAKLAND CHINATOWN CHAMBER OF COMMERCE AND  
ASIAN HEALTH SERVICES REGARDING  
COOPERATION TO STUDY AND MITIGATE TRAFFIC AND RELATED  
IMPACTS IN ALAMEDA, OAKLAND, AND SPECIFICALLY IN OAKLAND  
CHINATOWN**

THIS AGREEMENT, dated as of April \_\_\_, 2004 is by and between, the Oakland Chinatown Chamber of Commerce, ("OCCC"), a California non-profit corporation, Asian Health Services ("AHS"), a California non-profit corporation, the City of Oakland ("Oakland"), a municipal corporation, acting by and through its City Council, and the City of Alameda ("Alameda"), a municipal corporation, acting by and through its City Council.

**RECITALS**

A. Residents and businesses in Oakland Chinatown and Alameda depend upon a common network of regional roadways and local streets. Access to the regional traffic network for trips beginning or ending in Alameda requires the use of certain local streets in Oakland Chinatown and therefore adds to the traffic volumes of those local streets.

B. The Oakland Chinatown community is located at the entrances and exits to the I-880 freeway and Webster and Posey Tubes. OCCC and AHS contend that existing traffic levels within Oakland Chinatown and other associated impacts are negatively affecting the quality of life within the community and impacting the health, safety and welfare of its residents. Traffic from Alameda that exits and enters the I-880 freeway and Webster and Posey Tubes currently travels through Chinatown and adds to the traffic volumes in that district.

C. Alameda needs and desires Oakland's cooperation in planning, funding, and implementing transportation improvements to be constructed in Oakland in order to mitigate future traffic impacts anticipated to occur as a result of possible future development at "Alameda Point".

D. Oakland, OCCC and AHS recognize the long term importance of the redevelopment and reuse of Alameda Point to the City of Alameda, the region's economy and jobs for Alameda and Oakland residents, the regional supply of market rate and affordable housing, and the regional supply of public waterfront open space and recreational opportunities.

E. The Oakland Chinatown community, Oakland, and Alameda must work together more effectively to identify appropriate transportation improvements to benefit both communities and funding sources to fund those improvements.

F. On May 20, 2003, Alameda certified the Alameda Point General Plan Amendment EIR, which found that future development at Alameda Point will significantly impact

levels of service in Oakland at: the 12th/Brush exit from I-980, the 6<sup>th</sup>/Jackson entrance to I-880, the Posey Tube and the High Street entrance to I-880.

G. Oakland similarly has identified potential adverse environmental impacts at intersections identified in Recital F, above.

H. Alameda has adopted a Citywide Development Impact Fee, which includes assessments on all development in Alameda to collect a fair share of the costs for certain improvements in Oakland including \$275,000 for improvements at 5<sup>th</sup> and Broadway, \$4.9 million of improvements at the 7<sup>th</sup> and Harrison/6<sup>th</sup> and Jackson/6<sup>th</sup> and Harrison intersections, and \$1.7 million for the I-880 interchange at High Street.

I. Alameda has prepared a Transportation Demand Management program for Alameda Point to reduce residential vehicle trips by 10% and non-residential vehicle trips by 30% for future development in this area.

J. The General Plan Amendment for Alameda Point includes policies encouraging transit-oriented development at Alameda Point.

K. On December 24, 2003, the City of Oakland filed suit challenging the City of Alameda's EIR for the General Plan Amendment for Alameda Point in City of Oakland v. City of Alameda, Alameda County Superior Court Case No. (RG03133599) (the "Oakland suit").

L. On January 9, 2004, Asian Health Services and Oakland Chinatown Chamber of Commerce filed suit challenging the City of Alameda's EIR for the General Plan Amendment for Alameda Point in Asian Health Services et al. v. City of Alameda, Alameda County Superior Court Case No. (RG04135696) (the "AHS and OCCC suit").

O. Alameda maintains that the EIR for the Alameda Point General Plan Amendment fully complies with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*

M. Alameda wishes to work collaboratively with the Oakland Chinatown community for the planning, redevelopment and reuse of Alameda Point to the benefit of Alameda and the region, and to minimize impacts of that development on Chinatown and adjacent communities.

THEREFORE, in consideration of the foregoing, the provisions of this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, OCCC, AHS, Oakland and Alameda agree as follows:

1. Collaboration and Communication

- 1.1. Oakland Chinatown Advisory Committee. Within sixty (60) days of the effective date, , Alameda and Oakland shall establish and provide staff support (which shall be limited to scheduling and noticing meetings, publishing agendas and providing information, reports and recommendations) for an Oakland Chinatown Advisory Committee (“OCAC”). The OCAC shall serve as an advisory committee to the Alameda City Council and Planning Board and the Oakland City Council and Planning Commission for the purpose of providing ongoing communication and feedback on Oakland Chinatown issues related to the future development and environmental review (CEQA) process for projects within Alameda Point and Downtown Oakland. The OCAC shall continue to meet as often as it determines necessary until all project level CEQA documents for build-out of development at Alameda Point under the Alameda Point General Plan Amendment have been certified or approved by the lead agency, until it votes to dissolve itself, or until this agreement is terminated by one of the parties under section 12 of this Agreement. Meetings of the OCAC will alternate between locations in Oakland and Alameda. All meetings of the OCAC shall be subject to open meeting laws applicable to Oakland Boards and Commissions.
- 1.2. OCAC Participation. The OCAC shall be made up of four (4) representatives and one alternate representative from the Oakland Chinatown community to be selected by OCCC and AHS to represent the broad interests of the community, two (2) representatives and one alternate selected by the Oakland City Council, and two (2) representatives and one alternate representative selected by the Alameda City Council. Each representative will have equal voting rights. The OCAC shall, by vote of a plurality of all OCAC representatives, elect a chairperson from among the representatives selected by OCCC and AHS. The OCAC shall reach all other decisions by vote of a majority of all OCAC representatives. In case of a deadlock, the chairperson shall be entitled to cast an additional tie-breaking vote.
- 1.3. OCAC Role and Responsibilities. The OCAC will meet to review and make recommendations to the Alameda Planning Board and City Council and the Oakland Planning Commission and City Council regarding potentially significant environmental effects related to the potential implementation of Alameda Point and Downtown Oakland development projects on the Oakland Chinatown community. These recommendations may encompass cumulative impacts, and project impacts specifically including, but not limited to, transportation, air quality, and pedestrian safety planning models, assumptions, projections, standards, improvements, appropriate contributions toward the implementation of mitigation measures for cumulative impacts, thresholds of significance, and methodologies. Specific issues for OCAC consideration and recommendation may include: 1) Scope of studies necessary to evaluate the potential traffic impacts of development at Alameda Point and Downtown Oakland, 2) Alternatives to be considered in the environmental analysis, 3) Intersections to be analyzed in Alameda and Oakland including but not limited to the intersections within and adjoining Oakland Chinatown, 4) Both short term and long term



mitigation measures to be considered to reduce or eliminate any significant impacts identified, including methods to re-route Webster/Posey Tube traffic around the Oakland Chinatown Community, 5) Mitigations to reduce or eliminate cumulative impacts on the Oakland Chinatown community from development in Oakland and Alameda, 6) Implementation of TSM/TDM programs in either Downtown Oakland or Alameda Point, and 7) any other issue related to the impacts of Alameda Point or Downtown Oakland development on Oakland Chinatown. The OCAC may recommend and request that Alameda and Oakland staff conduct studies OCAC deems necessary in the performance of its responsibilities. However, neither Alameda nor Oakland shall be obligated to undertake such studies. Alameda and Oakland agree that they will give consideration to any written recommendations of the OCAC received before or at a public hearing conducted by Oakland or Alameda on the matter that is the subject of the recommendation, and will provide a written explanation for any recommendation they reject.

1.3.1. OCAC Recommendations. OCAC recommendations shall be in writing, shall include recordation of the vote of the OCAC on the recommendation, and may include minority opinion reports if desired by any OCAC representative.

1.4. Information and Funding: In order to allow sufficient time for review, comment, and possible revisions Oakland and Alameda staff shall provide copies of all project-related documentation or documentation related to other matters specifically within the purview of the OCAC as stated in section 1.3 above, that is anticipated to be provided to the final decision making body, to the OCAC members at the same time such information is provided to the decision making body and not less than two weeks prior to any public hearing at which any decision related to the substance of the material would be made by the decision making body. Any additional studies recommended by the OCAC and agreed upon by Alameda or Oakland may be funded by Alameda or Oakland subject to their sole absolute discretion. Each City shall have the sole right to select consultants for studies funded entirely by such City. Consultants involved in preparing OCAC-recommended studies funded jointly by any combination of Alameda, Oakland, and Caltrans (through its Revive Chinatown study) shall be selected by agreement of all jurisdictions participating in the funding, after Alameda and Oakland have considered any timely recommendations of the OCAC. In addition, Alameda agrees that it shall provide \$75,000 to OCCC and AHS solely for the purpose of funding OCCC and AHS staff support for their representatives on the OCAC and funding technical consultant services to OCCC and AHS representatives on the OCAC. Alameda's \$75,000 contribution towards approved OCCC and AHS costs shall be subject to the terms as set forth in the memorandum attached to this Agreement as Exhibit B. Under no circumstances shall any funding provided by Alameda be used for attorney's fees or to otherwise support litigation against a party to this agreement except as specifically provided in this Agreement. Neither Alameda nor Oakland shall be

obligated under any circumstances to provide any additional funds to OCAC or to any party to this Agreement

1.4.1 Verification of Expenditure. OCCC and AHS shall provide written verification that expenditure of funds provided by Alameda pursuant to section 1.4 above has been made subject to the limitations set forth in that section and the terms set forth in Exhibit B.

1.4.2 Right to Challenge or Oppose. Except as set forth in section 2.5.3 below, participation on the OCAC shall not in any way prejudice OCCC or AHS's right to commence, prosecute, fund or otherwise support any legal or administrative proceeding to challenge or oppose any plan or project located in Oakland or at Alameda Point, including any Environmental Impact Statement, Environmental Impact Report, relating to any project or plan in Oakland or at Alameda Point. However, except as otherwise expressly specified in this Agreement, nothing herein shall be deemed to establish any legal or administrative claim or right to challenge or oppose any such plan or project, nor to permit the OCCC or the AHS to file any lawsuit or challenge related to the obligations set forth in this Agreement in a manner that is inconsistent with section 7.2, 7.3 or 8.1 below.

1.5. Discretion as Governmental Agency. CEQA and the CEQA Guidelines require Alameda and Oakland as lead agencies to make certain CEQA decisions and determinations for projects within each city's jurisdiction. Consistent with CEQA, Alameda and Oakland reserve the discretion to make these determinations for projects within downtown Oakland and within Alameda Point and FISC following such consultation with the OCAC as is required by this Agreement. Nothing in this Agreement shall be construed as a delegation of police power by Alameda or Oakland nor shall this Agreement be construed to limit the discretion of Alameda or Oakland in any way, including without limitation, to make determinations regarding environmental impacts or the feasibility of mitigation measures or alternatives to projects under CEQA, to approve or deny any development application and/or adopt a statement of overriding considerations pursuant to Section 15093 of the State Guidelines for the Implementation of CEQA (the CEQA Guidelines), or decide what actions are in the best interests of the health, safety and welfare of the citizens of each jurisdiction.

## 2. California Environmental Quality Act (CEQA).

2.1. Alameda Point Project Specific EIR. Alameda shall prepare at least one Project level EIR ("Project Specific EIR") in compliance with CEQA for the Master Plan or any project to implement the Alameda Point General Plan Amendment for the redevelopment of Alameda Point prior to the construction of any new permanent occupied buildings at Alameda Point. However, nothing in this Agreement shall be construed to limit or restrict the leasing of property at Alameda Point that is otherwise permitted by the Interim Lease Program in place prior to the preparation of the programmatic EIR already certified for the Alameda Point

General Plan Amendment (“pEIR”), or to prohibit Alameda from adopting zoning necessary to bring the zoning ordinance and zoning map into conformance with the Alameda Point General Plan Amendment, and/or other applicable provisions of the General Plan (e.g. Housing Element) without preparing a subsequent or supplemental EIR unless Alameda determines that a subsequent or supplemental EIR or some other documentation under CEQA is required pursuant to the applicable provisions of CEQA and the CEQA Guidelines, including but not limited to Public Resources Code §21166 and Guidelines Sections 15162 (“Subsequent EIRs and Negative Declarations”), 15163 (“Supplement to an EIR”) and 15164 (“Addendum to an EIR or Negative Declaration”). Alameda relinquishes any authority it might otherwise have under section 15152 of the CEQA Guidelines to rely on the pEIR or any associated findings during the project-level environmental review of Alameda Point projects, except the Phase One Project (as defined in Section 2.5.3, below) and the Alameda Point Golf Course / Conference Hotel project, regarding their project level or cumulative traffic, pedestrian safety, or air quality impacts on Oakland Chinatown (“Chinatown Impacts”). Any Project Specific EIR for Alameda Point, except the Phase One Project EIR and the Alameda Point Golf Course/Conference Hotel EIR, shall include an updated and revised analysis of Chinatown Impacts. The data, analysis, conclusions, and any associated findings for Alameda Point projects (other than the Phase One Project, the Alameda Point Golf Course/Conference Hotel project, the rezoning or leasing activity referred to above) with respect to these issues will be prepared *de novo*, and any incorporation of or reference to prior analyses, recommendations, findings, conclusions, or determinations regarding Chinatown Impacts in connection with the approval of the Alameda Point General Plan Amendment or its pEIR, shall be considered as new information and shall not be given any deference based on its source. This analysis, and any associated conclusions or findings for project-level CEQA review for Alameda Point projects, shall be consistent with the following requirements:

- 2.1.1. Chinatown Setting. The analysis of Chinatown Impacts in the Alameda Point Master Plan EIR or any Project Specific environmental review for Alameda Point projects shall acknowledge and take into account the setting of the Chinatown District as an intensive pedestrian oriented retail/commercial area with a large populations of children and seniors;
- 2.1.2. Utilization of Studies. Alameda shall use its best efforts to ensure that the Project Specific environmental review utilize the information and consider the conclusions, and to the extent Alameda determines each is feasible, applicable to Alameda projects and either necessary to mitigate a significant impact or the most appropriate method of mitigating a significant impact, incorporate the mitigation measures contained within any studies conducted pursuant to this Agreement;

- 2.1.3. Mitigation Measures. The Project Specific environmental review will examine and discuss specific measures to mitigate Chinatown Impacts (to the extent they are determined by Alameda to be significant). The Project Specific environmental review will identify Alameda's determination regarding the feasibility or infeasibility of each measure as well as any significant secondary impacts resulting from each measure;
- 2.1.4. Range of Mitigation Measures Considered. The mitigation measures to be discussed in the Project Specific environmental review will include, at a minimum, all measures that are identified in the studies conducted pursuant to this Agreement and all measures that are suggested in the scoping process for the EIR (including those recommended in the scoping process by the OCAC), to the extent Alameda determines each such measure has a nexus with the project under review and is feasible. Such measures may include, so long as Alameda determines that such measures have a nexus and are feasible, measures to improve effectiveness of public transit connections to Alameda (e.g., queue-jumping for public transit/HOV at the Webster and Posey tubes during peak commute hours); any mitigation measures or improvements identified in the Caltrans "Revive Chinatown" study, measures designed to route through traffic (i.e., traffic that does not have Oakland Chinatown as its destination) around Oakland Chinatown, measures to encourage transit use at Alameda Point, (e.g., free and frequent intra-project shuttle service to/from AC Transit stops within commercial areas of project, promoting visibility of AC Transit stops and routes through signage, bus shelters, etc.), and measures to divert traffic from Alameda Point from the Webster and Posey tubes.
- 2.1.5. Mitigation Monitoring Program. To the extent Alameda adopts mitigation measures identified in the Project Specific environmental review, the Mitigation Monitoring or Reporting Program prepared by Alameda pursuant to Public Resource Code section 21081.6 shall identify how each adopted mitigation measure shall be implemented, what entity is responsible for implementation, and how implementation will be funded, if funding is required.
- 2.1.6. Project Alternatives. All Alameda Point Project Specific EIRs will include a detailed discussion of a transit-oriented Project Alternative, if recommended by the OCAC, which maintains the number of jobs and housing units included in the project but proposes a higher density, more clustered, transit-oriented site plan than the proposed project. The EIR will also include a reduced intensity project alternative. The fact that an Alternative would require an amendment to the City of Alameda's Charter, zoning ordinance or general plan shall not be deemed grounds for screening out that Alternative from detailed discussion or analysis, but Charter inconsistency may be grounds for finally determining that an Alternative is infeasible.

- 2.2. Definition of “Feasible.” The word “feasible” or “feasibility” as used in this agreement shall have the definition set forth in Public Resources Code section 21061.1 as that section has been interpreted through published case law and the CEQA Guidelines.
- 2.3. Conditions of Approval. For development plans and projects within Alameda Point and Downtown Oakland, Alameda and Oakland respectively agree to commit to the following:
- 2.3.1. Each jurisdiction will ensure that all mitigation measures that it determines are both feasible and effective, that are within that jurisdiction’s sole control, and are found pursuant to Public Resources Code Section 21081 and/or section 15091 of the CEQA Guidelines, to be necessary to avoid or substantially lessen the severity of a significant project-specific environmental impact, are incorporated into the project or adopted as mandatory conditions of approval as appropriate.
- 2.3.2. Each jurisdiction will ensure that those mitigation measures which it determines are feasible and effective and are found, pursuant to Public Resources Code Section 21081 and/or section 15091 of the CEQA Guidelines, to be necessary to avoid or substantially lessen the project’s contribution to an anticipated significant cumulative impact, and are only partial contributions to larger programs or improvements that require contributions from other projected development projects, shall be included in the Mitigation Monitoring Programs as required by Public Resource Code section 21081.6 and section 15097 of the CEQA Guidelines. The Mitigation Monitoring Programs shall include mechanisms to ensure that all required contributions from the project, or from each project phase if the project is constructed or developed in phases, are collected no later than the time of issuance of any building permit for any project or project phase and are made available to fund the larger program or improvement prior to commencement of said program or improvement.
- 2.3.3. When either Oakland or Alameda is responsible for the implementation of an identified feasible mitigation measure and has determined that it has received all funding required for the implementation of that mitigation measure, that jurisdiction shall undertake all activities it determines are required to commence the implementation of that mitigation measure in a timely fashion. Such measures shall include performing all required planning and environmental review, seeking all necessary governmental approvals and, if applicable, the acquisition of any required right of way. All funding required, as used in this section, shall refer to all funds that jurisdiction determines are required to complete all planning, environmental review, engineering, site acquisition, permit issuance, contract approval and

performance and construction or implementation of the improvement or mitigation measure.

- 2.3.4. Alameda shall not make a finding pursuant to Public Resources Code section 21081(a)(2) that Oakland “can and should” implement any mitigation measure identified in any future CEQA document for Alameda Point or FISC projects, if the implementation of that mitigation measure is within the sole jurisdiction of Oakland and Oakland enters a comment into the record that such measure has been considered and rejected by Oakland. Oakland shall not make a finding pursuant to Public Resources Code section 21081(a)(2) that Alameda “can and should” implement a mitigation measure identified in a future CEQA document for any Downtown Oakland project, if the implementation of that mitigation measure is within the sole jurisdiction of Alameda and Alameda enters a comment into the record that such measure has been considered and rejected by Alameda.

2.4. “Fair Share” Contribution Towards Mitigation Measures for Cumulative Impacts.

Oakland and Alameda agree that they will work cooperatively to agree, after considering any timely recommendations from the OCAC, upon a methodology or formula for determining each jurisdiction’s and project proponent’s fair share contributions toward mitigation measures or improvements in Alameda and Oakland to mitigate impacts from those projects upon Oakland and Alameda. Oakland and Alameda further agree that they will consider the methodologies used by Caltrans, the Alameda County Congestion Management Agency, or any other State or regional agency with appropriate jurisdiction, to calculate the appropriate contributions for improvements within those agencies’ control or jurisdiction. Oakland and Alameda further agree to consider in determining the appropriate methodology or formula, after considering any timely recommendations from the OCAC: 1) whether new and anticipated development should fund the total cost of the mitigation measure/improvement or only a share of the cost, 2) whether the mitigation measure/improvement improves service or the condition over existing conditions or simply maintains existing conditions and 3) whether the impact is being caused primarily by Oakland and Alameda projects or a whether a significant portion of the impact is being generated by projects outside the jurisdiction of either Alameda or Oakland.

2.5. Mutual Covenants not to Challenge.

- 2.5.1. Alameda. Alameda agrees not to commence, prosecute, fund or otherwise support any legal proceeding to challenge or oppose the redevelopment projects listed in Attachment C, including but not limited to any entitlements, approvals, licenses, leases, Environmental Impact Statements, Environmental Impact Reports, or other environmental and/or regulatory documentation or determination made relating to these projects.

2.5.2. Oakland. Within seven (7) days after the effective date of this Agreement, Oakland shall dismiss with prejudice all existing legal proceedings challenging the Alameda Point General Plan Amendment, including the Oakland suit and any and all existing legal challenges to Alameda's compliance with CEQA with regard to said General Plan Amendment. Further, Oakland agrees not to commence, prosecute, fund or otherwise support any legal proceeding to challenge or oppose the reuse and redevelopment of Alameda Point and/or the former Fleet and Industrial Supply Center, Alameda Annex and Facility ("FISC") including but not limited to any entitlements, approvals, licenses, leases, Environmental Impact Statements, Environmental Impact Reports or any other environmental and/or regulatory documentation or determination made relating to these projects.

2.5.3. OCCC and AHS. Within seven (7) days after the effective date of this Agreement, OCCC and AHS shall dismiss with prejudice all existing legal proceedings challenging the Alameda Point General Plan Amendment, including the AHS and OCCC suit and any and all existing legal challenges to Alameda's compliance with CEQA with regard to said General Plan Amendment. Further, the OCCC and AHS agree not to commence, prosecute, fund or otherwise support any legal proceeding to challenge or oppose (i) the Alameda Point Golf Course project; (ii) any zoning amendment to bring the zoning ordinance and zoning map into conformance with the Alameda Point General Plan Amendment and/or other applicable provisions of the General Plan (e.g. Housing Element); (iii) any new or ongoing building leasing activity in conformance with the regulatory program adopted prior to the adoption of the Alameda Point General Plan Amendment (Interim Lease Program); (iv) any procedure, determination, interim leasing entitlement or other regulatory action undertaken as part of the approval process for the above listed projects or activities; or (v) the Oakland redevelopment projects listed in Attachment C, including but not limited to any entitlements, approvals, licenses, leases, Environmental Impact Statements, Environmental Impact Reports, or other environmental and/or regulatory documentation or determination made relating to these projects. Notwithstanding the foregoing in this section 2.5.3, OCCC's and AHS's obligations under this section 2.5.3 do not apply to any project or activity that Alameda cannot lawfully find is consistent with the adopted Alameda Point General Plan Amendment and/or the Interim Lease Program. In addition, OCCC and AHS agree not to commence, prosecute, fund, or otherwise support any legal or administrative proceeding to challenge or oppose any development entitlements for the Phase One Project at Alameda Point, as defined in this section 2.5.3 below, including, but not limited to, any development plan, subdivision, CEQA documentation, Development Agreement or other development entitlement necessary for construction of an initial first phase development project. As defined herein, the Phase One Project may include up to 1,000 single family/duplex units, 100 low and/or

very low income multifamily units and 100,000 square feet of neighborhood commercial construction. Nothing in this covenant not to challenge shall be deemed to bar the OCCC or AHS or any of its members from (i) making written or oral comments regarding any of the projects described in this Agreement to the Alameda Planning Board, the Alameda City Council, the Oakland Planning Commission or the Oakland City Council; or (ii) appealing any decision of the Alameda Planning Board or the Oakland Planning Commission to such City's respective City Council.

2.6 Alameda Contribution to Chinatown Traffic and Pedestrian Improvements.

- 2.6.1 Chinatown Improvements. The OCCC and AHS have identified certain physical traffic and/or transportation improvements ("Oakland Chinatown Improvements"), an interim list of which is attached hereto as Exhibit \_\_\_ that they believe will improve pedestrian safety and circulation in the Chinatown community following development at Alameda Point. The Oakland Chinatown Improvements are estimated to cost approximately \$962,000.
- 2.6.2 Alameda Funding of Improvements. As a condition of approval of the Phase One Project, Alameda shall on all market rate Phase One Project units impose a per residential unit development impact fee sufficient to generate \$500,000 ("Impact Fee"). The per unit Impact Fee shall be collected at the time of issuance of each of the Phase One Project building permits for the market rate residential units. Oakland, OCCC and AHS agree that the imposition and payment of such Impact Fee shall fully and finally mitigate all impacts of the Phase One Project on the Oakland Chinatown Community.
- 2.6.3 Oakland Administers Impact Fee Funds. Alameda shall transmit the Impact Fee proceeds to Oakland on a monthly basis as the proceeds accrue. Oakland and Alameda agree that the collection and expenditure of the Impact Fee is subject to the requirements of the Mitigation Fee Act (Government Code Section 66000 *et. seq.*) and that Oakland shall comply with the provisions of that statute. The Impact Fee proceeds shall be applied to construct the Oakland Chinatown Improvements, or other improvements ("Substitute Improvements") that the Oakland City Council finds, based upon substantial evidence in the record, improve pedestrian safety and circulation in Oakland Chinatown. Substitute Improvements located more than four blocks from the intersections of 7<sup>th</sup> Street and Webster Street or 7<sup>th</sup> Street and Harrison Street shall be ineligible to be considered as Substitute Improvements for purposes of this Agreement.
- 2.6.4 Oakland Funding Match. Oakland shall contribute \$462,000 ("Oakland Contribution") towards the Oakland Chinatown Improvements or to the



Substitute Improvements. Any funds that Oakland has secured, provided or expended or will secure, provide or expend for Oakland Chinatown Improvements or Substitute Improvements will be credited toward the Oakland Contribution, and the balance of the Oakland Contribution payable hereunder shall be correspondingly reduced. For example (and not in limitation of the foregoing), currently pending before the Oakland City Council is a resolution authorizing the City Manager to execute a funding agreement and to appropriate funds in the amount of \$246,176.00 for installation of a traffic signal at the intersection of 7<sup>th</sup> Street and Franklin Street and for other pedestrian safety improvements in the Chinatown area; provided that this item is approved and the subject funds are expended, then the outstanding balance of the Oakland Contribution shall be reduced by the amount of such expenditure. Oakland shall pay out any balance of the Oakland Contribution (as such balance may have been reduced by credits described in this section 2.6.4) promptly upon its receipt of Alameda's dollar-for-dollar matching Impact Fee contribution. .

- 2.6.5 Use of Funds. All parties to this agreement shall use their best efforts to ensure that the Oakland Chinatown Improvements, or, if applicable, Substitute Improvements, are fully implemented within three (3) years of the date when the full Impact Fee and Oakland Contribution have been deposited with Oakland. If Oakland has not expended all of the Impact Fee within this time, then, if requested by Alameda, Oakland shall remit to Alameda any unexpended portion of the Impact Fee. Alameda shall segregate any such remitted funds and shall use such remitted funds to fund mitigation measures adopted to mitigate impacts upon the Oakland Chinatown community caused by future phases of development at Alameda Point, if any such measures are adopted through the CEQA process. Any remitted Impact Fee funds that remain unexpended ten (10) years after the full Impact Fee has been deposited with Oakland shall revert to the Alameda General Fund. Nothing in this section 2.6.5 shall be deemed to bar Alameda from (i) making written or oral comments regarding any of the Oakland Chinatown Improvements or, if applicable, Substitute Improvements to the Oakland Planning Commission or the Oakland City Council; or (ii) appealing any decision of the Oakland Planning Commission to the Oakland City Council; however, Alameda shall not commence, prosecute, fund or otherwise support any legal proceeding to challenge or oppose any action by the City of Oakland to fund, approve or implement any of the Oakland Chinatown Improvements or the Substitute Improvements.
- 2.6.6 Alameda Over-Payment. If the fair share of the cost of measures to mitigate the impacts of the Phase One Project's pedestrian safety and traffic impacts in Chinatown is less than \$250,000, then Alameda shall receive a credit for the additional \$250,000 of Impact Fee ("Impact Fee

Credit”), which Impact Fee Credit shall be applied against Alameda’s other obligations to fund traffic improvements in Oakland Chinatown or other parts of Oakland due to environmental impacts from future phases of development at Alameda Point.

2.6.6.1 In conjunction with the environmental review of the next phase of development at Alameda Point following the Phase One Project, Alameda shall determine Oakland’s and Alameda’s fair shares of the cost of measures implemented by Oakland pursuant to this Section 2.6 to mitigate the Phase One Project’s impacts in Oakland Chinatown. The analysis will use the fair share methodology developed pursuant to Section 2.4 of this Agreement. If Alameda determines, pursuant to Section 2.6.5 that the Impact Fee Credit should be applied to future phases, that determination and supporting analysis shall be documented during the environmental review for such future phases.

2.6.7 Letters of Acknowledgement. Within thirty(30) days after the effective date of this Agreement, the OCCC and AHS and Oakland agree to execute the letters attached as Exhibit \_\_\_\_ and Exhibit \_\_\_\_ respectively, acknowledging that the Impact Fee is sufficient to mitigate the impacts of the Phase One Project on the Chinatown Community.

3. Planning Studies. Alameda and the OCCC/AHS shall endeavor to complete the studies set forth in this section after considering timely recommendations from the OCAC and prior to publication of the Project Specific EIR for Alameda Point contemplated in Section 2.2. Oakland and Alameda shall consider any available findings, conclusions, and recommendations of the studies set forth in this section, and other studies which may be prepared pursuant to section 1.3 (so long as those studies are completed prior to the preparation of the applicable Project Specific EIR for Alameda Point or Downtown Oakland project) when preparing draft environmental documents for projects in Downtown Oakland, Alameda Point and FISC and as required by CEQA. The Planning Studies identified in paragraphs 3.1 through 3.5 shall include identification of specific improvement projects and the relative feasibility of those improvement projects, costs, funding strategies, and methods to collect fair share contribution from all parties.

3.1. Broadway/Jackson Phase II Study. Alameda and Oakland shall establish a joint management team for completion of the *Broadway/Jackson Phase II Study* in a timely manner. Alameda shall use its best efforts to complete the technical portion of the *Broadway/Jackson Phase II Study* within one year of the date of this Agreement.

3.2. Alameda to Oakland Alternative Transportation Corridor Feasibility Study. Alameda shall complete an *Alameda to Oakland Alternative Transportation Corridor Feasibility Study* prior to the Alameda Point Master Plan or project specific EIR approvals. The Study will include the approximate costs of each

alternative Alameda determines may be appropriate to consider evaluating in a potential Major Investment Study or other similar study and the necessary impact fees or exactions to cover Alameda's local share of those costs. Alameda and Oakland agree to work cooperatively to evaluate the feasibility of an alternative estuary crossing that will reduce the projected future traffic volumes in the Webster/Posey Tubes.

- 3.3. Transportation Alternatives for Alameda Point. Alameda shall complete a comprehensive study of the feasible transportation alternatives for Alameda Point prior to approval of the Alameda Point Master Plan or certification for any project specific EIR for an Alameda Point project ("Transportation Study"). The Transportation Study shall be conducted in collaboration with potential service providers and shall include costs and mode-shift benefits of supplemental ferry, shuttle, and transit connections from Alameda Point to Oakland. The intent of this work is to identify specifically the type and scale of alternative transportation services that will be required to support the Alameda Point development and reduce or offset automobile traffic volumes resulting from Alameda Point development through the Webster and Posey tubes near Chinatown. The Transportation Study will include the costs of each alternative and level of development impact fees, or exactions from development projects necessary to cover those costs.
- 3.4. Revive Chinatown Study. Oakland, OCCC and AHS shall use their best efforts to complete the Revive Chinatown Study within one year of the date of this Agreement. The completed study shall include a final list of specific physical improvements to be constructed by Oakland in Chinatown and partially funded by the Alameda funds described in section 2.6.2. However, no aspect of the processing of any project shall be contingent upon the progress or completion of the Revive Chinatown Study.
4. Development and Implementation of TSM/TDM Measures. Alameda shall continue to develop and implement Transportation System Management and Transportation Demand Management (TSM/TDM) measures to reduce the trips generated by new development at Alameda Point to a level less than significant if feasible.
  - 4.1. TSM/TDM Targets. Alameda shall require all new development at Alameda Point to fund and/or implement TSM/TDM measures designed to achieve a target reduction, below standard ITE trip generation rates, for each applicable land use of 30% in non-residential peak period vehicle traffic and 10% in residential peak. The Alameda Point Master Developer (or Alameda, if there is no Master Developer) shall conduct an annual commute mode survey at Alameda Point to determine the success of the TSM/TDM program in achieving these targets and if such reductions in trips generated are reflected in proportionate reductions in peak period vehicle trips utilizing the Webster and Posey Tubes. Surveys shall be conducted during a period of normal traffic generation; i.e., surveys periods

will not include vacation, weekend, or holiday periods. If Alameda Point is approved in phases, and to the extent that Alameda determines that additional, feasible TSM/TDM measures exist that 1) have not already been implemented and/or imposed upon Alameda Point development and 2) will reduce significant impacts of Alameda Point development, Alameda will require implementation of additional TSM/TDM measures on subsequent phases of Alameda Point development if Alameda determines through the monitoring program, that TSM/TDM targets, including proportionate reductions in peak period vehicle trips utilizing the Webster and Posey Tubes, are not achieved in the first phase. To the extent that Alameda determines that reducing residential and non-residential peak hour vehicle traffic is not necessary to mitigate a significant environmental impact, Alameda shall not be required to impose TSM/TDM measures to achieve a level of trip reduction that Alameda determines exceeds the level required to mitigate a significant environmental impact.

5. Collaboration. Oakland and Alameda agree to collaborate to efficiently utilize the existing regional transportation system and to facilitate improvements to that system.

5.1. Joint advocacy. Alameda and Oakland shall coordinate advocacy efforts for regional transportation funds for design, development and construction of improvements to the regional roadway system used by, and of mutual benefit to, both cities.

5.2. Intergovernmental communications. Alameda and Oakland shall establish a Transportation Improvement Team involving staff from both cities to meet regularly to coordinate and address joint transportation issues. The Transportation Improvement Team will establish a process for ongoing communication and feedback on transportation issues in addition to the environmental review (CEQA) process.

6. Dispute Resolution Process. If there is a disagreement between the parties relating to this Agreement, the parties agree to attempt to resolve such disagreement as follows:

6.1 Notice by OCCC and/or AHS Prior to Litigation Challenging Project. Prior to taking any action to commence, prosecute, fund or otherwise support any legal or administrative proceeding to challenge or oppose any project at Alameda Point or Oakland on grounds other than grounds arising out of or relating to this Agreement, OCCC and AHS shall provide the City of Alameda, or City of Oakland as applicable, advance written notice of their intent to commence such action either ten (10) days' or ½ the period provided by statute, or regulation as applicable, to file an action to challenge an approval of an Alameda Point project, whichever is less, before commencing such legal action. Within the advance notice period, OCCC and AHS shall meet with the City of Alameda, or the City of Oakland if applicable, along with any real party in interest involved in the project to be challenged to attempt to settle any disputes raised by OCCC and/AHS. If the dispute cannot be resolved within the advance notice period,

OCCC and AHS shall, if requested by Alameda or Oakland, as applicable, and all real parties in interest involved in the project to be challenged, agree to a tolling agreement to allow time to resolve the dispute without initiating the proposed legal proceeding.

6.2 Dispute Resolution over Terms of this Agreement. Any party seeking to resolve a disagreement over the interpretation or the alleged non-compliance or breach of the terms of this Agreement shall serve notice on the alleged offending party in writing (by mail, fax, or personal delivery) not later than fifteen business days after receiving notice of the decision or action that the party intends to challenge. Failure to provide written notice as required under this subsection shall preclude the complaining party from bringing any legal action based upon that alleged non-compliance or breach.

6.3 Dispute Resolution over Terms of this Agreement between City of Oakland and City of Alameda. For five business days after the notification has been served, or ten days if service is by mail, implementation of the decision that is being disputed shall be stayed, unless earlier action is required by order of a regulatory agency or by a threat to the public's health and safety. Within five business days of the above notification, the party whose decision is being challenged may request that the disputing party meet and confer with it and attempt to resolve the dispute. Such meetings shall continue during a period of at least five business days following the request unless either party determines that further continuation would be futile. Any such settlement efforts shall not prevent the disputing party from undertaking legal or administrative action to challenge the disputed decision if necessary to satisfy any applicable time limitation.

7. Enforceability. The parties agree that the following remedies shall be the sole and absolute remedies available to enforce, interpret, or seek remedies for claimed breaches of the terms of this Agreement.
  - 7.1. Any claim in which a party alleges that OCCC or AHS has failed to fulfill fully its obligations under this Agreement shall be filed and served within 30 days of the date the cause of action arises. The obligations of OCCC and/or AHS may be enforced solely through the remedies of Specific Performance, preliminary injunction and/or permanent injunction.
  - 7.2. Except for a dispute alleging a breach of Alameda's obligation to provide funding to the OCCC and/or the AHS under section 1.4, which shall be resolved through binding arbitration, any claim in which a party alleges that Alameda or Oakland has failed to fulfill fully its obligations under this Agreement shall be brought solely as a writ petition challenging the agency's decision that it complied with this Agreement. Any such writ action shall be filed and served within the statutory period otherwise applicable to, and in conjunction with, any challenge to a land use approval of any future Alameda Point or Oakland project which shall be evidenced by a Notice of Determination (NOD) filed with the

County Clerk (or other applicable public notification if an NOD is not filed), and shall be subject only to the rules applicable to a mandate proceeding (including without limitation deference to the local agency's decision, rules regarding exclusion of evidence outside the record, and rules regarding the substantial evidence and arbitrary and capricious standard of review, as applicable). In the event that more than one statute of limitations may apply to any such challenge, the action shall be filed within the earlier of such limitations periods. The remedies in such action shall be limited to those available in a writ of mandate proceeding except that, to the extent that the remedy sought relates solely to the breach of an express term of this Agreement that is not subject to judicial review under the standards and procedures for writ of mandate under Code of Civil Procedure §§ 1085 or 1094.5 (as those sections may be amended), then the remedy shall be limited to an order of specific performance and/or an injunction, which the parties agree shall operate in the same manner as a writ. Further, except as to enforcement of section 2.6, as between Oakland and the OCCC and the AHS, the OCCC and the AHS shall have no cause of action for breach of this Agreement under any circumstance.

7.3. Monetary damages shall not be available as a remedy in any action relating to or arising out of this Agreement. Further, in no case shall any action relating to or arising out of this Agreement be deemed to bar, suspend, enjoin, or otherwise preclude any governmental entity from undertaking any action or decision in processing or approving a project.

8. Attorneys Fees.

8.1 In any action or proceeding at law or in equity between the parties to enforce or interpret any provision of this Agreement, each party shall bear all of its own costs, including attorneys fees and experts fees.

8.2 Notwithstanding subsection 8.1 above, within thirty (30) days after the effective date of this Agreement, Alameda shall pay to OCCC and AHS their combined attorneys fees and costs in the amount of \$3,000. Payment by Alameda of the amount specified in this subsection 8.2 constitutes a full and final compromise, release and settlement of any and all claims for attorneys fees and costs from all petitioners and each of them against Alameda through and including the litigation and settlement activities culminating in execution of this Agreement. Payment of attorney's fees and costs pursuant to this section, shall be deducted from the \$75,000 payable to the OCCC and AHS by Alameda for the reimbursement of certain future OCCC and AHS expenses set forth in section 1.4 above. The \$75,000 available for such future reimbursement of OCCC and AHS expenses shall accordingly be reduced to \$72,000 following the payment by Alameda for OCCC and AHS attorney's fees and costs.

9. Partial Execution. If this Agreement is executed by Alameda and Oakland, but not executed by both OCCC and AHS within ninety (90) days of execution by Alameda

and Oakland, then this Agreement shall be binding between Alameda and Oakland, but neither OCCC nor AHS shall be considered a party to this Agreement. In such event, Sections 1 and 2.6 shall have no force and effect, and neither Alameda nor Oakland shall have any duty to OCCC or AHS regarding any aspect of this Agreement. Furthermore, neither OCCC nor AHS nor any other person or entity shall be deemed to be an incidental or intended third party beneficiary of this Agreement.

10. No Admissions Made. This is an agreement of compromise. Accordingly, the parties agree that none of its provisions constitute, or shall be construed as, an admission or as evidence concerning the validity or adequacy of the Alameda Point General Plan Amendment or its EIR.
11. Effective Date of this Agreement. This Agreement shall be effective as of the date upon which all of the signatories have signed the agreement (the "effective date").
12. Termination. This Agreement may be terminated by any party, for any or no reason, ten (10) years after the Effective date of the Agreement. Notice of termination must be made in writing and delivered to each of the other parties by U.S. Mail or personal service.
13. No Third Party Beneficiaries. The mutual promises in this Agreement are intended only for the benefit of the parties. The parties agree that there are no intended or incidental third party beneficiaries to this Agreement.
14. Notices. Any notice that may be required under this Agreement shall be in writing, shall be effective as of the date of service as indicated in a return receipt or statement from the U.S. Post Office, statement from a commercial delivery service, or messenger's signed proof of service, and shall be given by personal service or by certified or registered mail, to the addresses set for the below:

If to Alameda: Planning Director  
City of Alameda  
City Hall  
2263 Santa Clara Avenue  
Alameda, CA 94501

If to Oakland: Planning Director  
City of Oakland  
250 Frank Ogawa Plaza, Suite 300  
Oakland, CA 94612

If to OCCC: Executive Director  
Oakland Chinatown Chamber of Commerce  
Pacific Renaissance Plaza  
388 Ninth Street, Suite 258

Oakland, CA 94607

If to AHS: Chief Executive Officer  
Asian Health Services  
Asian Medical Center  
818 Webster Street  
Oakland, CA 94607-4220

- 15. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California applicable to contracts made and to be performed in California. All references to California Code sections and CEQA Guidelines shall be construed to refer to the law or Guideline as it exists on the date the action subject to that law or Guideline occurred.
- 16. Amendments. This Agreement may be amended only by written agreement executed by all of the parties.
- 17. Integration. This Agreement represents the entire agreement between Alameda, Oakland, the OCCC, and the AHS with respect to its subject matter. No representations, warranties, inducements or oral agreements have been made by any party with respect to the subject matter of this Agreement except as expressly set forth in this Agreement.
- 18. Authority to Bind the Parties. The parties to this Agreement represent that the signatories below have the actual authority to bind their respective parties to the terms of this Agreement and acknowledge that each party to this Agreement has relied upon that apparent authority in entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the signature dates below.

Effective Date: \_\_\_\_\_

CHINATOWN

ALAMEDA

Oakland Chinatown Chamber of Commerce,  
a California non-profit corporation  
Acting through its Executive Director

City of Alameda,  
a municipal corporation  
Acting through its City Council

By: \_\_\_\_\_

By: \_\_\_\_\_

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

City Manager



Signature Date: \_\_\_\_\_

Signature Date: \_\_\_\_\_

Asian Health Services  
A California non-profit corporation,  
Acting through its Chief Executive Officer

APPROVED AS TO FORM

By: \_\_\_\_\_

By: \_\_\_\_\_

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

City Attorney

Signature Date: \_\_\_\_\_

OAKLAND  
City of Oakland,  
a municipal corporation  
Acting through its City Council

By: \_\_\_\_\_

City Manager

Signature Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

City Attorney

Attachment B:

**MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF ALAMEDA  
AND OAKLAND CHINATOWN CHAMBER OF COMMERCE AND ASIAN  
HEALTH SERVICES REGARDING FINANCIAL  
ASISSTANCE FOR COMMUNITY PARTICIPATION IN CHINATOWN  
IMPACT MITIGATION PLANNING**

THIS AGREEMENT, dated as of March \_\_, 2004 is by and between, the Oakland Chinatown Chamber of Commerce, ("OCCC"), a California nonprofit corporation, Asian Health Services ("AHS"), a California nonprofit corporation and the City of Alameda ("Alameda"), a municipal corporation, acting by and through its City Council.

**RECITALS**

- A. The Oakland Chinatown Chamber of Commerce ("OCCC") and the Asian Health Services Inc. ("AHS") have agreed with the City of Alameda to settle their dispute with the City of Alameda over the adequacy of the Alameda Point General Plan Amendment EIR, and the parties have entered into an agreement between the City of Alameda, the City of Oakland, the Oakland Chinatown Chamber of Commerce and Asian Health Services regarding cooperation to study and mitigate traffic and related impacts in Alameda, Oakland, and specifically in Oakland Chinatown (referred herein as the "Chinatown Agreement").
- B. As part of that settlement, the OCCC and the AHS have agreed with the City of Alameda and the City of Oakland to form and participate in an advisory committee ("OCAC") to the Alameda Planning Board and City Council and the Oakland Planning Commission and City Council to advise those bodies in particular and the Cities of Alameda and Oakland in general regarding impacts within the greater Chinatown neighborhood of Oakland from proposed projects in Oakland and/or Alameda Point, and their mitigation.
- C. As a further part of that settlement, the City of Alameda has agreed to provide funding, in an amount no less and no more than \$75,000, to OCCC and AHS solely for the purpose of funding OCCC and AHS staff in support of OCCC and AHS representation on the OCAC and funding professional consultant services to OCCC and AHS representatives on the OCAC.

**THEREFORE**, for the purpose of efficiently and effectively implementing the Chinatown Agreement, OCC, AHS and Alameda agree as follows:

- 1. Single Point of Contact. The OCCC and the AHS shall appoint a single individual to act as the Single Point of Contact between the City of Alameda and the OCCC and AHS for the purposes of providing funding and the accounting of expenditures under this Agreement and the Chinatown Agreement. The OCCC and the AHS agree that Single Point of Contact shall represent both entities and shall have fiduciary

responsibilities to both entities. The OCCC and AHS further agree that they shall hold the City of Alameda, its City Council and officers and employees harmless for any acts or omissions of the Single Point of Contact. The OCCC and AHS shall jointly notify the City of Alameda in writing of any change in the single point of contact at least five business days prior to the effective date of the change.

2. Disbursement of Funds. Alameda shall disburse funds to the Single Point of Contact as set forth below.
  - 2.1. Pre-approval of Recipients Prior to any request for disbursement of funds, the Single Point of Contact shall provide the City of Alameda with: a) the names and billing rates for the OCCC and the AHS staff who will be billing for their time spent attending or preparing for attendance at OCAC meetings, and/or performing other OCAC related activities, and b) a copy of the consultant contract and associated scope of service for any professional consultant for which the Single Point of Contact will be requesting funds, prior to any request for disbursement of funds.
    - 2.1.1. The City of Alameda shall review and approve the OCCC or AHS staff members being funded by Alameda. Said staff members will be deemed approved if no objection is communicated in writing to the single point of contact within 10 business days of receipt of the submittal.
    - 2.1.2. The City of Alameda reserves the right to review and approve or reject any professional consultant or professional consultant scope of work based on its determination that the consultant and the scope of work are in substantial compliance with the specifications attached hereto as Attachment A. Said consultant/scope of work will be deemed approved if no objection is communicated in writing to the single point of contact within ten business days of receipt of the submittal.
  - 2.2. Means of Requesting Funding Disbursements. The Single Point of Contact shall request a disbursement in writing to the City of Alameda. The request will document the number of hours worked by each OCCC/AHS staff member approved pursuant to Section 2.1.1 requesting disbursements. Requests for staff disbursement shall take into account any funds not spent from previous disbursements. Requests for disbursements for consultant services shall be accompanied by the pre-approved scope of services authorized pursuant to 2.1.2. Along with the request for disbursement the Single Point of Contact shall provide an accounting of the expenditure of the previous disbursement. The request for funding disbursements will be made on a monthly basis and will be paid to AHS and OCCC within 15 businesses days of receipt by the City of Alameda.
  - 2.3. Grounds for denying all or part of a Disbursement Request. The City of Alameda shall grant the full amount of the Request for Disbursement unless any of the following circumstances exists: a) the request for disbursement is not

consistent with the list of Pre-approved Recipients or b) the request for disbursement does not meet the requirements of Sections 2.2 above; or c) the accounting of the expenditure of the previous disbursement indicates that funds were spent for a purpose which is not permitted under the Chinatown Agreement or funds were received by a person who has not been approved by the City of Alameda. The Disbursement Request will be deemed approved if no objection is communicated in writing to the single point of contact within ten business days of receipt of the submittal. Any disputes regarding performance of this agreement will be resolved through binding arbitration.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the signature dates below.

Effective Date: \_\_\_\_\_

CHINATOWN

ALAMEDA

Oakland Chinatown Chamber of Commerce,  
a California nonprofit corporation  
Acting through its Executive Director

City of Alameda,  
a municipal corporation  
Acting through its City Council

By: \_\_\_\_\_

By: \_\_\_\_\_

City Manager

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

Signature Date: \_\_\_\_\_

Signature Date: \_\_\_\_\_

Asian Health Services  
A California nonprofit corporation,  
Acting through its Chief Executive Officer

APPROVED AS TO FORM

By: \_\_\_\_\_

By: \_\_\_\_\_

City Attorney

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

Signature Date: \_\_\_\_\_

Attachment A:

Specifications for Consultant Service Scope of Work

Prior to submittal of any request for disbursement of funds for consultant services, the OCCC/AHS Point of Contact shall submit a proposed consultant scope of work to be funded. The proposed consultant scope of work shall include adequate detail and information to enable the City of Alameda to determine that the scope of work is consistent with the following specifications and criteria:

1. The consultant must be a professional with relevant experience for the work being completed. The following consultants are pre-approved:
  - 1.1. Dowling Associates (Transportation)
  - 1.2. DKS Associates (Transportation)
  - 1.3. CHS Consulting (Transportation)
  - 1.4. Fehr and Peers Associates (Transportation)
  - 1.5. OMNI Means (Transportation)
  - 1.6. Lamphier-Gregory (General Environmental Services)
  - 1.7. ESA Associates (General Environmental Services)
  - 1.8. Baseline Environmental Consulting (General Environmental Services)
  - 1.9. Borchard & Associates (General Environmental Services)
  - 1.10. Jones and Stokes (General Environmental Services)
  
2. The consultant scope of work meets the following criteria:
  - 2.1. The scope is well defined and specific.
  - 2.2. The scope is consistent with the consultant's area(s) of expertise and with the scope of issues for the OCAC, as set forth in the Chinatown Agreement.

Attachment B: Oakland Projects.

**Jack London Square Redevelopment:** up to 1.5 million net new square feet (mixture of entertainment, retail and offices) within the Jack London District as geographically delineated by the estuary, Clay, 2nd Street and Alice Street.

**Uptown Mixed Use Project:** 1,300 residential units, (including 1,000 student beds), and 50,000 square feet of retail in the central downtown area bounded by 20th Street (Thomas Berkeley Way), San Pablo Avenue, Telegraph Avenue and 18th Street.

**Central Station:** 25 acre site bounded by the frontage road, Wood Street, 14th Street and Grand Avenue, which includes the historic Union Pacific West Oakland Rail Station. Development may include up to 1,200 residential units, up to 200,000 square feet of office and retail space and the restoration and reuse of the historic rail station.

**Broadway-Grand Residential Development:** up to 500 residential units in the 2 block area bounded roughly by West Grand, Broadway, Valley and 24th Street.