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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Supplemental re Oakland Army Base
TCIF and CSA Amendments

DATE: April 25, 2012

City Administrator
Approval

Date

4/26/12

COUNCIL DISTRICT: 3

RECOMMENDATION

Staff recommends that the City Council adopt Resolutions authorizing the City Administrator to:

- (1) Execute an Amendment to the California Transportation Commission (CTC) Trade Corridor Improvement Fund (TCIF) Baseline Agreement Between the Port of Oakland and CTC Regarding the Oakland Army Base Project, to Add the City of Oakland As a Party and As a Grant Recipient, to Combine the Two TCIF Grant Allocations into One \$242.1 Million Allocation, to Eliminate TCIF Funding for the 7th Street Project, to Expand the Scope and Areas of the Former Oakland Army Base Where TCIF Funds May Be Used, to Establish a New Performance Schedule; to Identify Funding Sources to Match the TCIF Grant, and To Commit an Additional \$22.5 Million in City Funds to Match the TCIF Grant; and
- (2) Negotiate an Amendment to the Cost Sharing Agreement Between the City of Oakland and the Port of Oakland Pertaining to Infrastructure Improvements at the Former Oakland Army Base, to Reflect the Above Amendment to the TCIF Baseline Agreement, to Establish Respective Roles and Responsibilities Between the Port and City as to Grant Funding; to Identify the Funding Sources to Match the TCIF Grant; and To Commit an Additional \$22.5 Million in City Funds to Match the TCIF Grant.

REASON FOR SUPPLEMENTAL

At its meeting of April 24, 2012, the Community and Economic Development (CED) Committee:

Item: _____
City Council
April 30, 2012

1. Amended the second resolution regarding the approval of a new Cost Sharing Agreement (CSA), to strike the words "and execute" where they appear, authorizing the City Administrator to negotiate this agreement, but not to execute it. Staff will present the renegotiated CSA to Council at such time as a proposed Lease Development and Disposition Agreement (LDDA) is ready for presentation. A revised CSA resolution is included with this supplemental report.
2. Requested that staff present a comparison of the proposed new Term Sheet for the Cost Sharing Agreement to the previous CSA Term Sheet which was approved by the City Council on July 5, 2011. This supplemental report presents that comparison.

ANALYSIS

The proposed new CSA Term Sheet is re-presented here (for brevity, without its additional Exhibits) as **Supplemental Attachment A**, to allow for easy comparison. The previously approved July 5, 2011 CSA Term Sheet is included as **Supplemental Attachment B** to this report. As a comparison of the two documents shows, since the proposed new Term Sheet is substantially different in both form and content from the earlier version, it is not possible for staff to present a simple redlined version which would highlight the changes in an easy manner. Instead, the following is a list of the major differences between the contents of the July 2011 Term Sheet and the new Term Sheet document which staff proposed for approval today.

1. The July 2011 Term Sheet emphasized that the City-Port CSA was contingent upon "terms and conditions of the amended Baseline Agreement with the California Transportation Commission (CTC) regarding allowable uses of Trades Corridor Improvement Funds, specifically for infrastructure improvement and site preparation work on ORA/City property." These proposed CSA revisions are a direct result of the changes being directed by the CTC to the Baseline Agreement on the use of TCIF monies. This is the major reason why a side-by-side comparison of the previous and new CSA Term Sheets is difficult.

As described in the April 24 staff report to the CED Committee, the new arrangement would be beneficial to the City in that the majority of the TCIF funds would now be planned for expenditure on the City's portion of the Oakland Army Base.

2. 7th Street Project and the Outer Harbor Intermodal Terminals (OHIT): The new CSA reflects that the Port will apply to CTC to remove the 7th Street project from the TCIF funding, and that instead the \$110 million targeted for that project will be redirected to OHIT. The OHIT project description will be revised to include, in addition to the previously identified Maritime backbone infrastructure, improvements to Burma Road, a new bulk terminal at Berth 7, and other site improvements on the City's portion of the OAB. The City would also become a co-signatory to the OHIT Baseline Agreement. Total TCIF funding for OHIT will be revised to \$242.1 million (which once matched by

Item: _____
City Council
April 30, 2012

public and private sources will become \$484.2 million). More detail on the revised project description and the sources in the financial plan can be found on Page 2 of **Supplemental Attachment A**, the proposed new CSA Term Sheet.

3. Should the TCIF Amendment be approved by the CTC, the Port and City will seek Alameda County Transportation Commission Proposition B3 sales tax funds for the 7th Street grade project, should that measure pass in November 2011.
4. "Development elements" are more specifically defined under the new CSA Term Sheet, reflecting the Oakland Army Base Project Description, currently undergoing CEQA/NEPA Review, and the Oakland Army Base Master Plan Design Set, regarding the Master Infrastructure Development planning.
5. The "Lead Entity" for various specific aspects of the Army Base project is more explicitly defined, as are the terms for cooperation between and access to the portions of the Army Base under the control of each respective entity. The Port is responsible for the design and construction of the Port Rail Terminal and the City is responsible for all other aspects of the OHIT project
6. A new performance schedule with dates to achieve certain key benchmarks in the Army Base development process is included on Page 7 of **Supplemental Attachment A**, the proposed new CSA Term Sheet.
7. The Port grants to the City 50% of the capacity of the Port's Rail Terminal for 20 years, which is crucial for the operation and success of the rail-oriented logistics and maritime terminal aspects of the City's portion of the OAB.
8. The City commits, subject to being impacted by the redevelopment situation an additional \$22.5 million towards the required TCIF matching funds, making its total commitment \$54.5 million.

For questions regarding this report, please contact Pat Cashman, Oakland Army Base Project Manager, at 510-238-6281.

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

Prepared by: Pat Cashman
Title: Oakland Army Base Project Manager
Office of Neighborhood Investment

Supplemental Attachment A: Proposed new Cost Sharing Agreement Amendment Term Sheet dated March 30, 2012

Supplemental Attachment B: Previous CSA Term Sheet approved by Council on July 5, 2011

Item: _____
City Council
April 30, 2012

Cost Sharing Agreement Amendment

March 30, 2012

2012 CSA Term Sheet reflecting TCIF Amendment

This term sheet, dated as of March 30, 2012, summarizes certain basic terms of a proposed Amendment to that certain Cost Sharing Agreement between the City and the Port dated July 27, 2011, which will be formally negotiated and approved by the Port and the City, after the CTC approves the anticipated TCIF Baseline Agreement Amendment, subject to the general conditions stated in Section E below.

- A. Recitals – just an update of those in the current CSA (not a full repeat)
- B. Definitions – same as those used in CSA unless otherwise stated herein.
- C. TCIF Baseline Amendment submittal:
 1. The Port will apply to CTC for permission to amend the Port's Baseline Agreements to (i) remove the 7th Street Project from TCIF funding, (ii) add the \$110M in TCIF funds from the 7th Street Project to OHIT, (iii) revise the OHIT project description to specifically include improvements to Burma Road, a new bulk terminal at Berth 7 and other trade and logistics improvements on the City's side of the OAB, and (iv) add the City as a co-signatory to the amended OHIT Baseline Agreement. The estimated total TCIF funding for the revised OHIT project will be \$242.1 million, and the proposed amendment to the OHIT Baseline Agreement will reflect that the TCIF funds will be matched by a combination of public and private investments, for a total project cost of approximately \$484.2 million. In the event that insufficient matching funds are raised by the parties, the City and the Port agree to work cooperatively to either (a) to the extent permitted by CalTrans, reduce the scope of the revised OHIT project and therefore the total amount of the match required for the amended OHIT Baseline Agreement, or (b) raise the additional funds needed to meet the required TCIF match.
 2. The TCIF Baseline Agreement Amendment request will include:
 - a. A revised Project Description for the "OHIT TCIF Project" that includes the following uses (which is further described in the plans and detailed project description attached hereto as Exhibit A):
 - i. New Maritime Street, Burma Road, Wake Avenue (realignment) and a "backbone" utility corridor and other utility infrastructure to serve both the Port and City properties (the "Backbone Infrastructure");
 - ii. Environmental remediation on the Port and City properties necessary to complete the RAP and, in conjunction with the other work, the RMP (respectively, the "Port Environmental Work" and the "City Environmental Work");

- iii. Demolition/de-construction, earthwork, and other site preparation on the Port and City properties as necessary to construct the other project elements ("Site Prep Work");
- iv. A new rail yard located on the Port property including any utility relocation or protection required to vacate 14th Street (the "Port Rail Terminal");
- v. Trade and logistics facilities located on the City property (the "City Trade & Logistics Facilities");
- vi. West Gateway Break Bulk Terminal and rail spur located on the City property (the "Berth 7 Terminal"); and
- vii. Recycling facilities located on the City property (the "Recycling Facilities").

The revised Project Description for the "OHIT TCIF Project" set forth in this paragraph C.2.a is hereafter referred to collectively as the "OHIT Project."

- b. A description of the environmental benefits of the revised project description;
- c. The Project Delivery Schedule for City Lead Improvements (defined below), attached hereto as Exhibit B, and Project Delivery Schedule for the Port Rail Terminal, attached hereto as Exhibit C.

3. A Financial Plan identifying sources and uses and matching commitments based on the following:

Table 1

	Total Cost	Port	City	City Private Match	TCIF
Remediation	11.4	5.7	5.7	-	-
Port Rail Terminal	79.6	10*	3.8	-	65.8
Backbone Infrastructure	247.2	-	45.0	25.9	176.30
Recycling Facilities	46.6	-	-	46.6	-
City Logistics	99.4	-	-	99.4	-
TOTAL	484.2	15.7	54.5	171.9	242.1

* Subject to Port Board approval

D. Other Amendments to the Cost Sharing Agreement:

- 1. If the Port succeeds in amending the Baseline Agreements as described above, the City agrees to provide the non-Port and the non-TCIF funds set forth in Table 1 above as matching funds for the revised OHIT Project. In exchange, the City and Port agree to allocate and use the TCIF funds in accordance with the uses shown in Table 1.
- 2. **ACTC Funds:** The Port will seek ACTC funding of approximately \$271 million ("2012 ACTC Funds") for the development of the 7th Street Project and other development activities on the Port's side of OAB, and, contingent upon the Port succeeding in amending the Baseline Agreements as described above and the TCIF

funds actually being available to fund the OHIT Project, the City shall use good faith and reasonable efforts to support the Port's efforts to obtain such 2012 ACTC Funds. In the event that the 2012 ACTC Funds are issued in phases and ACTC determines that the Port is not ready/eligible for a particular phase, the City may, at its sole cost, apply for and receive funds from such phase for the OHIT Project (or other City projects).

3. **Development Elements of the Port/City OHIT Project:** The development elements to be included in the proposed Port and City portions of the OHIT Project described in Paragraph C.2.a above and the 7th Street Project are referred to collectively herein as the "Development Elements" and individually as a "Development Element." However, the 7th Street Project shall not be a Development Element that will be funded by TCIF funds.
4. **CEQA/NEPA Review of the OAB Project.** Each of the Development Elements have been incorporated into the 2012 Oakland Army Base Project Description dated March 28, 2012 prepared by LSA Associates, Inc. (the "Project Description"), which is the Project Description agreed upon between the City and the Port pursuant to Section 5.02 of the initial Cost Sharing Agreement. Such Project Description shall be used to complete the CEQA review of the OHIT Project as contemplated by Section 5.02 of the initial Cost Sharing Agreement.
5. **Master Infrastructure Development Planning.** Each of the Development Elements have also been incorporated into the Oakland Army Base Master Plan Design Set dated April 2, 2012 prepared by Architectural Dimensions Master Design Team (the "Master Plan") which is the master infrastructure plan that the parties agreed upon in concept pursuant to Section 5.03 of the initial Cost Sharing Agreement subject to comments previously provided by the Port being adequately addressed. Notwithstanding the foregoing to the contrary, each party reserves the right to provide comments regarding proposed revisions to the Master Plan (both changes and supplemental comments) and the parties shall negotiate in good faith regarding the same. If the agreed upon changes to the Master Plan result in corresponding changes to the project documents/information (baseline budgets, TCIF funds, matching funds, plans, etc.) the parties shall cooperate to make applicable changes.
6. **Detailed Designs.** The detailed designs contemplated by Section 5.04 of the initial Cost Sharing Agreement ("Construction Drawings") shall be developed as follows:
 - a. **Port Lead Improvements.** The Port shall be responsible for developing the Construction Drawings for the Port Rail Terminal, Port Environmental Work and related Site Prep Work on the Port property (the "Port Lead Improvements"). Subject to the provisions of the agreed upon design review process (see below) and force majeure delay, the Port shall develop the Construction Drawings for the Port Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit C. Further, only to the extent 2012 ACTC Funds are available, the Port shall prepare Construction Drawings for the 7th Street Project pursuant to an agreed upon schedule. The City shall transfer the work product related to the design of the Port Lead

Improvements and the 7th Street Project that has been completed to date to the Port and the Port shall provide the City, CCIG and all design consultants with appropriate releases of claims associated with any work product incorporated by the Port into its Construction Drawings (defined below).

- b. City Lead Improvements. The City shall be responsible for completing the detailed designs for the Backbone Infrastructure, City Environmental Work, City Trade & Logistics Facilities, Berth 7 Terminal, Recycling Facilities and related Site Prep Work (collectively, the "City Lead Improvements"). Subject to the provisions of the agreed upon design review process (see below) and force majeure delay, the City shall develop the detailed plans for the City Lead Improvements pursuant to the Site Delivery Schedule set forth in Exhibit B.
 - c. Design Coordination/Process. The amended Cost Sharing Agreement will include a design coordination process which shall be adhered to by each party and their consultants and contractors in designing Backbone Infrastructure, Port Rail Terminal, the 7th Street Project (only if 2012 ACTC Funds are available) and related Site Prep Work (each, a "Common Development Element"). No phase of any Common Development Element shall be commenced unless and until each party has approved in writing (or been deemed to have been approved pursuant to a mutually agreed upon process) the final construction drawings for such Common Development Element. Neither party shall unreasonably withhold, condition or delay its approval of a design that is consistent with the applicable portion of the Project Description and related CEQA Addendum and Master Plan. The design process shall include requirements for detailed support/explanation of any disapproval and that submittals shall be deemed approved if not disapproved within a specified time period.
7. **Right of Way and Permits**. Each party shall be responsible for obtaining the right of way and permits necessary to deliver the improvements for which they are responsible for delivering.

To the extent that the construction of Backbone Infrastructure requires right of way or easements (construction, utility and access) over a portion of a parties' property, the owner of such property shall provide the same upon written request and without requiring consideration therefor. Notwithstanding the foregoing, the parties shall develop standard indemnity and insurance provisions with request to construction easements, and the parties may impose reasonable conditions on the uses of such rights of way or easements. To the extent the construction of other Development Elements require rights of way or easements over a portion of a party's property, the owner of such property shall consider and meet and confer with the party who needs such right of way or easement to negotiate in good faith the terms and conditions for such right of way or easement.

To the extent feasible, the parties shall coordinate and cooperate in the other parties' efforts to obtain the required permits.

8. Lead Entity for Development and Delivery of Development Elements: The Port shall be responsible for commencing and completing the construction of the Port Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit C. Further, subject to the availability of the 2012 ACTC Funds, the Port shall be responsible for commencing and completing the construction of the 7th Street project pursuant to an agreed upon schedule. The City shall be responsible for commencing and completing the construction of the City Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit B.

The City and the Port shall hereby agree that the baseline budget for each Development Element as shown in the total cost column of Table 1. Such baseline budget includes an agreed-upon percentage of total contract costs allocated for contingency approvals. The party that takes the lead in the development and delivery of each such Development Element shall be solely responsible (as between the City and the Port) for any construction costs that exceed such baseline budget. Notwithstanding the foregoing to the contrary, each party shall be responsible for costs associated with maintaining temporary utilities to their own property. If any party completes the development of any Development Element for less than the amount agreed upon as the baseline budget for that Development Element, then the party who achieved such cost savings may apply such cost savings to other Development Elements on its portion of the OAB.

The City shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the City Lead Improvements. The Port shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the Port Rail Terminal.

Each lead party shall apply their own procurement rules, policies and "community benefits" to the improvements that they are charged with delivering under the Cost Sharing Agreement, regardless of where the improvements are located. However, the parties shall reasonably cooperate and agree upon insurance requirements related to the development of any Common Development Element, particularly as it relates to the release or presence of any hazardous materials. The non-lead party may require reports regarding contracting that are reasonably required to satisfy such parties reporting requirements.

The parties shall negotiate in good faith regarding reasonable, mutual assurances related to the timely delivery of the Common Development Elements and the commencement of operations at the Port Rail Terminal.

The parties shall negotiate in good faith regarding procedures to deal with traffic control, temporary utilities, temporary parking, construction storage and temporary tenant relocation.

9. City commitment to Design/Build construction methodology: In order to meet the TCIF schedule and to be consistent with its RFQ, RFP, ENA, and LDDA negotiations, it is the intent that (a) the City will work with the City's developer of the

City's side of OAB on the construction of the City Lead Improvements using the proposed design/build basis and (b) the Port will implement its own design/build process for the construction of the Port Lead Improvements.

10. The City and the Port shall agree upon a schedule for the rail yard to be operational (operator and equipment in place and services available), which schedule shall be coordinated with the completion and operation of agreed upon phases of the City Lead Improvements.
11. Port Commitment to permit City access to Rail Terminal. In recognition of the City's needs for rail access to the Port Rail Terminal, the Port and City will negotiate in good faith an agreement for the Port Rail Terminal to serve the City's rail needs within the following parameters: (i) the Port shall use commercially reasonable efforts to select the operator of the Port Rail Terminal no later than a date to be agreed upon between the City and the Port; (ii) upon completion of the initial Phase of the Port Rail Terminal, the Port shall require its operator of the Port Rail Terminal to provide rail services to the City's rail needs for a period of 20 years as follows: (a) priority rail service to City's rail needs for up to 50% of the train capacity at the Support Yard (the 8 unit train tracks) portion of the Port Rail Terminal, provided that if the City's rail needs are not utilizing 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, the Port shall have the right to use such train capacity for Port rail needs, and (b) priority rail service to Port's rail needs for up to 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, provided that if the Port's rail needs, the City shall have the right to use such train capacity for City rail needs; and (c) the new Knight Rail Yard (manifest train tracks) shall be operated on a first-come/first-served basis; (iii) the City and its tenants shall be required to pay the standard operator charges and Port rail tariffs as such charges and tariffs may be adjusted from time to time by the Port Board (which charges shall be transparent, market rate (consistent with other West coast rail facilities) and non-discriminatory (as between City/Port tenants/customers); and (iv) should the demand for rail service from both the City's and the Port's rail needs reach or exceed [80]% of the rail terminal's total capacity to serve all the interested customers for a continuous period of 12 consecutive months within 10 years after the completion of the Port Rail Terminal, the Port and the City shall negotiate in good faith for the expansion of the Port Rail Terminal. Additionally, upon the expiration of the term of the City's priority use, the City shall have non-exclusive, non-priority access to the Support Yard upon market rate terms.

In the event the Port operator is unable to deliver the rail services as provided in the preceding paragraph, the City shall have the right to provide such services for its own uses of the Port Rail Terminal using its own operator. In such an event, the City and the Port shall negotiate in good faith the terms and conditions for the City's operator to enter and use the Port Rail Terminal at market rates. Additionally, the parties agree that the Port will not prohibit Oakland Global Rail Enterprise from responding to the Port's operator RFP.

12. The City and Port Agree to Cooperate in Good Faith to Seek Other Sources of Financing for the Development Elements if needed.

13. Performance Schedule:

- July 31, 2012 deadline for CEQA and LDDA agreements with City developers
- November 2012 ACTC transportation sales tax vote
- June 2013 Notice to Proceed
- Dec 2013 construction start, absolute TCIF deadline.

E. General

While this term sheet summarizes certain essential terms of a proposed amendment to the Cost Sharing Agreement, it does not set forth all of the material terms and conditions of that document. This term sheet is not intended to be, and will not become, contractually binding on the City or the Port, and no legal obligation will exist unless and until the parties have negotiated, executed and delivered a mutually acceptable amendment to the Cost Sharing Agreement based upon this term sheet. The City and the Port retain the absolute discretion before any final action on the proposed amendment to the Cost Sharing Agreement by the City Council and the Board of Port Commissioners, as applicable, to make such modifications to the Cost Sharing Agreement, the proposed amended OHIT Project, and this term sheet.

**OAKLAND ARMY BASE
JOINT INFRASTRUCTURE DEVELOPMENT
COST SHARING AGREEMENT**

**OAKLAND REDEVELOPMENT AGENCY/CITY OF OAKLAND
&
PORT OF OAKLAND**

OAKLAND REDEVELOPMENT AGENCY BOARD APPROVED

TERM SHEET

I. Intention of this Agreement

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

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

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

II. Funding

ORA/City

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

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

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

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

Port

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

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

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

Commission 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 \$1.6 million in TIGER II grant funding, which will provide the initial contribution to the Agency's \$10,000,000 funding obligation. The remaining \$8.4 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 \$8.4 million, the Parties will renegotiate the TCIF commitment to the Agency/City using a pro rata methodology.

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

E) Both parties acknowledge that the current project described in the Baseline Agreements is not fully funded, and requires approximately \$226,000,000 in

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

F) The parties agree that this Cost Sharing Agreement is contingent upon an amendment to the Baseline Agreements the Port has with the CTC. The amended Baseline Agreement shall identify the ORA/City as a funding source and a TCIF project budget allocation of \$62,000,000 for agreed upon improvements on ORA/City Army Base property and facilities as set forth elsewhere in this Term Sheet. If the Baseline Agreements are amended as described herein, the ORA/City agrees to (i) use such TCIF funds in strict compliance with the requirements of the Baseline Agreements, and (ii) use and develop Agency's and City's portions of the Army Base property only for purposes that are consistent with and in furtherance of the Baseline Agreements and the Proposition IB Goods Movement Program. Should either party use the TCIF monies for its project and later, those monies be deemed ineligible or

unqualified, the responsible party shall indemnify, defend, and hold the other party harmless and resolve the issue with CTC.

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

IV. Scope of Work

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

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

project description by May 15, 2011. Should the Port and the ORA/City fail to reach agreement on the project description by May 15, 2011, either party may elect to terminate this Cost Sharing Agreement.

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

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

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

disruption of existing businesses and/or tenant operations on the OAB during construction.

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

V. Master Infrastructure Development Planning

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

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

VI. **Management of Funds**

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

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

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

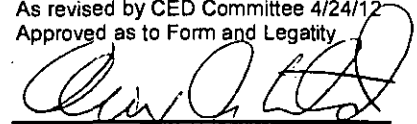
While this term sheet summarizes certain essential terms of the proposed Cost Sharing Agreement, it does not set forth all of the material terms and conditions of the Agreement. This term sheet is not intended to be, and will not become, contractually binding on the Agency or the Port, and no legal obligation 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]

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 APR 26 PM 4:47

As revised by CED Committee 4/24/12
Approved as to Form and Legality


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AN AMENDMENT TO THE COST SHARING AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY (AGENCY) AND THE PORT OF OAKLAND PERTAINING TO INFRASTRUCTURE IMPROVEMENTS AT THE FORMER OAKLAND ARMY BASE, TO REFLECT THE TRANSFER OF THE PROPERTY FROM THE AGENCY TO THE CITY OF OAKLAND, TO ACKNOWLEDGE AN AMENDMENT TO THE TRADE CORRIDOR IMPROVEMENT FUNDS (TCIF) BASELINE AGREEMENT, TO ESTABLISH RESPECTIVE ROLES AND RESPONSIBILITIES BETWEEN THE PORT AND CITY AS TO GRANT FUNDING; TO IDENTIFY THE FUNDING SOURCES TO MATCH THE TCIF GRANT; AND TO COMMIT AN ADDITIONAL \$22.5 MILLION IN CITY FUNDS TO MATCH THE TCIF GRANT.

WHEREAS, the City of Oakland (City) and the Port of Oakland (Port) own respective parcels of the former Oakland Army Base; and

WHEREAS, the assets of the Oakland Redevelopment Agency, including its real property at the former Oakland Army Base, have transferred to the City as of January 31, 2012; 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 million; and

WHEREAS, the California Transportation Commission (CTC) has awarded the Port an allocation of more than \$242 million in Trade Corridor Improvement Funds (TCIF) to be used for the construction of infrastructure improvements within the East and Central Areas of the former Oakland Army Base; and

WHEREAS, the Port of Oakland (Port), the California Department of Transportation (Caltrans), and CTC entered into the TCIF Baseline Agreement as of December 10, 2009; and

WHEREAS, on or about July 27, 2011, the Port of Oakland, the Redevelopment Agency of the City of Oakland, and the City of Oakland entered into a Cost Sharing Agreement for the

Oakland Army Base (CSA) to support each agency's economic development goals for their respective portions of the former Oakland Army Base; and

WHEREAS, the CSA provided for the terms under which the City and/or the Redevelopment Agency would contribute toward the matching funds required for the Port of Oakland's TCIF grant; and

WHEREAS, the parties to the TCIF Baseline Agreement intend to amend that agreement to add the City as a grant recipient, to expand the scope and areas where the TCIF funds can be extended, to establish a new performance schedule, and to identify the funding sources to match the TCIF funds; and

WHEREAS, the parties to the CSA wish to amend the CSA to reflect the changes to the TCIF Baseline Agreement, to commit an additional \$22.5 million in City funds to match the TCIF grant, and to establish the respective roles and responsibilities between the Port and City, in a manner consistent with the term sheet dated March 30, 2012, attached hereto as Attachment A; and

WHEREAS, the City Council wishes to grant the City Administrator further authority to negotiate an amendment that may include those terms on Attachment B; and

WHEREAS, the City has identified that the \$22.5 million in funding will come from a combination of \$18 million in scheduled land sales and \$4.5 million in the existing Army base Leasing Program and Fund Balances, Fund Numbers 5670 and 5671; and

WHEREAS, the parties to the CSA wish to amend the CSA to acknowledge that the Redevelopment Agency's interests in the former Oakland Army Base have transferred to the City; now, therefore be it

RESOLVED: That the City Administrator is authorized to negotiate an amendment to the Cost Sharing Agreement with the Port of Oakland for the development of infrastructure and other improvements on the former Oakland Army Base that will: (1) acknowledge that the Oakland Redevelopment Agency's interests in the former Oakland Army Base have transferred to the City; (2) commit an additional Twenty-Two Million Five Hundred Thousand dollars (\$22,500,000) of City funds to match the Trade Corridor Improvement Fund (TCIF) grant made by the California Transportation Commission; and (3) establish the respective roles and responsibilities between the Port and the City in a manner consistent with the term sheet dated March 30, 2012, attached hereto as Attachment A; and be it

FURTHER RESOLVED: That the City is authorized by way of the amended Cost Sharing Agreement and the amended TCIF Baseline Agreement to accept up to \$176.3 million in Trades Corridor Improvement Funds over the course of the agreements for the construction of infrastructure and other site preparation projects within East and Central Gateway Areas; and be it

FURTHER RESOLVED: That the City Administrator is authorized to negotiate an amendment to the Cost Sharing Agreement with the Port of Oakland that may include those terms found on Attachment B hereto; 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 to 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 City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating the amendment contemplated herein in support of the development of public improvements on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

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

NOES --

ABSENT --

ABSTENTION --

ATTEST: _____
LATONDA SIMMONS
City Clerk of the City of Oakland

Attachment A

Term Sheet Dated March 30, 2012

Cost Sharing Agreement Amendment

March 30, 2012

2012 CSA Term Sheet reflecting TCIF Amendment

This term sheet, dated as of March 30, 2012, summarizes certain basic terms of a proposed Amendment to that certain Cost Sharing Agreement between the City and the Port dated July 27, 2011, which will be formally negotiated and approved by the Port and the City, after the CTC approves the anticipated TCIF Baseline Agreement Amendment, subject to the general conditions stated in Section E below.

A. Recitals – just an update of those in the current CSA (not a full repeat)

B. Definitions – same as those used in CSA unless otherwise stated herein.

C. TCIF Baseline Amendment submittal:

1. The Port will apply to CTC for permission to amend the Port's Baseline Agreements to (i) remove the 7th Street Project from TCIF funding, (ii) add the \$110M in TCIF funds from the 7th Street Project to OHIT, (iii) revise the OHIT project description to specifically include improvements to Burma Road, a new bulk terminal at Berth 7 and other trade and logistics improvements on the City's side of the OAB, and (iv) add the City as a co-signatory to the amended OHIT Baseline Agreement. The estimated total TCIF funding for the revised OHIT project will be \$242.1 million, and the proposed amendment to the OHIT Baseline Agreement will reflect that the TCIF funds will be matched by a combination of public and private investments, for a total project cost of approximately \$484.2 million. In the event that insufficient matching funds are raised by the parties, the City and the Port agree to work cooperatively to either (a) to the extent permitted by CalTrans, reduce the scope of the revised OHIT project and therefore the total amount of the match required for the amended OHIT Baseline Agreement, or (b) raise the additional funds needed to meet the required TCIF match.
2. The TCIF Baseline Agreement Amendment request will include:
 - a. A revised Project Description for the "OHIT TCIF Project" that includes the following uses (which is further described in the plans and detailed project description attached hereto as Exhibit A):
 - i. New Maritime Street, Burma Road, Wake Avenue (realignment) and a "backbone" utility corridor and other utility infrastructure to serve both the Port and City properties (the "Backbone Infrastructure");
 - ii. Environmental remediation on the Port and City properties necessary to complete the RAP and, in conjunction with the other work, the RMP (respectively, the "Port Environmental Work" and the "City Environmental Work");

- iii. Demolition/de-construction, earthwork, and other site preparation on the Port and City properties as necessary to construct the other project elements (“Site Prep Work”);
- iv. A new rail yard located on the Port property including any utility relocation or protection required to vacate 14th Street (the “Port Rail Terminal”);
- v. Trade and logistics facilities located on the City property (the “City Trade & Logistics Facilities”);
- vi. West Gateway Break Bulk Terminal and rail spur located on the City property (the “Berth 7 Terminal”); and
- vii. Recycling facilities located on the City property (the “Recycling Facilities”).

The revised Project Description for the “OHIT TCIF Project” set forth in this paragraph C.2.a is hereafter referred to collectively as the “OHIT Project.”

- b. A description of the environmental benefits of the revised project description;
- c. The Project Delivery Schedule for City Lead Improvements (defined below), attached hereto as Exhibit B, and Project Delivery Schedule for the Port Rail Terminal, attached hereto as Exhibit C.

- 3. A Financial Plan identifying sources and uses and matching commitments based on the following:

Table 1

	Total Cost	Port	City	City Private Match	TCIF
Remediation	11.4	5.7	5.7	-	-
Port Rail Terminal	79.6	10*	3.8	-	65.8
Backbone Infrastructure	247.2	-	45.0	25.9	176.30
Recycling Facilities	46.6	-	-	46.6	-
City Logistics	99.4	-	-	99.4	-
TOTAL	484.2	15.7	54.5	171.9	242.1

* Subject to Port Board approval

D. Other Amendments to the Cost Sharing Agreement:

- 1. If the Port succeeds in amending the Baseline Agreements as described above, the City agrees to provide the non-Port and the non-TCIF funds set forth in Table 1 above as matching funds for the revised OHIT Project. In exchange, the City and Port agree to allocate and use the TCIF funds in accordance with the uses shown in Table 1.
- 2. ACTC Funds: The Port will seek ACTC funding of approximately \$271 million (“2012 ACTC Funds”) for the development of the 7th Street Project and other development activities on the Port’s side of OAB, and, contingent upon the Port succeeding in amending the Baseline Agreements as described above and the TCIF

funds actually being available to fund the OHIT Project, the City shall use good faith and reasonable efforts to support the Port's efforts to obtain such 2012 ACTC Funds. In the event that the 2012 ACTC Funds are issued in phases and ACTC determines that the Port is not ready/eligible for a particular phase, the City may, at its sole cost, apply for and receive funds from such phase for the OHIT Project (or other City projects).

3. **Development Elements of the Port/City OHIT Project:** The development elements to be included in the proposed Port and City portions of the OHIT Project described in Paragraph C.2.a above and the 7th Street Project are referred to collectively herein as the "Development Elements" and individually as a "Development Element." However, the 7th Street Project shall not be a Development Element that will be funded by TCIF funds.
4. **CEQA/NEPA Review of the OAB Project.** Each of the Development Elements have been incorporated into the 2012 Oakland Army Base Project Description dated March 28, 2012 prepared by LSA Associates, Inc. (the "Project Description"), which is the Project Description agreed upon between the City and the Port pursuant to Section 5.02 of the initial Cost Sharing Agreement. Such Project Description shall be used to complete the CEQA review of the OHIT Project as contemplated by Section 5.02 of the initial Cost Sharing Agreement.
5. **Master Infrastructure Development Planning.** Each of the Development Elements have also been incorporated into the Oakland Army Base Master Plan Design Set dated April 2, 2012 prepared by Architectural Dimensions Master Design Team (the "Master Plan") which is the master infrastructure plan that the parties agreed upon in concept pursuant to Section 5.03 of the initial Cost Sharing Agreement subject to comments previously provided by the Port being adequately addressed. Notwithstanding the foregoing to the contrary, each party reserves the right to provide comments regarding proposed revisions to the Master Plan (both changes and supplemental comments) and the parties shall negotiate in good faith regarding the same. If the agreed upon changes to the Master Plan result in corresponding changes to the project documents/information (baseline budgets, TCIF funds, matching funds, plans, etc.) the parties shall cooperate to make applicable changes.
6. **Detailed Designs.** The detailed designs contemplated by Section 5.04 of the initial Cost Sharing Agreement ("Construction Drawings") shall be developed as follows:
 - a. **Port Lead Improvements.** The Port shall be responsible for developing the Construction Drawings for the Port Rail Terminal, Port Environmental Work and related Site Prep Work on the Port property (the "Port Lead Improvements"). Subject to the provisions of the agreed upon design review process (see below) and force majeure delay, the Port shall develop the Construction Drawings for the Port Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit C. Further, only to the extent 2012 ACTC Funds are available, the Port shall prepare Construction Drawings for the 7th Street Project pursuant to an agreed upon schedule. The City shall transfer the work product related to the design of the Port Lead

Improvements and the 7th Street Project that has been completed to date to the Port and the Port shall provide the City, CCIG and all design consultants with appropriate releases of claims associated with any work product incorporated by the Port into its Construction Drawings (defined below).

- b. City Lead Improvements. The City shall be responsible for completing the detailed designs for the Backbone Infrastructure, City Environmental Work, City Trade & Logistics Facilities, Berth 7 Terminal, Recycling Facilities and related Site Prep Work (collectively, the "City Lead Improvements"). Subject to the provisions of the agreed upon design review process (see below) and force majeure delay, the City shall develop the detailed plans for the City Lead Improvements pursuant to the Site Delivery Schedule set forth in Exhibit B.
 - c. Design Coordination/Process. The amended Cost Sharing Agreement will include a design coordination process which shall be adhered to by each party and their consultants and contractors in designing Backbone Infrastructure, Port Rail Terminal, the 7th Street Project (only if 2012 ACTC Funds are available) and related Site Prep Work (each, a "Common Development Element"). No phase of any Common Development Element shall be commenced unless and until each party has approved in writing (or been deemed to have been approved pursuant to a mutually agreed upon process) the final construction drawings for such Common Development Element. Neither party shall unreasonably withhold, condition or delay its approval of a design that is consistent with the applicable portion of the Project Description and related CEQA Addendum and Master Plan. The design process shall include requirements for detailed support/explanation of any disapproval and that submittals shall be deemed approved if not disapproved within a specified time period.
7. **Right of Way and Permits**. Each party shall be responsible for obtaining the right of way and permits necessary to deliver the improvements for which they are responsible for delivering.

To the extent that the construction of Backbone Infrastructure requires right of way or easements (construction, utility and access) over a portion of a parties' property, the owner of such property shall provide the same upon written request and without requiring consideration therefor. Notwithstanding the foregoing, the parties shall develop standard indemnity and insurance provisions with request to construction easements, and the parties may impose reasonable conditions on the uses of such rights of way or easements. To the extent the construction of other Development Elements require rights of way or easements over a portion of a party's property, the owner of such property shall consider and meet and confer with the party who needs such right of way or easement to negotiate in good faith the terms and conditions for such right of way or easement.

To the extent feasible, the parties shall coordinate and cooperate in the other parties' efforts to obtain the required permits.

8. Lead Entity for Development and Delivery of Development Elements: The Port shall be responsible for commencing and completing the construction of the Port Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit C. Further, subject to the availability of the 2012 ACTC Funds, the Port shall be responsible for commencing and completing the construction of the 7th Street project pursuant to an agreed upon schedule. The City shall be responsible for commencing and completing the construction of the City Lead Improvements pursuant to the Project Delivery Schedule set forth in Exhibit B.

The City and the Port shall hereby agree that the baseline budget for each Development Element as shown in the total cost column of Table 1. Such baseline budget includes an agreed-upon percentage of total contract costs allocated for contingency approvals. The party that takes the lead in the development and delivery of each such Development Element shall be solely responsible (as between the City and the Port) for any construction costs that exceed such baseline budget. Notwithstanding the foregoing to the contrary, each party shall be responsible for costs associated with maintaining temporary utilities to their own property. If any party completes the development of any Development Element for less than the amount agreed upon as the baseline budget for that Development Element, then the party who achieved such cost savings may apply such cost savings to other Development Elements on its portion of the OAB.

The City shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the City Lead Improvements. The Port shall be solely responsible (as between the City and the Port) for accounting for and compliance with all TCIF requirements for the Port Rail Terminal.

Each lead party shall apply their own procurement rules, policies and "community benefits" to the improvements that they are charged with delivering under the Cost Sharing Agreement, regardless of where the improvements are located. However, the parties shall reasonably cooperate and agree upon insurance requirements related to the development of any Common Development Element, particularly as it relates to the release or presence of any hazardous materials. The non-lead party may require reports regarding contracting that are reasonably required to satisfy such parties reporting requirements.

The parties shall negotiate in good faith regarding reasonable, mutual assurances related to the timely delivery of the Common Development Elements and the commencement of operations at the Port Rail Terminal.

The parties shall negotiate in good faith regarding procedures to deal with traffic control, temporary utilities, temporary parking, construction storage and temporary tenant relocation.

9. City commitment to Design/Build construction methodology: In order to meet the TCIF schedule and to be consistent with its RFQ, RFP, ENA, and LDDA negotiations, it is the intent that (a) the City will work with the City's developer of the

City's side of OAB on the construction of the City Lead Improvements using the proposed design/build basis and (b) the Port will implement its own design/build process for the construction of the Port Lead Improvements.

10. The City and the Port shall agree upon a schedule for the rail yard to be operational (operator and equipment in place and services available), which schedule shall be coordinated with the completion and operation of agreed upon phases of the City Lead Improvements.
11. Port Commitment to permit City access to Rail Terminal. In recognition of the City's needs for rail access to the Port Rail Terminal, the Port and City will negotiate in good faith an agreement for the Port Rail Terminal to serve the City's rail needs within the following parameters: (i) the Port shall use commercially reasonable efforts to select the operator of the Port Rail Terminal no later than a date to be agreed upon between the City and the Port; (ii) upon completion of the initial Phase of the Port Rail Terminal, the Port shall require its operator of the Port Rail Terminal to provide rail services to the City's rail needs for a period of 20 years as follows: (a) priority rail service to City's rail needs for up to 50% of the train capacity at the Support Yard (the 8 unit train tracks) portion of the Port Rail Terminal, provided that if the City's rail needs are not utilizing 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, the Port shall have the right to use such train capacity for Port rail needs, and (b) priority rail service to Port's rail needs for up to 50% of the train capacity at the Support Yard portion of the Port Rail Terminal, provided that if the Port's rail needs, the City shall have the right to use such train capacity for City rail needs; and (c) the new Knight Rail Yard (manifest train tracks) shall be operated on a first-come/first-served basis; (iii) the City and its tenants shall be required to pay the standard operator charges and Port rail tariffs as such charges and tariffs may be adjusted from time to time by the Port Board (which charges shall be transparent, market rate (consistent with other West coast rail facilities) and non-discriminatory (as between City/Port tenants/customers); and (iv) should the demand for rail service from both the City's and the Port's rail needs reach or exceed [80]% of the rail terminal's total capacity to serve all the interested customers for a continuous period of 12 consecutive months within 10 years after the completion of the Port Rail Terminal, the Port and the City shall negotiate in good faith for the expansion of the Port Rail Terminal. Additionally, upon the expiration of the term of the City's priority use, the City shall have non-exclusive, non-priority access to the Support Yard upon market rate terms.

In the event the Port operator is unable to deliver the rail services as provided in the preceding paragraph, the City shall have the right to provide such services for its own uses of the Port Rail Terminal using its own operator. In such an event, the City and the Port shall negotiate in good faith the terms and conditions for the City's operator to enter and use the Port Rail Terminal at market rates. Additionally, the parties agree that the Port will not prohibit Oakland Global Rail Enterprise from responding to the Port's operator RFP.

12. The City and Port Agree to Cooperate in Good Faith to Seek Other Sources of Financing for the Development Elements if needed.

13. Performance Schedule:

- July 31, 2012 deadline for CEQA and LDDA agreements with City developers
- November 2012 ACTC transportation sales tax vote
- June 2013 Notice to Proceed
- Dec 2013 construction start, absolute TCIF deadline.

E. General

While this term sheet summarizes certain essential terms of a proposed amendment to the Cost Sharing Agreement, it does not set forth all of the material terms and conditions of that document. This term sheet is not intended to be, and will not become, contractually binding on the City or the Port, and no legal obligation will exist unless and until the parties have negotiated, executed and delivered a mutually acceptable amendment to the Cost Sharing Agreement based upon this term sheet. The City and the Port retain the absolute discretion before any final action on the proposed amendment to the Cost Sharing Agreement by the City Council and the Board of Port Commissioners, as applicable, to make such modifications to the Cost Sharing Agreement, the proposed amended OHIT Project, and this term sheet.

Exhibit A

TCIF Project Description

Project Description

The Outer Harbor Intermodal Terminals (OHIT) project is of national significance, seeking to transform the former Oakland Army Base into a world-class intermodal trade and logistics center. The Port of Oakland is the only international container trade gateway for the Northern California MegaRegion; it is the leading U.S. export gateway on the West Coast and is the fifth ranked US seaport by containerized cargo movements.

The Port of Oakland is a strategic trade gateway that has seen over a billion dollars in investment over the past decade to support the growing demand for global trade through the nation's limited trade gateways.

This project will be another critical development initiative to open US businesses to international markets through an improved Oakland seaport. The Trade Corridors Improvement Fund (TCIF) will contribute towards the \$484.2 million first phase of the Oakland Army Base redevelopment. This represents the build-out of a City owned 165 acre development area and the establishment of a new rail terminal on 40 acres of the Port property. Subsequent phases of the redevelopment will include further expansion of the rail terminal, an additional 1 million square feet of trade and logistics facilities on the Port's land, and the 7th Street grade separation project connecting road, rail and marine networks efficiently within Port. The complete redevelopment, including all phases is expected to take ten years. The project represents a billion dollar investment in goods movement for California.

i. Oakland Army Base

The former Oakland Army Base (OARB), an approximately 430-acre facility located on the West Oakland waterfront, was first commissioned in 1941 as a Port and trans-shipment facility. During World War II, it served as a major cargo Port and warehousing facility. Up until 1995, the Base was active with warehouse uses and approximately 2,040 employees. In 1995, the Base Realignment and Closure Commission recommended closure and realignment/disposal of the Oakland Army Base. The Base was officially closed for military operations in September 1999.

The closure resulted in the loss of more than 7,000 jobs and the dismantling of a national maritime and military asset. Adjacent to the Port of Oakland seaport, this 330-acre former base is at a nexus of maritime, rail and highway transportation. After a decade of strategic planning for the redevelopment of the base and the surrounding lands, the Outer Harbor Intermodal Terminals development is the implementation of a bold vision to revitalize Oakland's working waterfront.

In August 2005, approximately 170 acres of the former Army Base were conveyed to the City of Oakland, and another 200 acres were transferred to the Port. The City of Oakland has assembled a number of private land developers and companies interested in partnering with it to develop the infrastructure necessary for the base redevelopment.

ii. Location

The Oakland Army Base site is located along the eastern shoreline of San Francisco Bay in the City of Oakland. The project area is located approximately two miles west of the Oakland central business district. It is located adjacent to several regional transportation links, as well as to the Bay.

III. Master Plan

For the past eight months, the City of Oakland its development partner, California Capital and Investment Group, and the Port of Oakland have worked to develop a master plan for the entire Oakland Army Base described above. The master plan was finalized in February 2012 and will guide the development of the multiple elements of the site throughout the future.

IV. Project Elements

The key components of the OHIT project described in this application are:

- Construction of a new rail terminal
- Rehabilitation of an existing wharf and surrounding lands, creating a new bulk cargo marine terminal
- Construction of new trade and logistics warehousing and port-related facilities
- Relocation and consolidation of Oakland recycling services into a central location with improved access to the Port
- Roadway and utility improvements for the development area, focused along a backbone along Maritime Street and Burma Road
- On-going environmental remediation
- Site preparation--including import, fill, surcharging, and grading—within the City areas designated for the trade and logistics and recycling facilities

The TCIF will be used for the rail, backbone infrastructure, and site preparation required for the container/bulk transfer facilities. Details on the major components are provided in Section VI, Segmentation.

V. Construction Activities

The project is divided into multiple development sequences, ranging from demolition to earthwork to utility and road work to building development. The development generally consists of two types of work. The first is public infrastructure improvements, consisting of road, utility, wharf, rail and site preparation work. Following these improvements, "vertical," or private investments in new buildings and sites will be development for specific users and customers to leverage the strategic public infrastructure improvements.

VI. Project Segmentation

To distinguish responsibilities between the two implementing agencies, the Project has been divided into five separate segments with corresponding funding plans, permitting, and delivery methods.

	Total Cost	Port	City	City Private Match	TCIF
Remediation	11.4	5.7	5.7	-	-
Port Rail Terminal	79.6	10	3.8	-	65.8

City Site Prep and Backbone Infrastructure	247.2	-	45.0	25.9	176.3
Recycling Facilities	46.6	-	-	46.6	-
City Trade & Logistics Facilities	99.4	-	-	99.4	-
TOTAL (costs in millions)	484.2	15.7	54.5	171.9	242.1

Segment 1: Environmental Remediation

Environmental Remediation. Sites of hazardous material still exist throughout the project area. Prior to the transfer of the Base to the Port and the City, these sites were identified and protocols were established for their remediation and on-going monitoring. This combined effort by the City and Port is approximately 80% complete and will be ongoing with this project. This project may need for additional remediation and such costs are included in the project estimate.

Please refer to drawing X-126; attached.

Segment 2: Port Rail Terminal

The former Knight Yard on the Oakland Army Base would be replaced with a rail terminal designed to support increased cargo transfer between ships and trains. The new rail terminal will include over 65,000 feet of new railroad tracks, designed to accommodate intermodal, manifest and unit bulk trains. The manifest tracks will be used as a staging yard to accommodate the existing and new warehouses within the site. The manifest yard has a 200 railcar capacity, supporting up to 20,000 loaded railcars per year. The unit train support yard can accommodate 4 unit trains at any one time with its 8 - 4,000 ft tracks. This yard will be used to stage primarily bulk and intermodal trains up to 8,000 feet in length each. The yard can accommodate as many as 28 trains per week. The support yard will be used for the bulk cargo marine terminal, to support the future phase 2 intermodal yard planned adjacent to the support yard, and bulk cargo transload operations within the Port. The rail terminal includes 2 lead tracks for the Port's existing Joint Intermodal Terminal as well. Access improvements to Union Pacific Railroad's adjacent line are planned to minimize impacts on the mainline. The tracks will all be designed to current UP and BNSF industry standards, and will be capable of accommodating all types of rail cargo.

Please refer to drawing X-127, attached, for a description of the rail improvements.

Segment 3: City Site Prep Work and Backbone Infrastructure

Demolition of Existing Buildings. Old, outdated, non-code conforming buildings still exist throughout the site, including several large warehouses created for the Army in the early days of World War II. These buildings were built before the container industry developed, and are not nearly as effective as modern facilities, however they are still occupied today by opportunistic freight companies. Unfortunately the buildings are deteriorating, settling (due to underlying bay mud), not seismically safe nor designed to meet today's container-based port operations. Elements of the buildings, particularly the massive wood materials, are of value in today's market and will be salvaged for reuse, a sustainable goal of the project. The demolition effort will eliminate underutilized buildings including their hazardous materials,

Earthwork and Soil Stabilization. The project site is currently low in elevation due to years of settlement and an original design elevation that did not contemplate today's drainage and sea rise requirements. For this reason, a large amount of earth import is required to bring the project site up to a new elevation that complies with current regulations and anticipated sea rise. In addition to the import needed to raise the site, more import is needed on a temporary basis to "load" the site (weigh it down) to achieve condensing of the underlying bay mud before new buildings are constructed. This process, called surcharging, will "pre-settle" the site to thwart long term settlement that damages buildings and site improvements such as utilities. Earth imports will be made primarily by barge taking advantage of marine transportation that is cheaper and less impactful on the environment due to elimination of traditional truck transportation. Before surcharging of the site, there will be a deep dynamic compaction process to cure the underlying sand layer that is susceptible to liquefaction during a seismic event. The compaction process will result in settlement of the existing dirt by around one foot.

Replacement of Utilities. The existing utility systems across the project are failing in various degrees but all failing nonetheless. There is documentation of water leakage throughout the project site area to the extent that local repairs cannot be made. The storm sewer system is also leaking underground and is undersized to carry storm water at today's design levels. Power infrastructure is old, not able to sustain more demands on the system and in need of replacement simply due to age. Telecommunication systems are minimal simply due to the vast increase in requirements in this arena in the last 20 years that the 1940s vintage improvements did not include. The project includes construction of new utility systems to sustain full build-out of the project. New improvements will ensure supply of services to new users with efficiency that yields less energy usage compared to the original development and even buildings developed in the last 10 years. Reconstruction of utilities will eliminate wasteful leakages that add to contamination of bay waters through water table migration.

Grading and Drainage. After the surcharging program, the sites will be rough-graded to a super pad elevation to allow for construction of vertical improvements. Each "vertical" building project will be responsible for its respective share of surrounding site improvements to support the building and such improvements will follow design standards being developed for the project now. The grading and drainage plan for the project shows grades and drainage patterns to the extent that all drainage will meet current state and local retention and filtration requirements for protection of downstream sources, namely San Francisco Bay. The storm system will be replaced for the most part but tie into existing Bay outfalls. The new drainage plan shows that we have provided more than 4% filtration areas to receive runoff. The distribution of landscape areas to serve as filtration zones is very good so there will be adequate natural filtration.

Circulation. Along all the arterials sidewalks and bike lanes are provided. The bike lanes extend the existing system so that there is full connectivity between the east/west path from Emeryville to the Bay Bridge into the project site along Burma Road and into Maritime where the bike path heads south all the way to 7th street where it parts east and west; east going along 7th street, under Interstate-880 to Wood Street and west going to Middle Harbor Park.

Public Roadway Improvements. Maritime Street and Burma Road, the two primary existing roadways within the project, are sinking and crumbling; therefore in need of total replacement. Replacing and realigning these roads will allow for better traffic flow within the Port, enable the replacement of the utility systems, and provide access to the future gateway park at the base of

the Bay Bridge. New roadway design with reduced intersections will increase traffic efficiency, reduce accidents and reduce emissions. The project will also construct new bike lanes to connect to other projects thus enabling more thoroughfare through the site to existing and planned parks.

Landscaping. While not normally seen in intermodal facilities we are planning new landscaping areas to enhance views, reduce heat gain and to facilitate drainage filtration. Reduction of impervious areas is possible through good planning practices particularly when facilities share truck parking areas to maximize usage and eliminate unnecessary pavement. It is our plan to install a new reclaim water system to irrigate landscaping thus saving more potable water from the nearby facility that feeds all of West Oakland.

Wharf Improvements. Existing wharves have been studied to determine the extent of repairs and costs for reuse as a working waterfront. The wharves have deteriorated over the past 60 years but have adequate structure to allow repairs to bring them into a useful mode for bulk shipping activities. Repair through public and private investment will facilitate new businesses along the wharves that enhance rail activities and local hiring. No new wharf structures are part of this project.

Please refer to the activities described in drawing X-128, attached.

Segment 4: Recycling Facilities

Two recycling operators located in a mixed used neighborhood of West Oakland would be relocated to the industrial area adjacent to the Port. Both recyclers utilize the Port terminals for the export of metals, paper and other collected materials.

Please refer to drawing X-129, attached, for a description of the recycling facilities.

Segment 5: City Trade & Logistics Facilities

Bulk Cargo Marine Terminal. On the City's West Gateway site, berth 7 would be converted to a modern bulk cargo marine terminal for movement of commodities such as iron ore, corn and other products brought in to the terminal by rail. 80,000 DWT Panamax vessels would be filled with cargo brought in by rail, unloaded on site and moved by conveyor into the ship's cargo holds. The terminal would also accommodate project cargo such as windmills, steel coils and oversized goods. Rail tracks from the rail terminal to this marine terminal would be built, as would improvements to the wharf structure, construction of new purpose-built cargo handling facilities such as storage locations, conveyors, and rail car unloading equipment.

Trade and Logistics Facilities. Approximately one million square feet of port-oriented trade and logistics facilities would be constructed on the Central and East Gateway sites. Work would include site preparation, including raising the site and surcharging. Rail service and truck parking would be provided for the warehouses as appropriate. The facilities would be used predominantly by importers and exporters for goods movement associated with the Port of Oakland transportation hub.

Please refer to drawing X-130, attached, for a description of the trade and logistics facilities.

Exhibit B

Delivery Schedule for City Areas

Delivery Schedule for City Areas

Area	Activity	Est. Start	Est. Completion
Preconstruction Activities	Soils Import	July 2012	June 2013
	Remediation	On-Going	August 2013
Roadways	Maritime Street	June 2013	October 2015
	Burma Road	June 2016	December 2018
East Gateway	Site Preparation	July 2013	July 2017
	Vertical Construction	June 2016	July 2017
	Occupation	January 2017	
North Gateway	Site Preparation	May 2014	May 2018
	Vertical Construction	September 2016	July 2018
	Occupation	April 2018	
Central Gateway	Site Preparation	September 2014	December 2019
	Vertical Construction	November 2017	December 2019
	Occupation	May 2018	
West Gateway (Working Waterfront Variant)	Site Preparation	January 2015	July 2018
	Vertical Construction	July 2012	February 2013
	Occupation	March 2013	
West Gateway (Office/R&D Variant)	Site Preparation	January 2015	July 2018
	Vertical Construction	December 2017	July 2018
	Occupation	July 2018	

Exhibit C

Delivery Schedule for Port Rail Terminal

Attachment B

Additional Terms to Be Negotiated by the City Administrator

Provisions addressing the following:

- (1) Deadlines, penalties, and a City self-help option regarding the Port's construction and operation of the rail yard;
- (2) The inclusion of a Community Facilities District for property maintenance;
- (3) An agreement to lease certain Port-owned billboard sites to the City in exchange for consideration;
- (4) The exchange of certain property in the North Gateway portion of the former Oakland Army Base for a portion of the Central Gateway (which exchange will be subject to further Council approval by way of a future ordinance);
- (5) A process whereby the Parties grant each other access and permits to support the Army Base Master Plan; and
- (6) An agreement about responsibility among the parties regarding the possible partial demolition of any warehouse on the subject property.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 APR 26 PM 4:47

As revised by CED Committee 4/24/12
Approved as to Form and Legality

DRAFT

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE COST SHARING AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY (AGENCY) AND THE PORT OF OAKLAND PERTAINING TO INFRASTRUCTURE IMPROVEMENTS AT THE FORMER OAKLAND ARMY BASE, TO REFLECT THE TRANSFER OF THE PROPERTY FROM THE AGENCY TO THE CITY OF OAKLAND, TO ACKNOWLEDGE AN AMENDMENT TO THE TRADE CORRIDOR IMPROVEMENT FUNDS (TCIF) BASELINE AGREEMENT, TO ESTABLISH RESPECTIVE ROLES AND RESPONSIBILITIES BETWEEN THE PORT AND CITY AS TO GRANT FUNDING; TO IDENTIFY THE FUNDING SOURCES TO MATCH THE TCIF GRANT; AND TO COMMIT AN ADDITIONAL \$22.5 MILLION IN CITY FUNDS TO MATCH THE TCIF GRANT.

WHEREAS, the City of Oakland (City) and the Port of Oakland (Port) own respective parcels of the former Oakland Army Base; and

WHEREAS, the assets of the Oakland Redevelopment Agency, including its real property at the former Oakland Army Base, have transferred to the City as of January 31, 2012; 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 million; and

WHEREAS, the California Transportation Commission (CTC) has awarded the Port an allocation of more than \$242 million in Trade Corridor Improvement Funds (TCIF) to be used for the construction of infrastructure improvements within the East and Central Areas of the former Oakland Army Base; and

WHEREAS, the Port of Oakland (Port), the California Department of Transportation (Caltrans), and CTC entered into the TCIF Baseline Agreement as of December 10, 2009; and

WHEREAS, on or about July 27, 2011, the Port of Oakland, the Redevelopment Agency of the City of Oakland, and the City of Oakland entered into a Cost Sharing Agreement for the

Oakland Army Base (CSA) to support each agency's economic development goals for their respective portions of the former Oakland Army Base; and

WHEREAS, the CSA provided for the terms under which the City and/or the Redevelopment Agency would contribute toward the matching funds required for the Port of Oakland's TCIF grant; and

WHEREAS, the parties to the TCIF Baseline Agreement intend to amend that agreement to add the City as a grant recipient, to expand the scope and areas where the TCIF funds can be extended, to establish a new performance schedule, and to identify the funding sources to match the TCIF funds; and

WHEREAS, the parties to the CSA wish to amend the CSA to reflect the changes to the TCIF Baseline Agreement, to commit an additional \$22.5 million in City funds to match the TCIF grant, and to establish the respective roles and responsibilities between the Port and City, in a manner consistent with the term sheet dated March 30, 2012, attached hereto as Attachment A; and

WHEREAS, the City Council wishes to grant the City Administrator further authority to negotiate ~~and execute~~ an amendment that may include those terms on Attachment B; and

WHEREAS, the City has identified that the \$22.5 million in funding will come from a combination of \$18 million in scheduled land sales and \$4.5 million in the existing Army base Leasing Program and Fund Balances, Fund Numbers 5670 and 5671; and

WHEREAS, the parties to the CSA wish to amend the CSA to acknowledge that the Redevelopment Agency's interests in the former Oakland Army Base have transferred to the City; now, therefore be it

RESOLVED: That the City Administrator is authorized to negotiate ~~and execute~~ an amendment to the Cost Sharing Agreement with the Port of Oakland for the development of infrastructure and other improvements on the former Oakland Army Base that will: (1) acknowledge that the Oakland Redevelopment Agency's interests in the former Oakland Army Base have transferred to the City; (2) commit an additional Twenty-Two Million Five Hundred Thousand dollars (\$22,500,000) of City funds to match the Trade Corridor Improvement Fund (TCIF) grant made by the California Transportation Commission; and (3) establish the respective roles and responsibilities between the Port and the City in a manner consistent with the term sheet dated March 30, 2012, attached hereto as Attachment A; and be it

FURTHER RESOLVED: That the City is authorized by way of the amended Cost Sharing Agreement and the amended TCIF Baseline Agreement to accept up to \$176.3 million in Trades Corridor Improvement Funds over the course of the agreements for the construction of infrastructure and other site preparation projects within East and Central Gateway Areas; and be it

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and ~~execute~~ an amendment to the Cost Sharing Agreement with the Port of Oakland that may include those terms found on Attachment B hereto; 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 City Administrator and his or her designee is authorized to take whatever action is necessary with respect to negotiating and executing the amendment contemplated herein in support of the development of public improvements on the former Oakland Army Base consistent with this Resolution and its basic purposes.

IN SESSION, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LATONDA SIMMONS
City Clerk of the City of Oakland