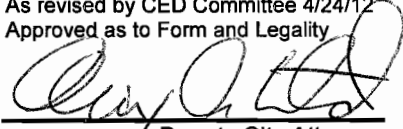


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OFFICE OF THE CITY CLERK
OAKLAND

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. 83865 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 RESOLED: 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 RESOLED: 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 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, MAY 15 2012, 2012

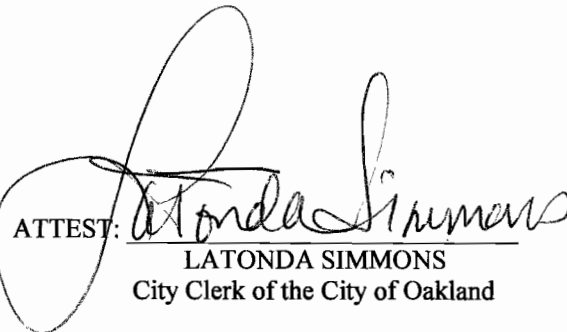
PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, SCHAAF, AND PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 
LATONDA SIMMONS
City Clerk of the City of Oakland

Attachment A

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.

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.