

PHASE TWO AGREEMENT

This Agreement is entered into as of October 8, 2002.

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. *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. This *Agreement* was referred to in the *Phase 1 Agreement* as the “Phase 2 Agreement.”
- 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, any supplements and addenda thereto existing as of the date of this *Agreement*, and the supplement *Port* presently is preparing, which will describe

the changes to the Airport Development Program identified in Exhibit A to this *Agreement*.

- 2.10 “*EIR*” refers to the Environmental Impact Report for the *ADP* prepared by *Port*, as well as any supplements and addenda thereto, including the supplement the *Port* presently is preparing.
- 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 & Northern District of California No. C-02-1780 PJH).
- 2.13 “*Phase I Agreement*,” which has been amended and restated, refers to the previous agreement dated as of November 14, 2001, between *Port*, on the one hand, and *Petitioners*, on the other hand, resolving some of their differences with respect to the operation and expansion of the *Airport*.
- 2.14 “*Master Plan*” refers to the 20-year Master Plan for the *Airport*, prepared in accordance with *FAA* Advisory Circular 150/5070-6A, required by paragraph 4.4(k) of the *Phase I Agreement*. The *Master Plan* will provide guidance for the next 20 years of Airport planning, commencing in approximately 2002 or 2003. As described in *FAA* Advisory Circular 150/5070-6A, *Port* anticipates that the *Master Plan* will include short-term planning strategies as well as planning principles that will guide longer range airport planning. The *FAA* Advisory Circular recognizes: “The goal of a master plan is to provide guidelines for future airport development which will satisfy aviation demand in a financially feasible manner, while at the same time resolving the aviation, environmental and socioeconomic issues existing in the community.” To that end, *Port* intends to work closely with *Petitioners* to identify community needs; to discuss with *Petitioners* the needs identified by *Port*, its tenants, the *FAA*, the aviation industry, and other affected communities; and to enlist *Petitioners’* assistance in exploring solutions to address their communities’ needs and to balance any competing tensions between their communities’ needs and the needs of others, including measures to reduce aircraft noise. While *Port* cannot assure

Petitioners that they will be satisfied with the *Master Plan*, *Port* can assure *Petitioners* that *Port* staff will coordinate with *Petitioners* throughout the process of preparing the *Master Plan*, and *Port* staff will be instructed to listen closely to *Petitioners'* concerns and suggestions and to act on such concerns and suggestions positively where appropriate. The *Parties* recognize that it is in their mutual interest to communicate with one another during the process of preparing the *Master Plan*; and the *Parties* further recognize that it is in their mutual interest to focus their mutual attention on "big picture" needs and solutions, rather than detailed planning of individual *Airport* facilities. Because the *Master Plan* will be conceptual in nature, it will not include every project that *Port* might propose for approval during the 20-year planning period covered by the *Master Plan*, nor will inclusion of a project in the *Master Plan* constitute a proposal to approve that project. Accordingly, *Port* intends that its approval of the *Master Plan* will be exempt from the requirements of the California Environmental Quality Act so long as that approval is limited to approval of the *Master Plan* as a planning study, and does not constitute a decision by *Port* to approve, adopt, or fund any project or group of projects described in the *Master Plan*.

- 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 the *Phase I Agreement* as Exhibit B.
- 2.16 "*Passenger facilities*" means the following improvements intended to support commercial passenger operations: a net increase in the number of gates; a net increase in the number of loading bridges (except for installation of multiple loading bridges that would be used to load or unload a single aircraft); and a net increase in the number of remain overnight parking spaces for commercial passenger aircraft. *Passenger facilities* does not include improvements constructed or used primarily for security reasons or for any other emergency-related reason.
- 2.17 "*Cargo facilities*" means the following improvements intended to support commercial cargo or air mail operations: a net increase in the square footage of pavement used for loading or unloading of cargo or mail from aircraft; new buildings used primarily for cargo- or mail-handling activities; a net increase in the number of remain overnight parking spaces for air cargo or air mail aircraft; and expansion of an existing building used primarily for cargo- or mail-handling activities or any other existing building on the *Airport* if for the purpose of using the expanded building primarily for cargo- or mail-handling activities, if (i) a cumulative total of such expansion projects would exceed 75,000 square feet and (ii) the expansion project would be intended to significantly expand the use or capacity of the existing building for cargo- or mail-handling activities beyond that existing at the time that *Port* considers approval of the expansion project. *Cargo*

facilities does not include improvements used or constructed primarily for security reasons or for any other emergency-related reason.

2.18 “*CEQA*” refers to the California Environmental Quality Act, Public Resources Code § 21000 *et seq.*

2.19 “*CEQA Guidelines*” refers to 14 Cal. Code Reg. § 15000 *et seq.*

3.0 Recitals; Nature and Purpose of this Agreement

3.1 This *Agreement* is entered into in good faith for the purpose of settling the disputes between the *Parties* relating to the *ADP* and the operation and expansion of the *Airport*.

3.2 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.

3.3 The *Parties* acknowledge *Petitioners’* interest in (a) avoiding piecemeal expansion of the *Airport*, (b) ensuring that *Port* considers and discloses how any future expansion of *Airport* facilities fits into long-term plans for the *Airport*, (c) ensuring that *Port* considers and discloses the short- and long-term environmental impacts of any future expansion of *Airport* facilities, and (d) avoiding or minimizing environmental impacts (and, in particular, nighttime noise impacts) from *Airport* operations on those who reside, work, or recreate in *City* and Berkeley.

3.4 The *Parties* also acknowledge *Port’s* interest in (a) the safe and efficient operation of the *Airport*, (b) responding to and seeking to accommodate the demand for air transportation at the *Airport*, (c) responding to and balancing the concerns of all of its neighboring communities, affected communities, *Airport* users, and tenants, (d) providing sufficient facilities for existing and future air carriers operating at the *Airport*, (e) complying with all federal and state laws, orders, and requirements, and (f) moving swiftly to address all safety, security, or emergency related matters at the *Airport*.

4.0 Terms of Settlement

4.1 *Petitioners* agree:

(a) Within 10 days following *City’s* receipt of payment from *Port* pursuant to paragraph 4.2(k), below, and *KJOB’s* receipt of payment from *Port* pursuant to the Supplemental Phase 2 Agreement of even date, to seek entry of judgment in state court and dismissal in federal court of the *Litigation* in accordance with paragraph 4.3, below.

(b) Not to object to, challenge, or take any action that hinders approval, construction, operation, maintenance, or financing of any components of the *ADP* with the sole exception of the North Field Cargo components and United States Postal Service (USPS) facilities referenced in paragraphs 4.2(b) and (d), below. *Petitioners* also will not encourage or assist any other individual or entity in objecting to, challenging, or taking any action that hinders approval, construction, operation, maintenance, or financing of any *ADP* facilities. Nothing in this paragraph is intended or shall be construed to limit the ability of *Port* or *City* to enforce their rights under the *1976 Settlement Agreement*, or of any *Party* to enforce their rights under the *Phase 1 Agreement* or this *Agreement*. This paragraph also is not intended to prevent *Petitioners* from notifying *Port* of any unlawful construction activities, or construction activities not authorized by *Port*, undertaken by *Port's* construction contractors.

(c) Not to make any statements in opposition to or submit any comments on the forthcoming Supplement to the *EIR* being prepared by *Port* in response to the Court of Appeal's decision in the *Litigation* and not to encourage or assist any other individual or entity in preparing or submitting comments on the Supplement to the *EIR*.

(d) Except as otherwise provided in this Agreement, to waive any claims for additional attorneys' fees and costs related to the *Litigation*.

(e) Not to bring any challenge to *Port's* approval of the *Master Plan* pursuant to the provisions of the California Environmental Quality Act or the National Environmental Policy Act, so long as that approval is limited to approval of the *Master Plan* as a planning study, and does not constitute a decision by *Port* to approve, adopt, or fund any project or group of projects described in the *Master Plan*, or have a legally binding effect on later *Port* activities.

4.2 *Port* agrees:

(a) Before *Port* prepares and approves the *Master Plan*, not to approve or construct *Passenger facilities* for the *Airport* beyond those contained in the *ADP*.

(b) Before *Port* prepares and approves the *Master Plan*, not to approve, construct, issue building permits for, or enter into new leases that authorize construction of, or new modifications to existing leases that authorize construction of: (i) any of the North Field cargo components identified in the *ADP* as Project D.4, with the sole exception of the infield roadway, or (ii) *Cargo facilities* beyond those contained in the *ADP*. A diagram depicting Project D.4 is attached to this *Agreement* as Exhibit B.

(c) Except for emergencies, not use or allow the use of the *ADP EIR* Project D.4 site (with the exception of the infield roadway) for any cargo use, including loading, unloading, office operations, sorting, storage, or equipment or vehicle (including aircraft) parking, storage or servicing, until *Port* has prepared and approved the *Master Plan*.

(d) Not to approve, construct, issue a building permit for, or enter into new leases that authorize construction of, or new modifications to existing leases that authorize construction of, the USPS facilities identified in the *ADP* as Project D.2 at any location on the *Airport* for at least 20 years. A diagram depicting Project D.2 is attached to this *Agreement* as Exhibit C.

(e) Before *Port* prepares and approves the *Master Plan*, not to propose, approve, or construct a new runway at the *Airport* inboard of existing Runway 11/29 and not to propose a new inboard runway for approval in the *Master Plan*. This provision shall not prevent *Port* from (i) describing an inboard runway as an "alternative" in the *Master Plan*, or in any environmental review of the *Master Plan* pursuant to *CEQA* or federal law, (ii) after initial preparation and approval of the *Master Plan*, subsequently proposing an inboard runway for approval during the planning period covered by the *Master Plan*, or (iii) performing any act necessary to respond to an emergency. This provision also does not restrict *Port's* ability to use temporary Runway 12/30 (Taxiway W) for emergency purposes or for construction, maintenance, or other reasons necessitating the closure of Runway 11/29. This provision also does not prevent *Port* from proposing a new inboard runway for approval at any time after it has prepared and approved the *Master Plan*; however, subsequent to preparation and approval of the *Master Plan*, and prior to proposing a new inboard runway for approval, *Port* would perform project-level environmental studies for a proposed new inboard runway (if such a runway ever is proposed) and all *Parties* would have an opportunity to comment on those studies and the proposal.

(f) *City*, *CLASS*, and *KJOB* each shall have formal representation in the formulation of the *Master Plan* to be prepared pursuant to paragraph 4.4(k) of the *Phase 1 Agreement* and shall have the opportunity to participate in development and consideration of objectives, alternatives, and elements with respect to the *Master Plan*.

(g) As full mitigation for all traffic impacts of the *ADP* in Alameda, to provide funding for *City* to perform, according to a schedule agreed to by *City* and *Port* and not later than six months from execution of this *Agreement*, updated traffic and engineering studies with respect to the following three Alameda intersections: Otis Drive/Fernside Boulevard; Otis Drive/Bayview/High Street;

and Island Drive/Doolittle Drive. The scope of work of the traffic and engineering studies and the consultant or consultants who perform those traffic and engineering studies shall be mutually agreeable to *Port* and *City*. The traffic study will identify the improvements needed to ensure that those intersections operate at a service level no worse than LOS D, and the engineering study will (i) provide a detailed estimate of the pre-design, design, construction, public information, and related costs that will be incurred to implement the necessary improvements and (ii) a non-binding recommendation of *Port's* fair share of the cost of the necessary improvements. *Port* will make a lump sum payment to *City* for the cost of the traffic and engineering studies within 30 days of receipt of a copy of the contract with the consultant or consultants, attaching a scope of work. The total funding from the *Port* to the *City* for the traffic and engineering studies shall not exceed \$75,000. If *City* constructs any of the improvements identified in the traffic and engineering studies with respect to the three Alameda intersections identified above, *Port* shall pay its fair share of the cost of those intersection improvements.

(h) To use its good faith, best efforts to coordinate with and persuade *FAA* to maximize the use of the "Silent 7" procedure for departures on Runway 29.

(i) To take concrete and assertive actions to gain enhanced pilot, tenant, air carrier, and *FAA* compliance with (i) the provisions of the *1976 Settlement Agreement* relating to jet departures on Runways 27L&R, and (ii) the other noise abatement measures embodied in the "procedures" and "programs," as those terms are defined in the *Phase 1 Agreement*. Subject to considerations of applicable laws, rules, regulations, and procedures concerning safety, *Port's* actions shall include, but not be limited to, using its good faith, best efforts to coordinate with and persuade *FAA* to educate air traffic control (ATC) personnel at the *Airport* that (A) the provisions in the *1976 Settlement Agreement* restricting departures on Runways 27L&R should be followed to the fullest extent feasible, (B) strict compliance with those provisions is important to all *Parties*, (C) the expectation is that, to the extent feasible, the only exceptions to compliance would be attributable to emergencies, periods when Runway 11/29 is closed, or periods when access from North Field to Runway 11/29 is unavailable, and (D) compliance with those and other existing noise abatement procedures is a high priority for *Port* in maintaining good relations with noise-sensitive neighboring communities.

(j) To jointly undertake with *Petitioners* an evaluation of general aviation aircraft departures from Runways 27L/R under visual flight rules, to be prepared by Mestre Greve & Associates and any mutually agreeable subcontractor to Mestre Greve & Associates, and funded half by *Port* and half by *City*. The

goal of the evaluation will be to identify, and establish a protocol for implementing, procedures and/or mechanisms that will encourage pilots of general aviation aircraft departing from these runways to turn right as soon as is feasible (safety permitting), in order to reduce general aviation aircraft noise heard by *City* residents. If the evaluation demonstrates that lighting or other navigational aids on the Chuck Corica Golf Complex, will assist pilots of general aviation aircraft in turning sooner to reduce noise experienced by residents, *Port* will fund half the cost of installing such navigational aids, with the other half funded by *City*. If the evaluation demonstrates that revised ATC instructions to pilots will assist pilots of general aviation aircraft in turning sooner to reduce noise experienced by residents, *Port, City, and CLASS* jointly will use their good faith, best efforts, to persuade the *FAA* to incorporate such instructions into its ATC tower procedures for the *Airport*. Further, *Port* will educate general aviation pilots and its tenants regarding the procedures and/or mechanisms, and *Port* will report deviations from the procedures and/or mechanisms in the manner described in paragraph 4.4(e)(1) of the *Phase 1 Settlement Agreement*, or as otherwise agreed to by the *Parties*.

(k) Within thirty (30) days of execution of this *Agreement*, to pay *City* three hundred seventy five thousand dollars (\$375,000.00) for attorneys' fees and costs related to the *Litigation*.

4.3 The *Parties* agree to jointly request entry in the state court *Litigation* of the Judgment and Peremptory Writ of Mandate attached as Exhibits D and E, respectively, to this *Agreement*. The *Parties* further agree to jointly request that the Judgment entered in the state court *Litigation* append, incorporate, and order compliance with this *Agreement* and the *Phase 1 Agreement*. The *Parties* agree to jointly request entry of the order dismissing the federal court *Litigation* with prejudice attached as Exhibit F. Nothing in this *Agreement* is intended to contravene or forego any requirements of the Court of Appeal's decision in the state court *Litigation*.

5.0 Referee Provisions

5.1 The *Parties* recognize the possibility that exigent or unforeseen circumstances may warrant relaxation of the prohibitions, in paragraphs 4.2(a)(b) (c) (d) or (e) of this *Agreement*, against *Port* approving, constructing, or issuing building permits for *Passenger facilities* or *Cargo facilities* not contained in the *ADP*, the Project D.4. North Field cargo components, the Project D.2 U.S. Postal Service project, or the new inboard runway before preparation of the *Master Plan* (or, in the case of the U.S. Postal Service project, expiration of the 20-year limitation). To balance the sometimes competing interests of the *Parties* identified in paragraphs 3.3 and 3.4 of this *Agreement*, while preserving each of the *Parties'* benefit of the bargain, the *Parties* have agreed upon the procedure described in paragraphs 5.3 through 5.6, below.

5.2 *Port* may not take any action prohibited by paragraphs 4.2(a) (b) (c) (d) or (e) of this *Agreement* except in accordance with an agreement reached pursuant to the procedure described in paragraphs 5.3 through 5.6, below. The existence of this procedure for potentially relaxing strict compliance with paragraphs 4.2(a)(b) (c) (d) or (e) is not intended, and shall not be construed, to mean that *Port* may take (or seek to take) action prohibited by any other provisions of this *Agreement*.

5.3 If *Port* desires to take action otherwise prohibited by paragraphs 4.2(a) (b) (c) (d) or (e) (a "Proposal"), it shall provide *Petitioners* with written notice describing (a) the nature of the Proposal, in as much detail as is available to *Port*, including a current schedule for the study, approval, construction, and operation of the Proposal's *Passenger facilities, Cargo facilities, Project D.4 North Field cargo component, Project D.2 U.S. Postal Service facilities, or new inboard runway,* (b) the reason for the Proposal, including an explanation why *Port* believes compliance with paragraphs 4.2(a) (b) (c) (d) or (e) is infeasible or unwarranted, and (c) the nature and anticipated timing of the environmental review for the Proposal contemplated by *Port* (e.g., preparation of an environmental impact report or a negative declaration, or issuance of a notice of exemption).

5.4 The *Parties* shall meet and confer within 10 days of receipt of the notice required by the preceding paragraph to determine if they can reach an agreement regarding whether the Proposal, either as initially proposed by *Port* or as modified or mitigated pursuant to the *Parties'* discussions, may proceed. No such agreement permitting a Proposal to proceed shall constitute a waiver of any of *Petitioners'* rights under this *Agreement* or be asserted by *Port* as a basis for approval of any future Proposals.

5.5 By this *Agreement*, the *Parties* respectfully request the Court in the state court *Litigation* to appoint a Referee with the responsibilities and authority specified below. The Referee shall be jointly agreed upon by the *Parties* or, if the *Parties* are unable to agree, shall be selected by the Court from a list containing two names submitted by *Petitioners* and two names submitted by *Port* (the "*Candidates*"). The list shall present the *Candidates* in alphabetical order without identifying which of the *Parties* proposed them and shall summarize the *Candidates'* respective qualifications and compensation requirements. No person shall be eligible to be a *Candidate* who is a current or former employee of or consultant to any of the *Parties*, or who is an employee, partner, member, shareholder, or officer of a company or business that has provided services to any of the *Parties*. Further, the *Parties* shall use their best efforts to identify *Candidates* who are independent and impartial. If a *Party* does not believe that a *Candidate* identified by another party would be independent and impartial, the *Party* may present such evidence to the Court at any time and the Court may consider that evidence in selecting a Referee or in determining whether the Referee should be replaced. The Referee shall be compensated at the rate of compensation specified in the Court's order appointing the Referee, or as may subsequently be modified by the Court. The Referee shall continue to serve, regardless of whether any Proposal, mediation, or arbitration is pending, until he or she has resigned or

been replaced by the Court, or until *Port's* obligations pursuant to paragraphs 4.2 (a) (b) (c) (d) or (e) have terminated. *Port's* obligations pursuant to paragraphs 4.2 (a) (b) (c) and (e) shall be deemed to have terminated on the date that *Port* provides written notice to Petitioners that it has completed preparation and approval of a *Master Plan* in accordance with the provisions of paragraph 2.14. *Port's* obligations pursuant to paragraph 4.2 (d) shall be deemed to have terminated 20 years from the date of this *Agreement*. The Referee may periodically provide the *Parties* with a statement for services rendered. *Port* and the *Petitioners* shall each be responsible for paying half of the Referee's fees and expenses.

5.6 If the *Parties* are unable to reach an agreement concerning a Proposal, *Port* may request the Referee to mediate the *Parties'* differences. *Port* shall provide the Referee with a copy of the written materials it provided the *Petitioners* pursuant to paragraph 5.3, above. If *Port* provides the Referee with additional written materials (other than a copy of this *Agreement*, the *Phase 1 Agreement*, or any environmental documents regarding the *ADP*), it shall provide a copy to *Petitioners* together with an explanation to the Referee and *Petitioners* why those materials were not previously provided to *Petitioners*. *Petitioners* may provide the Referee with written materials in connection with the mediation, and shall provide *Port* with a copy of any such materials. Any mediation shall be completed within 30 days, unless extended by agreement of the *Parties* or by the Referee. Each side shall bear its own attorneys' fees and expenses with respect to any mediation. The Referee's responsibility shall be limited to those matters expressly stated in paragraphs 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 of this *Agreement*, unless otherwise expressly agreed to in writing by the *Parties*.

6.0 Miscellaneous Provisions

6.1 Term of Agreement

Port shall have the option of terminating this *Agreement* at its sole discretion if, for any reason, judgment in the state court *Litigation* or dismissal in the federal court *Litigation* is not entered substantially as requested by the *Parties* in accordance with this *Agreement*, or if, due to actions by *Petitioners* in violation of their obligations under paragraph 4.1, above, *Port* is prevented from proceeding with approval, construction, operation, maintenance, or financing of any *Passenger facilities*, *Cargo facilities*, or other facilities contained in the *ADP* with the sole exception of the North Field cargo components and the USPS facilities referenced in paragraphs 4.2(b) and (d), above. *Petitioners* shall have the option of terminating this *Agreement* at their discretion if *Port* breaches any of its obligations under paragraph 4.2, above, or if any of those provisions or obligations 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 6.1 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*.

6.2 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*.

6.3 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.

6.4 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.

6.5 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.

6.6 Integrated Agreement

This *Agreement*, together with the Supplemental Phase 2 Agreement between *Port* and *KJOB* of even date, contains the entire agreement of the *Parties* and supersedes any written or

oral agreements or understandings reached in 2002 concerning the settlement of their disputes concerning the *ADP*. Notwithstanding the preceding sentence and any other provision of this *Agreement*, this *Agreement* shall not supersede or modify any *Party's* rights or obligations under the *1976 Settlement Agreement*, the *Phase 1 Agreement*, as amended and restated, or the Supplemental Phase 2 Agreement of even date. None of the *Parties* is relying upon any promise, representation, or statement not contained in this *Agreement*. The *Parties* acknowledge that this *Agreement* provides for the *Parties* to take actions or 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*.

6.7 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*.

6.8 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*.

6.9 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

To Port:

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

with a copy to:

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

To CLASS:

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

with a copy to:

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

To KJOB

John Shordike, Esq.
1826 Yosemite Rd.
Berkeley, CA 94707

with a copy to:

Margery Eriksson
55 Poppy Lane
Berkeley, CA 94708

6.10 Headings

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

6.11 Execution in Counterparts

The *Parties* may execute this *Agreement* in counterparts, each one of which will be an original or the equivalent thereof.


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

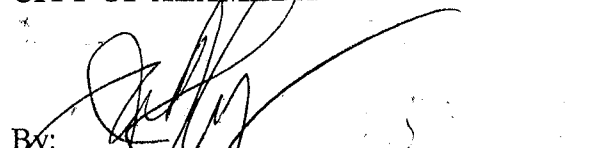
By: 
Tay Yoshitani
Executive Director

Date: 10/8/02

Approved as to Form:

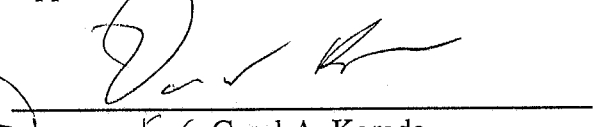

David L. Alexander
Port Attorney

CITY OF ALAMEDA

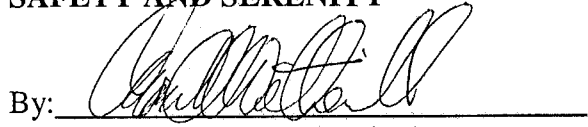
By: 
James M. Flint
City Manager

Date: 10-8-02

Approved as to Form:

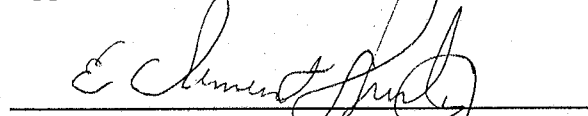

Carol A. Korade
City Attorney

CITIZENS LEAGUE FOR AIRPORT SAFETY AND SERENITY

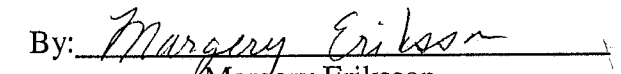
By: 
Ewart A. Wetherill

Date: 8 October 2002

Approved as to Form:

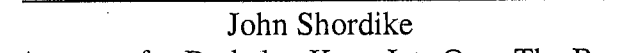

E. Clement Shute, Jr., Esq.
Attorney for Citizens League for Airport Safety and Serenity

BERKELEY KEEP JETS OVER THE BAY COMMITTEE

By: 
Margery Eriksson

Date: October 8, 2002

Approved as to Form:


John Shordike
Attorney for Berkeley Keep Jets Over The Bay Committee

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: _____

Approved as to Form:

David L. Alexander
Port Attorney

CITIZENS LEAGUE FOR AIRPORT SAFETY AND SERENITY

By: _____
Ewart A. Wetherill

Date: _____

Approved as to Form:

E. Clement Shute, Jr., Esq.
Attorney for Citizens League
for Airport Safety and Serenity

CITY OF ALAMEDA

By: _____
James M. Flint
City Manager

Date: _____

Approved as to Form:

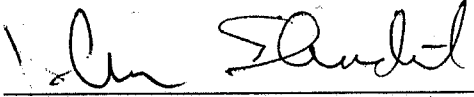
Carol A. Korade
City Attorney

BERKELEY KEEP JETS OVER THE BAY COMMITTEE

By: _____
Margery Eriksson

Date: _____

Approved as to Form:



John Shordike
Attorney for Berkeley Keep Jets Over The Bay
Committee

EXHIBIT A TO PHASE TWO SETTLEMENT AGREEMENT

Since publication of the Final Environmental Impact Report in 1997, Port staff and consultants have made design modifications to several of the ADP components. The parties recognize that as Port staff and consultants continue to design ADP projects, additional minor adjustments will be made. The modifications to the project description in the 1997 ADP EIR that Port staff have identified to date are as follows:

1. Passenger terminals. The terminal buildings have been redesigned such that the consolidated terminal will form an "L" shape, with the existing terminal 1 concourse and the new terminal 2 concourse appended to the L-shaped terminal. This change in shape results in a change in the footprint of the passenger terminal and concourses. The re-designed consolidated terminal will have a large centrally located concessions area, and will provide substantial space for security screening. The re-designed terminal will not have more gates than were described in the 1997 EIR. The number of gates upon build out of the ADP will total 34.

As part of the terminal design and to respond to new security requirements, the Port has re-designed the delivery vehicle receiving and loading dock area at the passenger terminal. Previously, the Port had anticipated that delivery vehicle docks would be incorporated into the passenger terminal building. Due to new security requirements, the Port plans to build a separate receiving and loading dock facility adjacent to the passenger terminal, accessible from both the secure airside and the landside.

The Port also has re-designed the central utility plant component of the passenger terminal. Rather than one central utility plant, the revised terminal design creates a need for two mechanical rooms. One of the mechanical rooms likely will be a separate building near existing Terminal 2.

2. Ground Transportation Center and Parking Garage. The location of the parking garage has been adjusted to correspond to the modified location of the passenger terminal. As stated in the letter from Steve Grossman attached to the Phase 1 Settlement Agreement, quick turn-around rental car facilities are expected to be in the ground transportation center/parking garage, as well as Port offices. Separate ground transportation administrative facilities (vehicle staging and inspection) are expected to be located within reasonable dispatching response to customer facilities. The Port currently anticipates that such vehicle staging and inspection areas will be located to the south of the relocated provisioning building or near the existing catering building adjacent to Neil Armstrong Drive; however, the location may change as designs are completed.

3. Airport Drive Access. Modifications have been made to the alignment of the access loop and other on-airport roads, which correspond to the changes in the location of project components caused by the re-design of the passenger terminal and parking garage.

4. Parking Lots. The addendum for the Pardee parking lot identifies several changes to construction-period parking lots. Some changes to the location of the permanent parking lots may be needed as well. The re-designed terminal and parking garage will displace a different amount of parking than the prior design. As the Port determines the location and

configuration of the parking lots, it will provide any new locations to the Petitioners.

5. Provisioning and Catering Building. As explained in the Port's letter dated March 25, 2002, the re-design of the passenger terminal will displace the proposed provisioning and catering buildings. The relocated provisioning building will be built west and south of the realigned John Glenn Drive, across from Taxiway B2. The Port also has identified a possible new location for relocation of the catering building, which will be displaced by the Airport Drive access loop. The new location is at the west side of Doolittle Drive northwest of Eden Street. The location of both of these buildings may change as designs are finalized.

6. Ground Equipment Service Center. Rather than construct the rectangular shaped ground equipment service center identified as project C.2, the Port plans to construct a ground equipment service center for Southwest Airlines near the new provisioning building. An additional ground equipment service center also may be identified, but the location is not yet known.

7. Jet fuel dispensing facility. Due to the re-design of the passenger terminal, there is no longer a need to relocate the jet fuel dispensing facility because the existing facility will not be displaced by construction of the passenger terminal. This project component will be removed from the ADP.

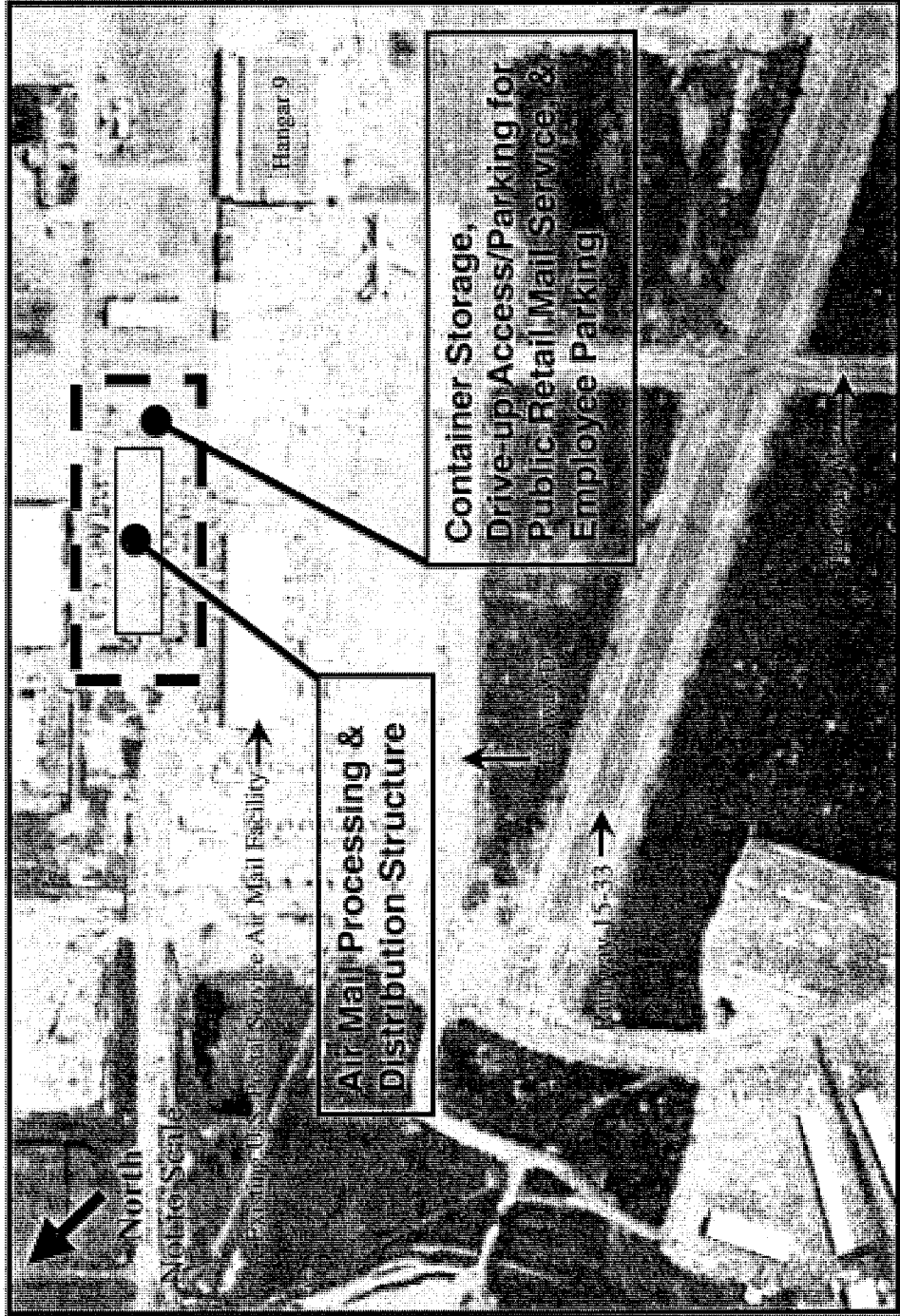
8. Multi-tenant Air Cargo Facility. The 1997 EIR stated that a multi-tenant cargo facility would be located next to the existing FedEx facilities. Instead, a single tenant (FedEx) will lease and use the area identified for the multi-tenant cargo facility. The area identified in the 1997 EIR as a ground equipment service area will be incorporated into the FedEx facilities.

9. Remote Aircraft Parking. The 1997 EIR stated that the ADP would include development of five new and 12 replacement remote aircraft parking positions. The re-designed passenger terminal displaces one additional remote aircraft parking position, creating a need for one additional replacement aircraft parking position. The location of the remote aircraft parking positions will differ from that stated in the 1997 EIR because the size of the area identified in the 1997 EIR for Remote Aircraft Parking (Project E.1) has been reduced. The Port recently built a ground run-up enclosure on a portion of this area. Also, the portion of the remote aircraft parking area shown in the 1997 EIR as jutting out at an angle for the larger rectangular parking area will not be constructed due to the location of the new terminal 2 concourse. Thus, only seven of the remote aircraft parking areas will be located in the area previously identified for remote aircraft parking. The 11 remaining aircraft parking positions will be constructed on other areas of the airfield.

10. Replacement Belly Cargo Building. The reconfiguration of the passenger terminal will displace approximately half of the building near existing terminal 1 that is used by UPS for its cargo operations and by the airlines for belly cargo operations. The Port does not anticipate that this change will affect UPS operations or the UPS facilities at this location. However, this change will create a need for a replacement building to be used by the airlines to process belly cargo. The location of the replacement belly cargo building likely will be in the vicinity of the replacement provisioning building; however that location may change as designs are finalized.

EXHIBIT C
TO PHASE TWO SETTLEMENT AGREEMENT

Project D.2 - North Field United States Postal Service Project
Oakland International Airport, Airport Development Program



Note: The U.S. Postal Service Project shown on this drawing is generalized and does not represent actual layouts.

**EXHIBIT D
TO PHASE TWO SETTLEMENT AGREEMENT**

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8

9 Attorneys for Respondent and Defendant
City of Oakland Acting By And Through Its Board of
Port Commissioners
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13
14 CITY OF ALAMEDA, a municipal corporation;
et al.,

15 Petitioners and Plaintiffs,

16 v.

17 PORT OF OAKLAND, et al.,

18 Respondents and Defendants.
19

20 BERKELEY KEEP JETS OVER THE BAY
COMMITTEE, an unincorporated association,

21 Petitioner,

22 v.

23 PORT OF OAKLAND,

24 Respondent.
25

26 CITY OF SAN LEANDRO, et al.,

No. 793056-0

(Consolidated with Nos. 793028-7,
793033-9, and 793046-3 (Dismissed))

REVISED JUDGMENT GRANTING
PEREMPTORY WRIT OF MANDATE

Action Filed: January 15, 1998
Trial Judge: William E. Jensen, Retired

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Petitioners and Plaintiffs,

v.

PORT DEPARTMENT OF OAKLAND
ACTING BY AND THROUGH THE
OAKLAND BOARD OF PORT
COMMISSIONERS, et al.,

Respondents and Defendants.

The joint motion of Petitioners and Plaintiffs, the City of Alameda, the Citizens League for Airport Safety and Security (“CLASS”), and the Berkeley Keep Jets Over the Bay Committee (“KJOB”), and Respondent Port of Oakland for an order to enter judgment pursuant to a stipulated settlement was presented in writing to the Court on _____, 2002. Petitioner City of Alameda appeared by counsel Steven Pflaum of McDermott, Will & Emery, Petitioner CLASS appeared by counsel E. Clement Shute, Jr. of Shute, Mihaly & Weinberger, Petitioner KJOB appeared by counsel John Shordike, and Respondents and Defendants Port of Oakland and Board of Port Commissioners appeared by counsel Barbara Schussman of Bingham McCutchen LLP.

These consolidated proceedings arise from petitions for writ of mandate challenging the Port of Oakland’s approval of its Airport Development Program and certification of an Environmental Impact Report for the Port of Oakland’s Airport Development Program. On February 2, 1999, this Court entered a Judgment Granting Peremptory Writ of Mandate and issued a Peremptory Writ of Mandamus. On June 1, 1999, this Court entered an Order Regarding Attorneys Fees. On November 5, 1999, this Court entered an Order Discharging the Writ of Mandate. This Court also heard and decided petitions for writ of mandate challenging the Port of Oakland’s re-approval of the Airport Development Program and certification of a

1 Supplement to the Environmental Impact Report (“SEIR”) for the Airport Development
2 Program. On May 19, 2000, this Court entered a Judgment Denying Petitions for Writ of
3 Mandate in those separate proceedings on the SEIR.

4 Petitioners City of Alameda, CLASS and KJOB appealed from the Judgment
5 Granting Peremptory Writ of Mandate, and the Order Discharging the Writ. Respondent Port of
6 Oakland cross-appealed from the Judgment Granting Peremptory Writ of Mandate and appealed
7 from the Order Regarding Attorneys Fees. Petitioners cross-appealed from the Order Regarding
8 Attorneys Fees. The Court of Appeal, First Appellate District, consolidated the appeals and
9 cross-appeals from the Judgment Granting Peremptory Writ of Mandate, Order Discharging the
10 Writ of Mandate, and Order Regarding Attorneys Fees (collectively the “Appeals”). Petitioners
11 did not pursue an appeal of the Court’s May 2000 Judgment Denying Petitions for Writ of
12 Mandate, and that judgment is final.

13 On August 30, 2001, the Court of Appeal, First Appellate District, issued its
14 decision on the Appeals, and subsequently modified its decision on September 26, 2001. The
15 Court of Appeal upheld in part and reversed in part the Judgment Granting Peremptory Writ of
16 Mandate, and directed that a new Peremptory Writ of Mandate be issued consistent with the
17 Court of Appeal’s decision. The Court of Appeal reversed the Order Regarding Attorneys Fees
18 and remanded the issue for a new determination by this Court of an award of attorneys’ fees to
19 the Petitioners. The Court of Appeal vacated the Order Discharging the Writ of Mandate.

20 Having reviewed the parties’ motion and the Court of Appeal’s decision, the
21 Court finds that the parties’ stipulated proposed Revised Judgment Granting Peremptory Writ of
22 Mandate is consistent with the Court of Appeal’s decision, that the motion to enter the stipulated
23 proposed Revised Judgment Granting Peremptory Writ of Mandate should be granted, and that
24 this Revised Judgment should be entered.

25 IT IS HEREBY ADJUDGED, ORDERED, and DECREED that:

- 26 1. This Revised Judgment Granting Peremptory Writ Of Mandate be entered

1 in these consolidated proceedings. This Revised Judgment shall replace the Judgment Granting
2 Peremptory Writ of Mandate entered by this Court on February 2, 1999 and the Order Regarding
3 Attorneys Fees entered by this Court on June 1, 1999.

4 2. The amended and restated Partial Settlement Agreement executed by the
5 parties on November 14, 2001 ("Phase 1 Agreement"), attached to this Revised Judgment as
6 Exhibit 1, is incorporated into this Revised Judgment, and this Court hereby orders compliance
7 with the terms of the Phase 1 Agreement. The Court further finds, pursuant to Public Resources
8 Code section 21168.9(b), that the undertakings described in Paragraph 4.1 subsections (a)
9 through (m) of the Phase 1 Agreement are severable from the other project components
10 described in the Port of Oakland's Airport Development Program; that severance will not
11 prejudice complete and full compliance with the requirements of the California Environmental
12 Quality Act; and that the Port of Oakland has complied with the California Environmental
13 Quality Act with regard to the undertakings described in Paragraph 4.1 subsections (a) through
14 (m) of the Phase 1 Agreement. Accordingly, the Court orders that the Port may proceed with
15 such undertakings.

16 3. The Settlement Agreement executed by the parties on October 8, 2002
17 ("Phase 2 Agreement"), attached to this Revised Judgment as Exhibit 2, is incorporated into this
18 Revised Judgment, and this Court hereby orders compliance with the terms of the Phase 2
19 Agreement. The Court further appoints _____ to be a Referee with the
20 responsibilities and authority specified in paragraphs 5.5 and 5.6 of the Phase 2 Agreement.

21 4. Based upon the decision issued by the Court of Appeal in these
22 consolidated proceedings, a Revised Peremptory Writ of Mandate directed to Respondent Port of
23 Oakland shall issue under seal of this Court, shall replace the Peremptory Writ of Mandate issued
24 on or about February 2, 1999, and shall order Respondent to do all of the following:

- 25 a. Respondent shall void Resolution 99263 (adopted by the Port of
26 Oakland on June 29, 1999), except that Resolution 99263 need not

1 be voided and shall remain valid as to the following: (1) the Port
2 of Oakland's approval of the undertakings described in Paragraph
3 4.1 subsections (a) through (m) of the Phase 1 Agreement and
4 certification of the Final Environmental Impact Report, as
5 supplemented, for such undertakings; (2) the Port of Oakland's
6 approval of the undertakings identified in paragraph 2(d) of this
7 Court's February 2, 1999 Judgment Granting Peremptory Writ of
8 Mandate, and certification of the Final Environmental Impact
9 Report, as supplemented, for such undertakings; (3) the Port of
10 Oakland's approval of the relocation of the provisioning building
11 component of the Airport Development Program, and certification
12 of the Final Environmental Impact Report, as supplemented, for
13 such relocation; (4) the Port of Oakland's approval of any other
14 components of the Airport Development Program that the Court
15 subsequently finds are severable pursuant to Public Resources
16 Code section 21168.9(b), and certification of the Final
17 Environmental Impact Report, as supplemented, for such project
18 components; and (5) the Port of Oakland's approval of findings
19 adopted pursuant to the California Environmental Quality Act with
20 regard to all matters included in those findings other than the
21 matters specified in sub-paragraphs 4(b)(1) through 4(b)(6) of this
22 Revised Judgment, below.

23 b. Except for the undertakings described in paragraph 4(a) above, the
24 Port shall not re-approve the Airport Development Program unless
25 and until it has first prepared, circulated for public comment, and
26 certified a Second Supplement to the Environmental Impact Report

1 for the Airport Development Program ("Second SEIR") that
2 provides the following information:

- 3 1) The Second SEIR shall contain a revised estimate of
4 emissions of toxic air contaminants from jet aircraft based
5 upon California Air Resources Board speciation profile
6 #586 for volatile organic compounds, or based upon more
7 recent speciation data for jet aircraft as determined by
8 Respondent Port of Oakland in consultation with the Bay
9 Area Air Quality Management District;
- 10 2) The Second SEIR shall include a meaningful attempt to
11 quantify the incremental amount of mobile-source
12 emissions of toxic air contaminants that would result from
13 normal operation of the Oakland International Airport with
14 the addition of the components of the Airport Development
15 Program in the year 2010, as compared to mobile source
16 emissions of toxic air contaminants that would result from
17 normal operation of the Oakland International Airport
18 without the addition of the components of the Airport
19 Development Program in the year 2010. For purposes of
20 this analysis, mobile source emissions of toxic air
21 contaminants shall mean emissions from normal operations
22 of aircraft, ground access vehicles, ground support
23 equipment and auxiliary power units at the Oakland
24 International Airport. Mobile source emissions need not
25 include emissions from ground vehicles operating outside
26 of the boundaries of the Oakland International Airport, and

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need not include emissions from ground vehicles associated with operation of the Airport Roadway Project component of the Airport Development Program.

3) The Second SEIR shall include an assessment of whether the incremental amount of mobile-source emissions of toxic air contaminants that would result from normal operation of the Oakland International Airport with the addition of the components of the Airport Development Program in the year 2010, as compared to mobile source emissions of toxic air contaminants that would result from normal operation of the Oakland International Airport without the addition of the components of the Airport Development Program in the year 2010, will result in significant health impacts to off-Airport residents, off-Airport workers or on-Airport workers;

4) The Second SEIR shall include a supplemental analysis of the potential noise impacts of increased nighttime flights due to normal operation of the Oakland International Airport with the addition of the components of the Airport Development Program in 2010, as compared to normal operation of the Oakland International Airport without the addition of the components of the Airport Development Program in 2010. The supplemental analysis of nighttime noise shall be based upon an estimate of the increase in the average number of flights per night at two or more locations in the cities of Alameda, Berkeley and San

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Leandro, that would result from the Airport Development Program in the year 2010, and calculation of the probability of being awakened by single event noise from a representative sampling of the types of single event nighttime aircraft operations that would increase due to operation of the Airport Development Program, based upon the 1997 FICAN-recommended sleep disturbance dose-response relationship for interior Sound Exposure Levels and percent awakening. The supplemental analysis of nighttime noise also shall include an updated calculation of existing cumulative aircraft noise levels (using the CNEL metric), based upon the fleet mix and aircraft operations at Oakland International Airport in the year 2000, including the existing noise conditions in the City of Berkeley;

5) The Second SEIR shall describe the measures for reducing impacts to the burrowing owl caused by construction of the components of the Airport Development Program. To the extent that the California Department of Fish and Game has executed a mitigation agreement for impacts to the burrowing owl or otherwise approved mitigation measures to reduce impacts to the burrowing owl from the Airport Development Program, the discussion of mitigation measures need only describe the measures approved by the California Department of Fish and Game; and

6) The Second SEIR shall include additional information regarding cumulative impacts and project alternatives as

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follows: a) If the analysis of toxic air contaminants demonstrates that a new significant impact would occur, then the Second SEIR shall compare the effects of the no project alternative, the passenger dominant alternative and the cargo dominant alternative to the effects of the Airport Development Program with regard to emissions of toxic air contaminants; b) The Second SEIR shall compare the effects of the no project alternative, the passenger dominant alternative and the cargo dominant alternative to the effects of the Airport Development Program with regard to single event nighttime noise; c) No additional analysis of the cumulative effects from toxic air contaminants shall be required; the health risk assessment, described above, will account for multiple sources of toxic air contaminants on the Airport from normal operations resulting from the Airport Development Program; and d) No additional analysis of cumulative nighttime noise effects shall be required; the analysis of sleep disturbance from nighttime noise, described above, will be a single event analysis, however an estimate of the total number of increased nighttime flights with operation of the Airport Development Program in 2010 shall be provided in the Second SEIR and the Port of Oakland shall update the analysis of estimated cumulative aircraft noise levels for the Airport Development Program in the year 2010 by using the CNEL metric.

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c. Pursuant to Public Resources Code section 21168.9(b) and the agreement of the parties, pending completion of the Second SEIR described above, Respondent Port of Oakland may proceed with approval and implementation of: the undertakings described in Paragraph 4.1 subsections (a) through (m) of the Phase 1 Agreement; the undertakings identified in paragraph 2(d) of this Court's February 2, 1999 Judgment Granting Peremptory Writ of Mandate; relocation of the provisioning building component of the Airport Development Program; and any such other components of the Airport Development Program that the Court subsequently finds are severable and will not prejudice complete and full compliance with the requirements of CEQA as specified by the Court of Appeal's decision in these consolidated proceedings.

5. Except for the matters described in paragraph 4(b), above, all other issues raised in the petitions for writ of mandate in these consolidated actions have been rejected.

6. Respondent Port of Oakland shall file a return to the Revised Peremptory Writ of Mandate accompanying this Revised Judgment after it has voided Resolution 99263 as described in paragraph 4(a) of this Revised Judgment, and completed any reconsideration and/or re-approval of any of the remaining components of the Airport Development Program, or determined not to re-approve the remaining components of Airport Development Program.

7. Pursuant to Public Resources section 21168.9(b), this Court shall retain jurisdiction over these proceedings by way of the return to the Revised Peremptory Writ of Mandate until the Court has determined that Respondent Port of Oakland has complied with the provisions of CEQA. Further, this Court shall retain jurisdiction over the parties in order to enforce the Phase 1 Agreement and the Phase 2 Agreement, attached as Exhibits 1 and 2, until performance in full of the terms of those agreements.

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8. As specified by the Phase 2 Agreement, Respondent Port of Oakland shall pay attorneys' fees to Petitioner City of Alameda in the amount of \$375,000. In addition, Respondent Port of Oakland shall pay attorneys' fees to Petitioner KJOB in the amount of \$137,876.00. Respondent Port of Oakland already has paid attorneys' fees to Petitioner CLASS in the amount of \$375,000, and that payment constitutes payment in full for all attorneys fees and costs owing by Respondent Port of Oakland to Petitioner CLASS arising out of these consolidated proceedings. Except for the amount of attorneys' fees specified in this paragraph, each party shall bear its own costs and attorneys' fees incurred in the proceedings before the Port of Oakland, in the proceedings before this Court, in the proceedings before the Court of Appeal, in the proceedings before the Supreme Court, or otherwise incurred in or arising out of these consolidated proceedings.

DATED: October __, 2002

Honorable William Jensen
Judge of the Superior Court

EXHIBIT E
TO PHASE TWO SETTLEMENT AGREEMENT

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Attorneys for Respondent and Defendant
9 City of Oakland Acting By And Through Its Board of
Port Commissioners
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

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14 CITY OF ALAMEDA, a municipal corporation;
et al.,

15 Petitioners and Plaintiffs,

16 v.

17 PORT OF OAKLAND, et al.,

18 Respondents and Defendants.
19

20 BERKELEY KEEP JETS OVER THE BAY
COMMITTEE, an unincorporated association,

21 Petitioner,

22 v.

23 PORT OF OAKLAND,

24 Respondent.
25

26 CITY OF SAN LEANDRO, et al.,

No. 793056-0

(Consolidated with Nos. 793028-7,
793033-9, and 793046-3 (Dismissed))

REVISED PEREMPTORY WRIT OF
MANDATE

Action Filed: January 15, 1998
Trial Judge: William E. Jensen, Retired

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Petitioners and Plaintiffs,

v.

PORT DEPARTMENT OF OAKLAND
ACTING BY AND THROUGH THE
OAKLAND BOARD OF PORT
COMMISSIONERS, et al.,

Respondents and Defendants.

TO: Respondents Port of Oakland and Board of Port Commissioners (collectively, "Respondent")

A revised judgment having been entered ordering that a new, revised peremptory writ of mandate issue from this Court:

YOU ARE HEREBY COMMANDED to comply with the following:

1. Within one year from the date the Revised Judgment becomes final, Respondent shall void Resolution 99263 (adopted by the Port of Oakland on June 29, 1999), except that Resolution 99263 need not be voided and shall remain valid as to the following: (1) the Port of Oakland's approval of the undertakings described in Paragraph 4.1 subsections (a) through (m) of the Phase 1 Agreement and certification of the Final Environmental Impact Report, as supplemented, for such undertakings; (2) the Port of Oakland's approval of the undertakings identified in paragraph 2(d) of this Court's February 2, 1999 Judgment Granting Peremptory Writ of Mandate, and certification of the Final Environmental Impact Report, as supplemented, for such undertakings; (3) the Port of Oakland's approval of the relocation of the provisioning building component of the Airport Development Program, and certification of the Final Environmental Impact Report, as supplemented, for such relocation; (4) the Port of Oakland's approval of any other components of the Airport Development Program that the Court

1 subsequently finds are severable pursuant to Public Resources Code section 21168.9(b), and
2 certification of the Final Environmental Impact Report, as supplemented, for such project
3 components; and (5) the Port of Oakland's approval of findings adopted pursuant to the
4 California Environmental Quality Act with regard to all matters included in those findings other
5 than the matters specified in sub-paragraphs 2(a) through 2(f) of this Revised Peremptory Writ of
6 Mandate, below.

7 2. Except for the undertakings described in paragraph 1 above, the Port shall
8 not re-approve the Airport Development Program unless and until it has first prepared, circulated
9 for public comment, and certified a Second Supplement to the Environmental Impact Report for
10 the Airport Development Program ("Second SEIR") that provides the following information:

- 11 a) The Second SEIR shall contain a revised estimate of emissions of
12 toxic air contaminants from jet aircraft based upon California Air
13 Resources Board speciation profile #586 for volatile organic
14 compounds, or based upon more recent speciation data for jet
15 aircraft as determined by Respondent Port of Oakland in
16 consultation with the Bay Area Air Quality Management District;
- 17 b) The Second SEIR shall include a meaningful attempt to quantify
18 the incremental amount of mobile-source emissions of toxic air
19 contaminants that would result from normal operation of the
20 Oakland International Airport with the addition of the components
21 of the Airport Development Program in the year 2010, as compared
22 to mobile source emissions of toxic air contaminants that would
23 result from normal operation of the Oakland International Airport
24 without the addition of the components of the Airport Development
25 Program in the year 2010. For purposes of this analysis, mobile
26 source emissions of toxic air contaminants shall mean emissions

1 from normal operations of aircraft, ground access vehicles, ground
2 support equipment and auxiliary power units at the Oakland
3 International Airport. Mobile source emissions need not include
4 emissions from ground vehicles operating outside of the boundaries
5 of the Oakland International Airport, and need not include
6 emissions from ground vehicles associated with operation of the
7 Airport Roadway Project component of the Airport Development
8 Program.

9 c) The Second SEIR shall include an assessment of whether the
10 incremental amount of mobile-source emissions of toxic air
11 contaminants that would result from normal operation of the
12 Oakland International Airport with the addition of the components
13 of the Airport Development Program in the year 2010, as
14 compared to mobile source emissions of toxic air contaminants
15 that would result from normal operation of the Oakland
16 International Airport without the addition of the components of the
17 Airport Development Program in the year 2010, will result in
18 significant health impacts to off-Airport residents, off-Airport
19 workers or on-Airport workers;

20 d) The Second SEIR shall include a supplemental analysis of the
21 potential noise impacts of increased nighttime flights due to
22 normal operation of the Oakland International Airport with the
23 addition of the components of the Airport Development Program
24 in 2010, as compared to normal operation of the Oakland
25 International Airport without the addition of the components of the
26 Airport Development Program in 2010. The supplemental

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analysis of nighttime noise shall be based upon an estimate of the increase in the average number of flights per night at two or more locations in the cities of Alameda, Berkeley and San Leandro, that would result from the Airport Development Program in the year 2010, and calculation of the probability of being awakened by single event noise from a representative sampling of the types of single event nighttime aircraft operations that would increase due to operation of the Airport Development Program, based upon the 1997 FICAN-recommended sleep disturbance dose-response relationship for interior Sound Exposure Levels and percent awakening. The supplemental analysis of nighttime noise also shall include an updated calculation of existing cumulative aircraft noise levels (using the CNEL metric), based upon the fleet mix and aircraft operations at Oakland International Airport in the year 2000, including the existing noise conditions in the City of Berkeley;

- e) The Second SEIR shall describe the measures for reducing impacts to the burrowing owl caused by construction of the components of the Airport Development Program. To the extent that the California Department of Fish and Game has executed a mitigation agreement for impacts to the burrowing owl or otherwise approved mitigation measures to reduce impacts to the burrowing owl from the Airport Development Program, the discussion of mitigation measures need only describe the measures approved by the California Department of Fish and Game; and
- f) The Second SEIR shall include additional information regarding

1 **EXHIBIT F**
2 **TO PHASE TWO SETTLEMENT AGREEMENT**

3 (See signature page for complete list of counsel)
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

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13 CITY OF ALAMEDA, et al.,

14 Petitioners,

15 v.

16 FEDERAL AVIATION ADMINISTRATION,
17 et al.,

18 Respondents.
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No. C-02-1780 PJH

**NOTICE OF VOLUNTARY
DISMISSAL WITH PREJUDICE AND
[PROPOSED] ORDER**

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE AND [PROPOSED] ORDER

Case No. C-02-1780 PJH

10/7/02 3:57 PM

1 NOTICE IS HEREBY GIVEN that pursuant to Rule 41(a)(2) of the Federal Rules
2 of Civil Procedure and the settlement agreement between petitioners and respondent Port of
3 Oakland, petitioners respectfully request an order voluntarily dismissing the above-captioned
4 action WITH PREJUDICE, with each party to bear its own costs and attorneys' fees.

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DATED:
October ____, 2002

By: _____
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DATED:
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[PROPOSED] ORDER

IT IS HEREBY ORDERED THAT this action is DISMISSED WITH PREJUDICE, with each party to bear its own costs and attorneys' fees.

DATED: _____

Honorable Phyllis J. Hamilton
UNITED STATES DISTRICT JUDGE