

# AMENDED AND RESTATED

## AGREEMENT

**LAW FILE COPY**

This Agreement is entered into as of November 14, 2001.

### **1.0** Parties

The parties to this Agreement are the Port of Oakland, on the one hand, and the City of Alameda, Citizens League for Airport Safety and Serenity, and Berkeley Keep Jets Over the Bay Committee, on the other hand.

### **2.0** Definitions

As used in this Agreement, the following terms shall have the meanings set forth below. Defined terms appear in *bold face italics*:

- 2.1 “*City*” refers to the City of Alameda, California.
- 2.2 “*CLASS*” refers to Citizens League for Airport Safety and Serenity, a non-profit corporation organized and existing under the laws of the State of California.
- 2.3 “*KJOB*” refers to Berkeley Keep Jets Over the Bay Committee, an unincorporated voluntary association created and existing under the laws of the State of California.
- 2.4 “*Petitioners*” refers to *City*, *CLASS*, and *KJOB*, collectively.
- 2.5 “*Port*” refers to the Port of Oakland, an autonomous department of the City of Oakland. The *Port* is acting by and through the Board of Port Commissioners in connection with the execution and implementation of this *Agreement*.
- 2.6 “*Parties*” refers to *City*, *CLASS*, *KJOB*, and *Port*, collectively.
- 2.7 “*Agreement*” means this Agreement. The “Amended and Restated Agreement” shall have the same meaning.
- 2.8 “*Airport*” refers to the Oakland International Airport.
- 2.9 “*ADP*” refers to the Airport Development Program for the *airport* proposed by *Port*, as described in the Final Environmental Impact Report dated December 1997, and any supplements and addenda thereto.

- 2.10 “*EIR*” refers to the Environmental Impact Report for the *ADP* prepared by *Port*, as well as any supplements and addenda thereto.
- 2.11 “*FAA*” refers to the Federal Aviation Administration.
- 2.12 “*Litigation*” refers to (a) the consolidated state court lawsuits brought by *petitioners* against *Port* challenging the adequacy of the *EIR* under the California Environmental Quality Act (*City of Alameda, et al. v. Port of Oakland, et al.*, Alameda County Superior Court Nos. 815052-9, 815330-6 & 815053-8, First District Court of Appeal Nos. A086708, A087959 & A089660), and (b) the federal court lawsuit brought by *petitioners* against *Port, FAA*, and other federal respondents asserting violations of the National Environmental Policy Act in connection with the Environmental Assessment and Finding of No Significant Impact relating to the *ADP* (*City of Alameda, et al., v. United States Department of Transportation, et al.*, Ninth Circuit No. 01-70169).
- 2.13 “*Phase 2 Agreement*” refers to a potential subsequent agreement between the *parties* resolving their remaining differences concerning the *ADP* and the operation of the *airport*.
- 2.14 “*Grossman letters*” refers to the letters dated October 3, 10, and 19, 2001, from Steven J. Grossman, *Port’s* Director of Aviation, to Robert Wonder, *City’s* Assistant City Manager, containing information regarding *Port’s* near-term projects. A copy of the three *Grossman letters* is attached to this *Agreement* as Group Exhibit A.
- 2.15 “*1976 Settlement Agreement*” refers to the July 1976 settlement agreement between *Port, City*, and certain other parties, a copy of which is attached to this *Agreement* as Exhibit B.
- 2.16 “*ANCA*” refers to the Aviation Noise and Capacity Act of 1990, 49 U.S.C. § 47521 *et seq.*
- 2.17 “*Committee*” refers to the Oakland International Airport Noise Compatibility Committee, as described in subparagraph 4.4(l) of this *Agreement*.

### 3.0 Nature and Purpose of this Agreement

3.1 This *Agreement* is entered into in good faith for the purpose of settling some of the disputes between the *parties* relating to the *ADP* and the operation of the *airport*, and thereby permitting the *Port* to proceed with the implementation of certain defined components of the *ADP* and related undertakings that the *Port* asserts are urgent, needed for security reasons, or otherwise severable from any judgment, writ of mandate, and other judicial remedy pursuant to Public Resources Code section 21168.9(b).

3.2 The *parties* agree to continue to negotiate in good faith, in accordance with Paragraph 5.1 of this *Agreement*, with the goal of reaching an agreement resolving all of their differences relating to the *ADP* and the operation of the *airport*. However, neither this *Agreement* nor any of the rights or obligations contained in this *Agreement* are contingent upon the *parties'* successful conclusion of such a *Phase 2 Agreement*. The rights and obligations of the *parties* are effective and binding on the *parties* regardless of the outcome of any petition, appeal, or remand in the *litigation*.

3.3 Except as expressly stated herein, this *Agreement* is not intended to, and shall not, effect a release or constitute a covenant not to sue with respect to any claims or causes of action, asserted in the *litigation* or otherwise, that any of the *petitioners* may have against the *Port*, or vice-versa.

3.4 Except as expressly stated herein, this *Agreement* is not intended to, and shall not, affect the *parties'* rights, obligations, or positions with respect to any aspect of the *litigation*.

3.5 This *Agreement* does not constitute an admission by any of the *petitioners* or the *Port* of the strength or weakness of the other side's claims or defenses.

#### 4.0 Terms of Settlement

4.1 *Petitioners*, as part of a good faith effort to settle the *litigation*, agree that the *Port* may proceed with the undertakings described in this subsection and as further described in the *Grossman letters*, without objection from the *petitioners*:

- (a) The parking garage;
- (b) The remain overnight (RON) apron, provided that this area may not be used for the loading or unloading of cargo or passengers until the *litigation* is completed, and after that time, four of the aircraft parking spaces in the RON may be used for the loading or unloading of cargo or passengers only for (i) sporadic, non-regularly scheduled itinerant charter passenger operations, or (ii) cargo operations for no more than 20 days per year;
- (c) The ground run-up enclosure;
- (d) The Swan-Pardee public parking lot;
- (e) The utility projects, but only to the extent that any such project neither (i) is primarily designed to support expanded cargo facilities at the *airport*, (ii) involves the extension of utilities to, or the construction of utilities at sites of the *ADP's* new or expanded air cargo facilities, (iii) involves any fuel storage or delivery

facilities other than necessary to carry out the projects listed in this Paragraph 4.1, nor (iv) is approved by *Port*, has a design or construction contract awarded, or is constructed without *Port* first providing *petitioners* with a minimum of ten calendar days notice of each such impending approval, contract award, or commencement of construction;

- (f) The rental car projects;
- (g) The Terminal 1 gate project;
- (h) The temporary ticket counters;
- (i) The security checkpoint improvements;
- (j) The third curbside;
- (k) The restroom improvements;
- (l) The Terminal 2 gate project; and
- (m) The *ADP* mitigation measures described in Exhibit C to this *Agreement*.

4.2 *Petitioners* agree that they will not object to or challenge the *FAA's* approval of the tower structure described in Paragraph 4.4(i), below, nor will they object to or challenge the *FAA's* approval of the imposition or use of money collected by passenger facility charges for any of the undertakings described in Paragraph 4.1. *Petitioners* further agree that they will not take any action that will hinder *Port* in its efforts to secure any approvals for or construct the undertakings described in Paragraph 4.1.

4.3 The *parties* agree to jointly request that any future Judgment entered in the *litigation* append, incorporate, and order compliance with this *Agreement*. Nothing in this *Agreement* is intended to contravene or forego any requirements of the Court of Appeal's decision in the *litigation*.

4.4 *Port* agrees:

- (a) Pending entry of any judgment, writ, and injunction referenced in Paragraphs 4.1 and 4.3 above, not to award or execute any construction contracts or carry out any construction activities with respect to any components of the *ADP* other than those listed in Paragraph 4.1 or the Airport Roadway Project. Unless and until a judgment has been entered in the *litigation* allowing *Port* to proceed with the *ADP*, should *Port* desire to award or execute any construction contracts or carry out any construction activities with respect to any additional *ADP* components

which are not severable under Public Resources Code section 21168.9(b), it will seek *petitioners'* prior written agreement that those additional components should be allowed to proceed.

(b) Not to construct any new runways on any portion of North Field at the *airport*. However, this provision shall not prevent *Port* from constructing a cross-wind runway at the *airport*, consistent with the previous proposals by *CLASS*; if the noise study described in subparagraph (j), below, demonstrates that operations on that runway would not expose any residents to significant noise impacts, including low frequency noise impacts.

(c) That no existing North Field runways (*i.e.*, Runways 9L/27R, 9R/27L, and 15/33) may be either (i) realigned or lengthened, or (ii) widened, reconstructed or overlaid if a purpose of doing so is to increase the permissible weight, wheel load, size or design group of aircraft using any such runway, except (and only to the minimum extent) such improvements are necessary either to maintain Runway 9R/27L as an alternate runway to Runway 11/29 or such improvements are necessary to comply with applicable FAA standards. In developing, studying, or implementing any project with respect to North Field runways, *Port* shall not assume or propose that any North Field runway other than Runway 9R/27L be used as an alternate runway to Runway 11/29 in case of emergencies or temporary closure of Runway 11/29 for construction, maintenance, or repairs.

(d) To hereby reaffirm its commitment to honor its obligations regarding (1) the restrictions on jet departures and other operations at North Field contained in paragraph 6(A) of the *1976 Settlement Agreement*, and (2) the other noise abatement procedures contained in paragraphs 6(B), (C), and (D) as those procedures currently exist and as the procedures may be revised over time in conformance with paragraph 6 of that agreement and as revised in accordance with *ANCA* (collectively, the "*procedures*").

(e) To take the following measures intended to improve conformance with the *procedures*:

(1) To use its good faith, best efforts to identify any North Field operations or engine run-ups that do not conform with any of the *procedures* (collectively, "*deviations*"), and with respect to any such known *deviations*, to provide *petitioners* with a quarterly written report describing each *deviation*, identifying the persons responsible, explaining the reason for the *deviation*, describing the efforts taken by *Port* to notify the responsible persons of the *deviation* and prevent future *deviations* by such persons, summarizing any response received by *Port*, and

appending a copy of any such written notification and response. **Port** will provide similar information regarding any other jet departures from Runways 27L & 27R;

(2) To provide all existing and future aircraft operators and fixed base operators who have leases with **Port** at the **airport** (collectively, "**Lessees**") with a notice indicating the **procedures** have been agreed to by the **parties** to this **Agreement** and the parties to the **1976 Settlement Agreement** as important noise abatement procedures and that the **Port**, subject to the limitations of applicable laws and regulations, urges each such **Lessee** to use its good faith, best efforts to comply with the **procedures**. An exhibit will be added to each such notice and request asking each **Lessee** to acknowledge, by signing, that the **Lessee** has received **Port's** notice and request. Within fifteen (15) days of the effective date of this **Agreement**, **Port** shall provide all existing **Lessees** with the notice, request, and acknowledgment. **Port** shall use its good faith, best efforts to obtain signed acknowledgements from all existing and future **Lessees**, and shall ask all existing and future fixed base operators to notify itinerant users who use their facilities of the **Port's** notice, request, and acknowledgment;

(3) To take all reasonable measures--including but not limited to verbal briefings, posting written notices, informing the Oakland Tower and **FAA** (e.g., Bay TRACON), and requesting **FAA** to include the **procedures** in the **FAA** document containing air traffic control procedures used in the Oakland Tower--necessary to timely and continuously inform all pilots and air traffic control personnel at or for the **airport** of the need for conformance with the **procedures**; and

(4) To construct, operate, and maintain an additional permanent noise monitor as close as feasible to the location for measuring noise from aircraft engine run-ups specified in paragraph 6(D) of the **1976 Settlement Agreement**, and to use data from that noise monitor in preparing the portion of the written reports, prepared pursuant to paragraph 4.3(e)(1) of this **Agreement**, pertaining to conformance with the aspect of the **procedures** regarding engine run-ups.

(f) To immediately develop a written plan, to be provided to, and subject to the approval of, the **petitioners**, describing reasonable steps that **Port** will implement to encourage and maximize conformance, and to discourage and minimize any diminution in conformance, with its other pre-ANCA programs intended to reduce noise associated with **airport** operations ("**programs**"). These **programs** include but are not limited to

the Nighttime Quiet Hours Program and the "Silent 7" departure procedure. Such written plan shall contain, at a minimum, measures substantially identical to those described in subparagraphs (e)(1) through (e)(3), above. For ease of reference, a brief description of the *programs* is appended to this *Agreement* as Exhibit D.

(g) To utilize flight track (radar) data to report to *petitioners*, on a quarterly basis, regarding the number and percentage of *airport* operations that do or do not (i) follow the *procedures* for North Field operations contained in paragraph 6(A) of the *1976 Settlement Agreement*, (ii) follow the restrictions on right turn climbout *procedures* over Bay Farm Island from Runway 11/29 contained in paragraph 6(B) of the *1976 Settlement Agreement*, (iii) follow the procedures set forth in the Nighttime Quiet Hours Program, (iv) follow the Silent 7 departure procedure throughout the length of that procedure, and (v) overfly the City of Berkeley, or fly within two miles of the portion of the Alameda County/Contra Costa County boundary that is coterminous with the City of Berkeley boundary, between the hours of 10 p.m. and 7 a.m. After five years, the *parties* will discuss whether to discontinue the requirements of this subparagraph (g); however, those requirements shall continue unless the *parties* agree to discontinue them.

(h) From the date of execution of this *Agreement* until *Port* provides the flight tracking system described in subparagraph (o) below, to provide *petitioners* with a monthly report that, for each nightly period in the month between the hours of 10 p.m. and 7 a.m., depicts the flight tracks of each departure to the north from the *airport* and arrival from the north to the *airport*, and identifies the air carrier and flight number, if any, associated with each such arrival and departure. If *Port* demonstrates that the flight tracking system described in subparagraph (o) can be provided in a sufficiently quick timeframe (as determined by *KJOB*), then the reporting requirement in this subparagraph (h) will be provided on a quarterly, rather than a monthly, basis until that requirement terminates upon *Port's* implementation of the flight track monitoring system described in subparagraph (o), below.

(i) To do as follows (necessary in light of impending FAA approval of aircraft control tower in alignment of proposed cross-wind runway): not take into account in any manner whatsoever *FAA* approval of a tower structure, including but not limited to the existence of such a structure or the cost of construction or removal or replacement of such a structure or *FAA* resistance to relocating such structure, in evaluating and making a decision on implementing a cross-wind runway; and to pay the costs associated with removal and replacement of a tower structure if *Port* determines to implement a cross-wind runway and a tower structure is in any way an impediment to implementation.

(j) To jointly undertake with *petitioners* a noise study, to be prepared by Vincent Mestre, P.E. and funded half by *Port* and half by *City* and *CLASS*, of impacts, including single event and low frequency noise impacts, associated with the cross-wind runway alignments previously proposed by *CLASS*. *Petitioners* agree that if the noise study demonstrates that the proposed runways would have no noise benefit, *Port* need not consider any such cross-wind runway as a mitigation measure to the *ADP* or in the Master Plan referenced in subparagraph (k), below. If, on the other hand, the noise study demonstrates that any such proposed runway would have a noise benefit, the *parties* agree to discuss the possibility of (i) requesting *FAA* to select an alternative to the proposed control tower that would not conflict with the proposed runway, (ii) including such a cross-wind runway as a mitigation measure in any Supplemental EIR for the *ADP*, and (iii) modifying the *ADP*, or the Master Plan referenced in subparagraph 4.4(k), below, to include such a runway. The noise study required by this subparagraph 4.4(j) shall be commenced within 30 days of the execution of this *Agreement* and shall be completed within 90 days of the execution of this *Agreement*. This schedule may be altered only subject to the schedule of Vincent Mestre, P.E. and then only for the minimum time necessary to accommodate his schedule.

(k) To promptly prepare a 20-year Master Plan for the *airport* in accordance with *FAA* Advisory Circular 150/5070-6A.

(l) To work with the *Committee*, an advisory body consisting of seven representatives. *City*, *CLASS*, and *KJOB*, shall each separately designate two representatives to the Committee, plus one alternate. The six representatives shall select the seventh representative by majority vote, and *KJOB* may designate one alternate for the seventh representative. The *Committee* shall be supported by *Port* staff as determined by *Port's* Executive Director. The Committee shall receive: (i) at least ten (10) days prior to the meeting, via e-mail at addresses supplied by the *petitioners*, the agenda, including brief descriptions of closed session items as required by the Brown Act, for all regular meetings of the Board of Port Commissioners and its Aviation Committee. Meeting agendas will be mailed to Committee representatives who do not have e-mail addresses. Copies of all public staff reports shall be e-mailed to the Committee at least five (5) days prior to each regular meeting of the Board of Port Commissioners and its Aviation Committee. Copies of public staff reports shall be mailed to Committee representatives who do not have e-mail addresses; (ii) at least the minimum amount of notice required by the Brown Act delivered personally by telephone or via e-mail, for special and emergency meetings of the Board of Port Commissioners and its Aviation Committee; and (iii) at least ten (10) days written notice before *Port* implements any airport projects, except emergency projects or projects for



which the need to take action arose after posting of the agenda. The **Committee** shall have work session meetings with the Aviation Committee of the Board of Port Commissioners three (3)-times per year to discuss issues and concerns regarding pending or proposed **airport** projects and the **Committee** may schedule additional internal **Committee** work session meetings before the **Port** takes action on major **airport** projects or plans, such as approval of the Master Plan described in subparagraph 4.4(k), above. The **Committee** and **Port** may each provide items to be placed on the agenda for such work session meetings as long as such requests are made in writing and submitted to the other party at least fifteen (15) days prior to the meeting. A scheduled meeting shall not be postponed or canceled by the **Committee** or **Port** without reasonable cause and reasonable advance notice and discussion. **Port** shall be responsible for ensuring that the Aviation Committee and Board of Port Commissioners meetings comply with any applicable requirements of the Brown Act and **Port** or City of Oakland regulations. **City** shall be responsible for ensuring that attendance of and participation by **City** representatives at the Aviation Committee and Board of Port Commissioners meetings comply with any applicable requirements of the Brown Act and **City** regulations. A status report item from the **Committee** and the Aviation Committee shall be placed on the Board of Port Commissioners' agenda at least once annually. The goal of the **Committee**, the Aviation Committee, and the Board of Port Commissioners shall be to enhance communication between the **parties** regarding pending or proposed **airport** projects, and to establish a relationship of trust and cooperation."

(m) To promptly make available to the public on its web site notice of any proposed **Port** projects, as well as complete copies of all notices and documents prepared for projects at the **airport** pursuant to the California Environmental Quality Act ("CEQA," Public Resources Code § 21000 *et seq.*) or the National Environmental Policy Act ("NEPA," 42 U.S.C. § 4321 *et seq.*).

(n) Not to propose, approve, or construct any extension of Runway 11/29 that would give Runway 11/29 a total effective length in excess of 11,600 feet. This provision shall preclude an extension of Runway 11/29 more than 1,600 feet to the northwest unless the **FAA** requires **Port** to do so in order to achieve an effective runway length of 11,600 feet, in which case Runway 11/29 can be extended to the northwest up to a total effective length of 11,600 feet even if that involves more than a 1,600 foot extension. **Port** agrees not to propose an extension of more than 1,600 feet to the northwest, unless the **FAA** requires the **Port** to include a longer extension in its application in order to achieve a total effective runway length of 11,600 feet. In the event **FAA** requires **Port** to extend Runway 11/29 more than 1,600 feet to the northwest to achieve an effective runway length of 11,600 feet for arrivals, **petitioners** retain their

ability to object to that portion of the runway extension that exceeds 1,600 feet to the northwest. Any existing or new stopways or clearways shall be included in measurements of any distances contained in this subparagraph 4.4(n) only to the extent they would be considered, in accordance with Appendix 14 to *FAA* Advisory Circular 150/5300-13, in determining the takeoff distance available (TODA) on Runway 29 for departures that start their takeoff roll at the southeast end of that runway and do not have the TODA reduced due to obstacles in the departure area. Safety areas or non-runway pavement other than stopways or clearways shall not be included in measurements of any distances contained in this subparagraph 4.4(n).

(o) To install, operate, and maintain a flight tracking system that displays flight track and flight operations information on the *airport* website. Subject to *FAA* regulations, policies or requirements, and subject to technical feasibility, this system will allow web users to review flight operations over specific geographic areas by date and time, identify the aircraft type, operator, flight number, and altitude of each aircraft, and allow retrospective viewing of data for the prior twelve (12) months. To the extent practicable, flight track and flight operations information will be updated every 24 hours. The *Port* will use its good faith, best efforts to install this system within six months from the effective date of this *Agreement*. The *Port* will also use its good faith, best efforts to:

(i) coordinate with and persuade *FAA* and carriers, relative to installing and using a new GPS navigational system or aid to maximize and enhance conformance with the Silent 7 procedure or other noise abatement procedures;

(ii) coordinate with and persuade *FAA* and carriers, relative to evaluating and implementing if feasible, in accordance with *ANCA* and to the extent possible without causing additional noise impacts in *City*, changes in climb rates or operating procedures used in connection with the Silent 7 procedure or other noise abatement procedures to reduce and minimize overall noise effects on Berkeley and other East Bay communities;

(iii) coordinate with and persuade *FAA*, to conduct discussions and meetings with all pertinent *FAA* levels to seek conformance with the Silent 7 procedure or other noise abatement procedures to the extent practicable. Such efforts shall include seeking cooperation from the carriers, the *FAA* Oakland Center facility, and *FAA* Bay TRACON; and

(iv) evaluate a reverse Silent 7 procedure or similar procedure during use of *FAA's* Southeast Plan, whereby planes

arriving at the *airport* between 10 p.m. and 7 a.m. would no longer overfly or turn south over Berkeley to land, but rather would fly further north and turn south over the Bay, and if the evaluation shows such a procedure would result in an overall benefit to the affected communities and would comply with *ANCA*, coordinate with and persuade *FAA* to implement such a procedure. The evaluation of a reverse Silent 7 procedure or similar procedure shall be conducted by *Port* within one year.

*Port* will timely and in good faith communicate with and involve *the petitioners* with regard to the matters set forth in subparagraphs (i), (ii), (iii), and (iv), above.

4.5 The *petitioners* agree to meet and confer in good faith with *Port* on any future efforts by *Port* to secure approvals for and construct an outboard runway at the *airport*.

## 5.0 Miscellaneous Provisions

### 5.1 Phase 2 Negotiations

The *parties* have entered into this *Agreement* as a partial settlement of the *litigation* and intend to enter into good faith negotiations in an attempt to reach final settlement of all the issues in the *litigation*. To this end, the *parties* agree to begin *Phase 2* negotiations within ten days of the execution of this *Agreement* and attempt to conclude such negotiations by December 31, 2001. The subjects for discussion include, but are not limited to: the status of those *ADP* components not included in this *Agreement*; a potential new air carrier runway at the *airport* outboard of existing Runway 11/29; the potential expansion in the use of, and limits on, the *RON*; and additional mitigation measures to reduce noise and other impacts on Alameda and Berkeley.

### 5.2 Term of Agreement

*Port* shall have the option of terminating this *Agreement* at its sole discretion if, due to actions by *petitioners*, any individual or entity not a party to this *Agreement*, or any court order, injunction, or judgment, *Port* is prevented from proceeding immediately with construction of the undertakings specified in Paragraph 4.1. The *petitioners* shall have the option of terminating this *Agreement* at their discretion if any of the obligations described in Paragraph 4.4 of this *Agreement* are ever determined to be unenforceable or to violate any state or federal laws, regulations, or policies. The *parties* intend that the termination rights contained in this Paragraph 5.2 shall be construed to secure each *party's* substantial benefits under this *Agreement*, but not to provide an excuse for a *party* to abdicate its responsibilities. Before any *party* may exercise its right to terminate this *Agreement*, the *parties* shall meet and confer in good faith to

attempt to address the conditions potentially giving rise to the right to terminate. If this *Agreement* is not terminated as provided in this paragraph, it shall remain in full force and effect unless and until it is terminated by written consent of all of the *parties*.

### 5.3 Binding on Successors

This *Agreement* shall be binding on the *parties* and their successors, including but not limited to any successor government agencies or entities responsible for the operation of the *airport*.

### 5.4 Reporting Requirements

If *Port* determines that the reporting requirements under this *Agreement* are unduly burdensome, the *parties* shall meet and confer in an attempt to modify the *Agreement* to reduce the reporting burden on *Port* while still providing the *petitioners* with the substance of the information provided by the prescribed reports.

### 5.5 Performance of Agreement

(a) The *parties* each agree to do all things necessary or convenient to carry out and effectuate the terms of this *Agreement* and not to do or fail to do anything, directly or indirectly, which will interfere with the terms and conditions of this *Agreement*.

(b) If a dispute arises concerning a *party's* compliance with this *Agreement*, and if no exigent circumstances require immediate court proceedings, the *party* asserting a breach shall provide notice of that assertion to the allegedly breaching *party*. Within 21 days of the receipt of that notice, if the circumstances constituting the alleged breach have not been cured and if no exigent circumstances require immediate court proceedings, the *parties* shall meet and confer to attempt in good faith to resolve the dispute.

(c) From the date of execution of this *Agreement* until the date that construction of the undertakings described in Paragraph 4.1 has been completed, *Port* shall provide *petitioners*, on a quarterly basis, with written information summarizing the status of the undertakings described in Paragraph 4.1 and the steps *Port* has taken to comply with this *Agreement*.

### 5.6 Attorneys' Fees and Costs

In the event suit is brought or a claim is made to enforce this *Agreement*, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

### 5.7 Mutually Drafted Agreement

Each of the *parties* has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this *Agreement*. Accordingly, the *parties* agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this *Agreement*. Further, each of the *parties* acknowledges that it has read this entire document, including the attached exhibits, and fully understands its terms and effect.

### 5.8 Integrated Agreement

This *Agreement* contains the entire agreement of the *parties* and supersedes any written or oral agreements or understandings reached in 2001 concerning the settlement of the disputes addressed in this *Agreement*. Notwithstanding the preceding sentence and any other provision of this *Agreement*, this *Agreement* shall not supersede or modify (a) *Port's* or *City's* rights or obligations under the *1976 Settlement Agreement* or the *programs*, or (b) the noise abatement measures contained in the *1976 Settlement Agreement* or the *programs*. None of the *parties* is relying upon any promise, representation, or statement not contained in this *Agreement*, unless contained in a concurrent written agreement executed by *Port* and at least one of the *petitioners*. The *parties* acknowledge that this *Agreement* provides for the *parties* to take actions or to refrain from taking actions at different times, and that the taking or forbearance of certain of those actions, once accomplished, could not be undone. Accordingly, the *parties* expressly waive any potential right to seek to modify or vacate the terms of this *Agreement*, except by a further writing signed by each of the *parties*.

### 5.9 No Third-Party Rights

This *Agreement* is not intended to, and shall not, create any rights in favor of any persons other than the *parties*.

### 5.10 Warranties of Authority

The signatories to this *Agreement* hereby represent and warrant that they are duly authorized to execute this *Agreement* on behalf of the parties for which they have signed and that they have all necessary lawful authority, and have taken all necessary actions, to execute this *Agreement*.

### 5.11 Notice

Any notices required by this *Agreement* shall be in writing and shall be deemed to have been provided when delivered to the addressees for the other *parties* at the addresses provided in this paragraph, or at such other address for a *party* as shall have been specified by that *party* in written notice provided to the other *parties*. Notices shall be addressed and delivered as follows:

**To City:**

City Manager  
City of Alameda  
2263 Santa Clara Avenue  
Room 320  
Alameda, CA 94501

*with a copy to:*

City Attorney  
City of Alameda  
2263 Santa Clara Avenue  
Room 280  
Alameda, CA 94501

**To Port:**

Executive Director  
Port of Oakland  
530 Water Street  
Fifth Floor  
Oakland, CA 94607

*with a copy to:*

Port Attorney  
Port of Oakland  
530 Water Street  
Fourth Floor  
Oakland, CA 94607

**5.12 Headings**

Paragraph headings are for convenience only and are not a substantive part of this *Agreement*.

**5.13 Execution in Counterparts**

The *parties* may execute this *Agreement* in counterparts, each one of which will be an original or the equivalent thereof. This Amended and Restated Agreement supersedes and replaces all other versions of this Agreement.

**To CLASS:**

E. Clement Shute, Jr., Esq.  
Shute, Mihaly & Weinberger  
396 Hayes Street  
San Francisco, CA 94102

**To KJOB:**

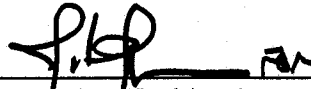
John R. Shordike, Esq.  
1826 Yosemite Road  
Berkeley, CA 94707

*with a copy to:*

Margery Eriksson  
55 Poppy Lane  
Berkeley, CA 94708

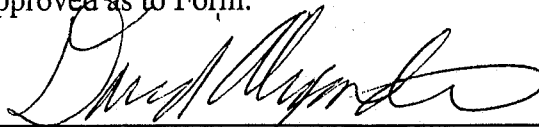
IN WITNESS WHEREOF, the *parties* have executed this *Agreement* as of the date first written above.

**CITY OF OAKLAND, Acting by and through its Board of Port Commissioners**

By:   
Tay Yoshitani  
Executive Director


Date: 5/1/02

Approved as to Form:

  
David L. Alexander  
Port Attorney

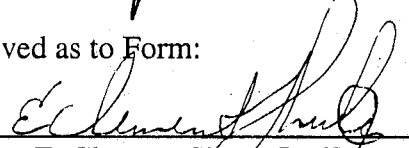
Date: 5/2/02

**CITIZENS LEAGUE FOR AIRPORT SAFETY AND SERENITY**

By:   
Ewart A. Wetherill

Date: 10 April 2002

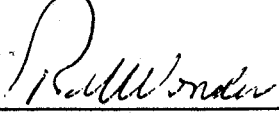
Approved as to Form:

  
E. Clement Shute, Jr., Esq.

Attorney for Citizens League for Airport Safety and Serenity

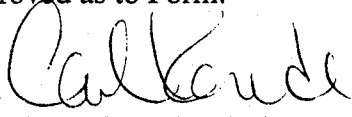
Date: April 10, 2002

**CITY OF ALAMEDA**

By:   
Robert Wonder  
Assistant City Manager

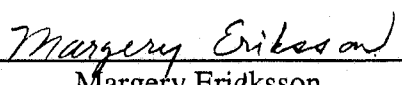
Date: 4/15/02

Approved as to Form:

  
Carol A. Korade  
City Attorney

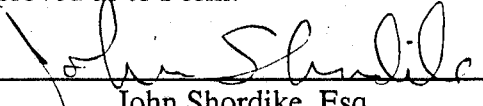
Date: 4/15/02

**BERKELY KEEP JETS OVER THE BAY COMMITTEE**

By:   
Margery Ericksson

Date: 4/30/02

Approved as to Form:

  
John Shordike, Esq.  
Attorney for Berkeley Keep Jets Over the Bay Committee

Date: 4/30/02