

**MEMORANDUM OF UNDERSTANDING
BETWEEN CITY AND PORT
REGARDING HOWARD TERMINAL OAKLAND A'S BALLPARK PROJECT**

1. Parties. This MEMORANDUM OF UNDERSTANDING BETWEEN CITY AND PORT REGARDING HOWARD TERMINAL OAKLAND A'S BALLPARK PROJECT ("MEMORANDUM OF UNDERSTANDING") is made by and between the City of Oakland, a municipal corporation, acting by and through its City Council ("City") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port"), which is a department of the City.

2. Term. This MEMORANDUM OF UNDERSTANDING is effective upon the date last signed and executed by the duly authorized representatives of the parties to this MEMORANDUM OF UNDERSTANDING. This MEMORANDUM OF UNDERSTANDING may be terminated, without cause, by either party upon written notice provided to the signatories below.

3. Purpose and Background.

3.1 The purpose of this MEMORANDUM OF UNDERSTANDING is to document the mutual understanding and intent of the City and the Port regarding the process of review of applications for, and, if approved, regulation of the development project proposed by the Oakland Athletics at Howard Terminal, which is anticipated to include a new, privately-funded, open-air major league ballpark; together with residential and mixed-use development, including retail, commercial, office, cultural, entertainment, hotel, and recreational uses that will be built in multiple phases over a period of many years ("**Proposed Project**").

3.2 This MEMORANDUM OF UNDERSTANDING is intended only as a nonbinding statement of intent, and no final decision or action on the Proposed Project or the shared regulatory framework contemplated herein will be undertaken until each of the parties review, consider, and approve the final Environmental Impact Report ("**EIR**") for the Proposed Project; therefore, this MEMORANDUM OF UNDERSTANDING is not a project for the purposes of the California Environmental Quality Act ("**CEQA**"). Nothing in this MEMORANDUM OF UNDERSTANDING establishes any precedent for any other projects, agreements, or arrangements that may exist now or in the future in the Port Area or on Port-owned property. This MEMORANDUM OF UNDERSTANDING will not be effective or apply in the event or to the extent that (a) the Proposed Project does not proceed at Howard Terminal, (b) the Proposed Project is approved, but any portion thereof reverts to uses not related to the Proposed Project, or (c) the Proposed Project is approved and this MEMORANDUM OF UNDERSTANDING is superseded by subsequent legislative action.

3.3 The City is a municipal corporation, enabled by authority vested through the Charter of the City of Oakland, adopted by the people of the City of Oakland on

November 5, 1968 and ratified and made effective by the California Secretary of State on January 28, 1969 (as amended, the “**Charter**”). As a charter city, the City has broad local authority with respect to land use planning and building permitting of lands lying within the City boundaries. Pursuant to the Charter, the City Council of the City (“**City Council**”) adopts the General Plan of the City, and zoning regulations in conformance with the General Plan, encoded as Chapter 17 of the City Municipal Code.

- 3.4 Article VII of the Charter vests in the Port of Oakland Board of Port Commissioners (“**Board**”), as a department of the City, the authority to control and manage certain lands of the City (referred to as the “**Port Area**”) in accordance with the Charter.
- 3.5 The Proposed Project is located on and adjacent to Howard Terminal along the Inner Harbor of the Oakland-Alameda Estuary and consists of approximately 55 acres of real property (“**Project Area**”), approximately 50 acres of which lie within the Port Area.
- 3.6 As a result, the development of the Proposed Project will require discretionary approvals from both the City and the Port, as well as other state, regional, and local agencies. Among other discretionary regulatory approvals, the Proposed Project will require certification of an EIR under CEQA, final legislative action to effectuate the shared regulatory framework contemplated herein, a General Plan amendment, new and revised zoning regulations, the filing of subdivision maps, and other related development permits. In addition, the Proposed Project will require Port Building Permits pursuant to Section 708 of the Charter, which is a discretionary regulatory approval by the Port for development projects in the Port Area. Finally, a Development Agreement has been requested by the Oakland Athletics (collectively as the “**Project Approvals**”).
- 3.7 The Port and City, without waiving any of their respective authorities and jurisdiction over lands within the Port Area, desire, consistent with Article VII of the Charter and CEQA, to cooperate to their mutual benefit to establish a shared regulatory framework that avoids administrative duplication, appropriately allocates regulatory land use authority between the City and Port, and facilitates the analysis of and, if approved by all applicable government agencies and entities, the development of the Proposed Project.
- 3.8 On May 13, 2019, pursuant to Port Resolution No. 19-32, the Board approved the Exclusive Negotiation Term Sheet dated May 13, 2019 with the Oakland Athletics (the “**ENTS**”). In addition to outlining preliminary negotiating terms for the Project, the ENTS states the Board’s authorization – pursuant to Section E(b) of the Purpose & Overview, and Section 5 of the ENTS – to develop an anticipated structure for a shared regulatory framework as outlined in this non-binding MEMORANDUM OF UNDERSTANDING. Following certification of a Final EIR for the Proposed Project, but prior to or concurrent with any other Project Approvals under their respective jurisdictions, the City Council and the Board will

consider any final legislative actions the parties mutually deem necessary to effectuate the shared regulatory framework contemplated herein.

- 3.9 More specifically, through this MEMORANDUM OF UNDERSTANDING, the Parties intend, during the pre-development application process: (i) to cooperate on the preparation of the EIR, (ii) to cooperate on the potential amendment of the General Plan, (iii) to jointly develop uniform zoning regulations applying to the Proposed Project in the Project Area, (iv) to allow the City to accept and process the planning and zoning development applications, including but not limited to applications for a Development Agreement (incorporating a comprehensive package of community benefits) and tentative subdivision map(s), along with other City permitting services necessary for the implementation of the Proposed Project, and (v) to coordinate the above with the Port's power and duty under the Charter and under Section 5 of the ENTS to take all actions associated with the Project-Wide Port Building Permit.

4. Environmental Review. The City, as the agency with principal responsibility for approving the Proposed Project with respect to its general governmental powers and its role as the anticipated first party to act with a binding discretionary action on the Proposed Project, is the Lead Agency under CEQA as follows:

- 4.1 Lead Agency. The Port and the City acknowledge and agree that, under CEQA and the CEQA Guidelines, including Public Resources Code section 21067, CEQA Guidelines sections 15050-15051, and related case law, the City is the lead agency responsible for environmental review of the Proposed Project based on several factors, including those summarized below. The City's responsibility for project approval is broader than the responsibility of the Port. The City has general governmental and police powers consistent with the Charter. The City further has exclusive authority over the approval of any change to the General Plan designation for the Project Area, which is the highest level of land-use approval required for the Proposed Project. All land-use regulations, zoning, development permits, and other approvals for the Proposed Project must conform to the City's amended General Plan. In addition, the Proposed Project includes residential development within the Port Area, which, pursuant to the Section 706 of the Charter, requires City Council consent through requisite legislation.

The Port and the City will act in good faith to undertake cooperative actions in connection with the preparation of the EIR for the Proposed Project, which include, but are not limited to the following efforts:

- a. Processing Duties. The City and the Port will use reasonable good faith efforts to consult, review, provide comments, and perform other tasks required for environmental review as expeditiously as possible, to facilitate the timely processing of the EIR for the Proposed Project.

- b. Staffing. The City and the Port will each provide and coordinate staffing to review and assist in processing the EIR.
 - c. EIR Consultant. The City will direct the work of EIR consultants, in accordance with the City's Consultant Guidelines for CEQA Consultants. In furtherance of the parties' cooperative approach to the CEQA process, the City will direct the EIR consultant to include analysis of the environmental impacts of certain issues of concern to or within the authority of the Port, including, for example, potential impacts to Port operations and/or maritime navigation. The City and the Port will jointly provide input on any issues of concern to the Port or within the jurisdiction of the Board, and the City will closely consult and coordinate with the Port prior to directing the EIR consultant on such issues.
 - d. Preparation of Draft EIR. The City and the Port will closely consult and confer regarding the content of the Draft EIR, including, but not limited to, the scope of the EIR, description of the environmental setting, appropriate baselines, significance thresholds, impact determinations, mitigation measures, and reasonable range of project alternatives. The City will provide the Port with copies of all administrative drafts of the Draft EIR and any specialized studies, memoranda or reports used to prepare the Draft EIR for review and comment. The Port will use reasonable good faith efforts to review and provide comments on drafts within the EIR schedule.
 - e. Final EIR. The City and the Port will consult regarding the preparation of the Final EIR, including preparation of Responses to Comments, revisions to the Draft EIR, and preparation of the Mitigation Monitoring and Reporting Program. The Port and the City will each independently review the administrative draft Final EIR and provide comments to each other within a reasonable period of time.
 - f. Public Notices and Proceedings. The City will prepare, publish, and circulate all CEQA-related public notices.
 - g. Documents. The City and the Port will consult and cooperate as the environmental review process develops to maintain a complete and organized record of documents to be included in any administrative record.
- 4.2 Independent Judgment and Discretion under CEQA. Nothing in this MEMORANDUM OF UNDERSTANDING is to be interpreted to replace or eliminate the City's or the Port's independent judgment or discretion under CEQA, and nothing is to be interpreted as an approval or a pre-commitment to approve the Proposed Project or the final legislative action(s) to effectuate the regulatory framework contemplated in 3.8 above, or as a decision to limit the parties' consideration of project alternatives and mitigation measures.

5. **General Plan and Zoning.** The City and Port intend to cooperate on the development of the General Plan amendment and zoning regulations as follows:

5.1 General Plan Amendment. The City is responsible for preparation of a General Plan amendment to govern the development of the Project Area. The City and the Port will closely consult and confer with one another regarding the content of the proposed General Plan amendment to be presented to the City Council for its discretionary review and approval, including, but not limited to, policy changes, land use map changes, and proposals to change land use designations. The Port will use reasonable good faith efforts to review and provide comments on any proposed General Plan amendment within a reasonable period of time.

5.2 Zoning Regulations. To ensure a cooperative and efficient process of regulation and to avoid duplication or conflicting rules, the Port agrees that the City will be primarily responsible for preparing the zoning regulations that will apply to the Project Area and govern the development of the Proposed Project. The zoning regulations may include establishment of a planned development zone and underlying site plans, new development standards and guidelines, and other implementing regulations (the “**Zoning Regulations**”). The City and Port will in good faith undertake cooperative actions in connection with the preparation of the Zoning Regulations as follows:

a. Preparation Duties. The City and the Port will use reasonable good faith efforts to consult each other, review, provide comments, and perform other tasks required for the processing of the Zoning Regulations as expeditiously as possible.

b. Staffing. The City and the Port will each provide and coordinate staffing to review and assist in processing the Zoning Regulations.

c. Preparing Zoning Regulations. To avoid duplication of regulation and permitting, it is anticipated that the City will consider, adopt, and eventually implement the Zoning Regulations. The City and the Port will closely consult and confer with one another in drafting the Zoning Regulations. The Port will use reasonable good faith efforts to review and provide comments on any proposed Zoning Regulations within a reasonable period of time.

d. Port Building Permit Regulations. The Port specifically reserves its power and duty to issue Port building permits pursuant to Section 708 of the Charter, which building permits will be in addition to any other permits required by the City. Consistent with the ENTS, the Port will accept applications for, process, and consider approvals of all discretionary actions associated with the Port building permits.

e. Public Notices and Proceedings. The City will prepare, publish, and circulate all public notices related to the Zoning Regulations. The Port will

prepare, publish, and circulate all public notices related to any Port actions, including any Port regulations relating to the Port Building Permits.

- f. Based on the foregoing and consistent with the anticipated zoning regulations, the City will accept from the Oakland Athletics, and process through the City framework, requisite planning applications for the Proposed Project.

6. Other Permits and Approvals.

- 6.1 Subdivision Map Act. The City will accept applications for, process, and consider approval of all tentative and final subdivision maps as required for build-out of the Proposed Project.
- 6.2 City Building Permits. The City will accept applications for, process, and consider issuance of all construction building permits, including grading permits, as required for build-out of the Proposed Project.
- 6.3 Other Permits and Approvals. As noted in 3.6 above, in addition to the permits and discretionary land use actions specifically contemplated herein, the Proposed Project will require additional approvals from both the City and the Port, as well as other state, regional and local agencies, including but not limited to the State Lands Commission, the Bay Conservation and Development Commission, and the Department of Toxic Substances Control. The City and Port will cooperate to their mutual benefit in the processing of all permits and approvals required for the Proposed Project, using reasonable good faith efforts to consult with one another, review, provide comments, and perform any other tasks required as expeditiously as possible.

Further, the parties agree that, unless otherwise set forth in the Development Agreement or EIR, the City will, in its processing of the Project Approvals and building permits, apply all relevant requirements, ordinances, policies, and codes typically employed in its ordinary course of business, including but not limited to the City's requirements for stormwater treatment (including post-construction operations and maintenance and trash compliance), exterior lighting, creek protection, tree protection, the payment of fees pursuant to the City's Master Fee Schedule, and the handling of hazardous materials during Project construction and/or operation.

General Provisions.

- 7.1 Nothing in this MEMORANDUM OF UNDERSTANDING is intended to limit or abridge the Port's control and management of the Port Department, the Port's power and duty to act for and on behalf of the City in the Port Area, or the Port's rights and duties under the Charter. Similarly, nothing in this MEMORANDUM

OF UNDERSTANDING is intended to limit or abridge the City's rights and duties under the Charter.

- 7.2 Each the City and the Port will bear its own costs in implementing the actions set forth in this MEMORANDUM OF UNDERSTANDING, or separately or jointly seek payment or reimbursement of costs from the Proposed Project applicant(s).
- 7.3 This MEMORANDUM OF UNDERSTANDING may be executed in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered electronically shall be deemed effective as originals.

IN WITNESS WHEREOF, the Parties hereto have executed this MEMORANDUM OF UNDERSTANDING as of the Effective Date.

CITY OF OAKLAND



Sabrina B. Landreth
City Administrator

Date: 2/3/2020

Approved as to form:



Barbara J. Parker
City Attorney
City Resolution No. 87998 C.M.S.

Date: 1/31/2020

PORT OF OAKLAND



Danny Wan
Executive Director

Date: 2/26/2020