

**STAFF’S PROPOSED NON-BINDING TERMS****DRAFT ONLY – SUBJECT TO FURTHER NEGOTIATION AND CHANGE**

<p><b>1. Parties &amp; Intent</b></p>	<p>This non-binding term sheet (“<b>Term Sheet</b>”) sets forth the preliminary terms upon which the Athletics Investment Group LLC d/b/a The Oakland Athletics, a California limited liability company (or an affiliate thereof) (the “<b>Oakland A’s</b>” or “<b>Developer</b>”) and the City of Oakland (the “<b>City</b>”) would negotiate and draft a Development Agreement for a mixed-use ballpark development project, as described herein, to be presented to the City Council for consideration, subject to requisite environmental review of the project under the California Environmental Quality Act (“<b>CEQA</b>”).</p> <p>Developer is proposing to acquire the rights to develop a site known as the Charles P. Howard Terminal (“<b>Howard Terminal</b>”) on the Oakland waterfront from the Port of Oakland (“<b>Port</b>”), acquire certain adjacent properties from private owners, and construct a new Major League Baseball ballpark, as well as residential, entertainment, office, hotel, and retail (mixed use) development, creating a new Oakland Waterfront Ballpark District (the “<b>Project</b>”). The proposed Project would be constructed in phases as described below.</p> <p>The site proposed for development of the Project includes the Howard Terminal and certain adjacent properties totaling approximately 55 acres (collectively, the “<b>Project Site</b>”). The Project Site is located on the Oakland waterfront, north of and across the Oakland-Alameda Estuary from the City of Alameda. A location map and aerial photographs of the Project Site and the surrounding vicinity are provided on <b>Exhibit A</b> attached hereto.</p> <p>The City and Developer desire to enter into a Development Agreement to secure benefits for the City of Oakland and its residents, which are not achievable through the regulatory process, as well as to vest in Developer and its successors and assigns certain entitlement rights with respect to the Project Site. This Term Sheet summarizes the key terms and conditions that will form the basis for the negotiation and completion of the final Development Agreement.</p>
<p><b>2. Term and Early Termination</b></p>	<p>The “<b>Term</b>” of the Development Agreement shall commence upon the latest to occur of the following: 1) full execution and delivery of the Development Agreement; 2) the last effective date of the ordinances establishing a shared regulatory framework for the Project, as shall be adopted by the City Council and Board of Port Commissioners, respectively; and 3) full execution and delivery of the Option Agreement for Howard Terminal between the Port and Developer (such date being the “<b>Commencement Date</b>”), and shall expire on the date that is 35 years from the Commencement Date. The term of the Development Agreement shall not</p>

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	<p>be subject to extension for Force Majeure or for any other reason.</p> <p>Notwithstanding the foregoing, upon delivery of a written notice from the City Administrator of the occurrence of an Early Termination event, the City may terminate the Development Agreement, notwithstanding any other requirement or process set forth in the Development Agreement or law.</p> <p>An “<b>Early Termination Event</b>” shall exist if:</p> <ul style="list-style-type: none"><li>(i) the Option Agreement with the Port expires or terminates before Developer and Port enter into the Disposition and Development Agreement (“<b>DDA</b>”);</li><li>(ii) the DDA terminates before Developer enters into the Ballpark Lease with the Port; or</li><li>(iii) Developer fails to Commence Construction of the Ballpark by that date (such date being the “<b>Ballpark Deadline</b>”) which is the later of: (a) May 13, 2025 or (b) four (4) years from the final adjudication of all third party legal challenges to the initial Project approvals that prevent the Commencement of Construction of the Ballpark, but, consistent with the Exclusive Negotiation Term Sheet for Howard Terminal between Developer and the Port, in no event later than May 13, 2028. The Ballpark Deadline shall be subject to extension as a result of one or more events of Force Majeure pursuant to Section 19.</li></ul> <p>“<b>Commence Construction of the Ballpark</b>” means the start of substantial physical construction of the building foundation as part of a sustained and continuous construction plan. Related terms such as “<b>Commencement</b>”, “<b>Commenced</b>” and “<b>Commences</b>” Construction of the Ballpark shall have the same meaning.</p>
<p><b>3. Termination</b></p>	<p>Under the proposed transaction documents with the Port (the “<b>Port Agreements</b>”), the Port has reserved recapture and reacquisition rights to portions of the Project Site for expansion or reconfiguration of the Inner Harbor Turning Basin of the Oakland Estuary (the portion of the Project Site subject to such recapture and reacquisition rights, the “<b>Termination Lands</b>”); however, Developer retains the right to re-annex such Termination Lands into the Project Site if the Port fails to meet the conditions set forth in the Master Lease (such occurrence giving rise to “<b>Re-Annexation Rights</b>”).</p> <p>If the Port exercises its recapture and reacquisition rights to any of the Termination Lands, the Development Agreement will remain in effect with respect to such Termination Lands so long as Developer still has Re-Annexation Rights under the</p>

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	<p>Master Lease, and, if applicable, as to any Termination Lands for which the A’s has exercised its Re-Annexation Rights; provided, however, in no event shall the Term of the Development Agreement be extended as a result of Developer’s exercise of its Re-Annexation Rights.</p>
<p><b>4. Amendments</b></p>	<p>The Development Agreement may only be amended in whole or in part, by mutual consent of the parties or their successors in interest. Amendments constituting a Material Change will require consideration by the Planning Commission and the approval of the City Council by ordinance. All other proposed amendments may be approved, on behalf of the City, by the City Administrator.</p> <p>A proposed amendment shall constitute a Material Change if it seeks to or causes: (i) an extension of the Term or the Ballpark Deadline as set forth in the Development Agreement; (ii) a material increase in the monetary or non-monetary obligations or liabilities of the City or a material decrease in the monetary or non-monetary benefits (including Community Benefits) to the City; (iii) an acceleration of other vertical development prior to substantial completion of the Ballpark; (iv) a delay in the delivery of the Project’s parks and open space elements relative to the Ballpark or other vertical development; or (v) an amendment to the General Plan or Zoning Ordinance that would introduce new land uses or change the quantities of permitted land uses beyond the parameters set forth in the Development Program included with the Development Agreement.</p> <p>The granting of any subsequent project approvals or amendments to the initial project approvals or subsequent project approvals will not require an amendment to the Development Agreement, except as set forth above.</p>
<p><b>5. Development Program</b></p>	<p>The Project consists of the development of a new Major League baseball park for the Oakland Athletics with a capacity of up to 35,000 attendees (the “<b>Ballpark</b>”); surrounding mixed-use development including up to 3,000 residential units; up to 1.5 million square feet of commercial uses; up to approximately 270,000 square feet of retail uses; an indoor performance center with capacity of up to 3,500 persons; hotel space with up to 400-rooms; a network of up to approximately 18 acres of publicly-accessible open spaces (less if the Port exercises its recapture and reacquisition rights for the Termination Lands); and pedestrian and bicycle access on the Project Site.</p>
<p><b>6. Phasing of Open Space and Horizontal</b></p>	<p><u>General</u></p> <p>For reference, the Master Phasing Diagram, attached hereto as <u>Exhibit B</u> (the</p>

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<p><b>Infrastructure</b></p>	<p>“<b>Master Phasing Diagram</b>”), generally identifies the phases, vertical development parcels and key open space and infrastructure elements in the Project.</p> <p>The Development Agreement will include a final phasing plan and procedures designed to ensure that infrastructure and capital improvements are constructed in a manner that is appropriate and proportional to the level of development proposed in each phase (“<b>Phasing Plan</b>”). The Phasing Plan will be attached as an exhibit to the Development Agreement and will describe in detail how each required infrastructure or open space element will be linked to vertical development parcels or other triggers consistent with the requirements below.</p> <p><u>Vertical Development</u></p> <p>The Ballpark must be included in the first phase Project development. No other vertical development may proceed until Commencement of Construction of the Ballpark has occurred, nor shall any other vertical development receive an occupancy permit prior to substantial completion of the Ballpark.</p> <p>Development south of Street A and west of Market Street (Phase 2B), excepting interim improvements, may not proceed as to any portion until the Port’s right to the Termination Lands has expired for the applicable portion, as set forth in the Section 3, above.</p> <p>Except as set forth in this Section 6 and in the Port Agreements, the Developer will retain the right to develop the vertical development in such order and time as it determines in the exercise of its business judgment.</p> <p><u>Infrastructure</u></p> <p>Phasing of infrastructure will be consistent with the final Phasing Plan and administered through the City’s subdivision and permitting processes. The City will review each application for a Final Development Plan (“<b>FDP</b>”), phased final map and associated improvement plans, and building permits for consistency with the Phasing Plan and approved Tentative Tract Map (“<b>TTM</b>”) and PDP to ensure that the infrastructure provided with each phase of development, including on- and off-site public streets, utilities and open space, will be delivered at an appropriate level to the proposed vertical development, as more specifically provided below.</p> <p><i>On-Site Streets, Sidewalks, and Utilities</i></p> <p>The Master Phasing Diagram shows all street segments to be included in the Project,</p>
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	<p>which shall be described in greater detail in the TTM to be approved as part of initial Project approvals.</p> <p>All public streets, sidewalks and utilities contained within Phase 1 shall be completed before issuance of an occupancy permit for the Ballpark.</p> <p>For the remainder of the Project, in general, each street segment, including associated sidewalks, landscaping and utilities shall be constructed with a particular vertical development parcel, or in some cases, the first to be developed of a group of vertical development parcels. Developer shall complete the street segment as a condition precedent to issuance of an occupancy permit for that vertical development parcel, as may be further described in the Phasing Plan and approved in in each FDP.</p> <p><i>Off-Site Transportation Improvements</i></p> <p>All offsite transportation improvements required of the Project, including streets, sidewalks, bicycle lanes, at-grade and grade-separated rail safety improvements, and transit facilities, shall be completed consistent with the requirements of the Project approvals.</p> <p><i>Parks and Open Space</i></p> <p>The Open Space Phasing Diagram attached hereto as <b>Exhibit C</b> shows the location of each park or open space element to be included in the Project.</p> <p>Design standards and guidelines for the parks and open space elements will be included within the PDP and Design Standards and Guidelines to be approved as part of the initial Project approvals.</p> <p>Athletics Way, MLK Plaza, Rooftop Park and Waterfront Park A, as well as an interim or permanent connection of the Bay Trail to Market Street, shall be completed before issuance of an occupancy permit for the Ballpark.</p> <p>Stomper Plaza shall be completed before issuance of an occupancy permit for Block 5.</p> <p>Waterfront Park C shall be completed before issuance of an occupancy permit for Block 7.</p> <p>Triggers for completion of Waterfront Parks B, D, E and F shall be established in the Development Agreement to ensure that construction of parks and open space is on pace with total vertical development within the Project.</p>
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	<p><i>Fire Station No. 2</i></p> <p>Fire Station No. 2, located at 47 Clay Street, lies within the alignment of Athletics Way on the Project Site. Improvements to Station No. 2 to add capacity and functionality, maintain sufficient access to the apparatus bay and fireboat, and provide adequate onsite parking and yard space, shall be completed prior to issuance of an occupancy permit for the Ballpark.</p>
<p><b>7. Vested Rights / Applicable Laws, Codes and Standards</b></p>	<p>Developer shall obtain approval of a PDP and TTM for the Project Site in addition to the Development Agreement. Development, construction, occupation and implementation of the Project will be subject to additional review and approval in accordance with the requirements of these initial project approvals.</p> <p>Developer shall have vested rights for the development of the Project as set forth in the Development Agreement, Project approvals, and all Applicable Laws (defined below), which shall control the overall design, development and construction of the Project and all improvements and appurtenances in connection therewith, including, without limitation, the following: the locations and numbers of buildings proposed, the required infrastructure, land uses and parcelization, height and bulk limits, including the maximum density, intensity and gross square footages, permitted uses, provisions for open space, affordable housing, vehicular access and parking, which collectively shall be referred to as the “<b>Vested Elements</b>”. The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Project approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent Project approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each later Project approval, once granted, shall be deemed a Project approval subject to the protections of the Development Agreement.</p> <p>The City shall process, consider, and review all later Project approvals in accordance with (i) CEQA, utilizing the certified Final Environmental Impact Report for the Project to the fullest extent permitted by law, (ii) the Project approvals received to date, including compliance with all applicable mitigation measures from the Standard Conditions of Approval and Mitigation Monitoring Program approved therewith (the “SCA-MMRP”), (iii) any conditions of approval that are imposed by the City or other governmental agencies with jurisdiction over the Project as part of the Project approvals, (iv) the City’s Charter, Municipal Code (including the Planning and Subdivision Codes) and General Plan, as each of the foregoing is in effect on the Commencement Date (“Existing <b>Standards</b>”) and may be amended or</p>

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	<p>updated in accordance with permitted New Laws as set forth below, (vi) California and federal law, as applicable, and (vii) the Development Agreement (collectively, “<b>Applicable Laws</b>”).</p> <p>(1) All new or amended laws and standards (collectively, “<b>New Laws</b>”) shall apply to the Project except to the extent they conflict with this Development Agreement. For the avoidance of doubt, the New Laws shall be deemed to conflict, subject to (2) below, with this Development Agreement if they:</p> <ul style="list-style-type: none"><li>(a) reduce the maximum allowable height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual buildings from that permitted under the Project approvals;</li><li>(b) reduce or change the allowable parking and loading ratios, except as provided in the Transportation Demand Management Plans, or materially change the location of vehicular access, parking or loading from those permitted under the Project approvals;</li><li>(c) limit, reduce or change permitted land uses for the Project from those permitted under the Project approvals;</li><li>(d) control or delay the rate, timing, phasing or sequencing of the development or construction of all or any part of the Project except as expressly set forth in the Development Agreement and Project approvals;</li><li>(e) require Developer to assume responsibility for construction or maintenance of additional infrastructure or open space beyond that contemplated by the Development Agreement;</li><li>(f) impose requirements for historic preservation or rehabilitation other than those contained in the Project approvals (including the SCA-MMRP);</li><li>(g) impose requirements for City-adopted environmental measures other than those contained in the Project approvals (including the SCA-MMRP);</li><li>(h) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for (i) permits or approvals required on a City-wide basis that do not prevent or materially interfere with the construction or operation of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by the Development Agreement, and (ii) permits that replace (but do not expand the scope or</li></ul>
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	<p>purpose of) existing permits;</p> <ul style="list-style-type: none"><li>(i) limit the availability of public utilities to the Project, including but not limited to sewer capacity and connections, or the Project’s rights thereto, in a manner that materially interferes with or prevents construction of the Project, or any part thereof, as and when intended by the Development Agreement;</li><li>(j) delay or prevent the procurement of subsequent Project approvals that are consistent with the Development Agreement and Project approvals; or</li><li>(k) increase the percentage of residential units required to be income-restricted, change the percentage of units required to be offered at any AMI threshold level or any eligibility requirements, change or impose requirements regarding unit size, finishes, amenities, or unit type, or any other change to the approved affordable housing plan beyond that contemplated by the Development Agreement.</li></ul> <p>(collectively, “<b>Conflicting Laws</b>”). In the event of express conflict, as determined by the City, the terms of the Development Agreement shall prevail.</p> <p>(2) Notwithstanding the foregoing, nothing in the Development Agreement shall prevent the City from:</p> <ul style="list-style-type: none"><li>(a) taking any action that is necessary to protect the health and safety of the public or to comply with applicable changes in Federal or State Law, including subjecting the Project to a New Law that is applicable on a City-Wide basis to the same or similarly situated uses (if any) and applied in an equitable and non-discriminatory manner, so long as such New Law is (i) limited solely to addressing specific and identifiable issues required to protect the physical health and safety of the public; or (ii) reasonably calculated and narrowly drawn to comply with a Federal or State Law;</li><li>(b) applying to the Project any provisions, requirements, rules, or regulations that are contained in the California Building Standards and Fire Codes, as adopted and amended by the City in accordance with the California Health and Safety Code, including requirements of the Oakland Building and Construction Code or other uniform construction codes, as the same may be amended; or</li><li>(c) applying then-current City standards applicable to infrastructure permits for each later Project approval if the following conditions are met: (i) the standards are compatible with, and would not require a material modification to</li></ul>
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	<p>previously approved permit drawings for the work; and (ii) the standards are compatible with, and would not require any retrofit, removal, supplementation, reconstruction or redesign of what was previously built as part of the Project. If Developer claims that these conditions have not been met, it will submit to the City reasonable documentation to substantiate its claim. The Parties agree to meet and confer for a period of not less than thirty (30) days to resolve any dispute regarding application of this Section.</p>
<b>8. Administrative Fees</b>	<p>For the Term of the Development Agreement, the Administrative Fees imposed on the Project shall be the rates in effect as of the date of the relevant application. “<b>Administrative Fee</b>” shall mean any fee imposed City-wide in effect at the time and payable upon the submission of an application for any permit or approval or thereafter, generally as set forth in the City’s Master Fee Schedule, as it may be amended or modified to cover the estimated actual costs to City of processing that application and/or inspecting work undertaken pursuant to that application. The term “Administrative Fee” shall not include any impact fees, exactions or City Costs.</p>
<b>9. Community Benefits</b>	<p>The Development Agreement will secure benefits for the City of Oakland and its residents, consistent, at a minimum, with the guidelines set forth in Assembly Bill 734 (2018) and the “Key Principles of the Howard Terminal Community Benefits Agreement” attached hereto as <b>Exhibit D</b>. See Section 10 below and <b>Exhibit F</b> for additional information on community benefits, including workforce development, affordable housing, and the community fund.</p>
<b>10. Workforce Development</b>	<p>All project-related construction on Port controlled property or funded, in whole or in part, by or through the Port, shall be subject to the Port’s Maritime Aviation Project Labor Agreement (MAPLA).</p> <p>In addition, it is anticipated that the Port’s tenets related to operations jobs, generally as set forth in the Port’s 2017 Operations Jobs Policy for the Centerpoint Oakland Global Logistics project, will form the basis for an operations jobs policy for the proposed Project. These include living wages and benefits for workers; priority consideration for unemployed individuals, armed forces veterans, single parents, ex-offenders and foster care adults; and a ban on asking applicants about prior criminal offenses.</p>
<b>11. Affordable Housing</b>	<p>See <b>Exhibit F</b>.</p>

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<p><b>12. Arts Master Plan / Process</b></p>	<p>The Development Agreement will establish the process pursuant to which an Arts Master Plan may be developed, approved and implemented for the Project, consistent with <b>Exhibit E</b> hereof.</p>
<p><b>13. Financing and BIDs</b></p>	<p>The City and Developer shall pursue formation of a Community Facilities District (CFD) and a single Enhanced Infrastructure Financing District (IFD) over the Project Site capturing the City’s and County’s shares of real property tax increment generated by the Project (the Project’s “but for” property taxes) for a period of 45 years to finance eligible capital improvement, affordable housing and maintenance costs associated with the Project. If requested by Developer, the City will also agree to cooperate with the establishment of a Business Improvement District and in submitting and processing grant or funding applications. For more information, see <b>Exhibit F</b>.</p>
<p><b>14. Review of Permits / Development Applications</b></p>	<p>The Development Agreement will incorporate a set of best practices for the submittal, review and processing of subsequent applications for approvals and permits required for development of the Project. These best practices are intended to facilitate the expeditious processing of subsequent project approvals and permits; to address challenges, issues, and concerns during development of the Project; and to promote accessibility, predictability, and consistency across City agencies and departments. As approved by the City, best practices may include:</p> <ul style="list-style-type: none"> <li>• Timelines for City review and Developer resubmittal of plan sets for B- and P-Job permits (for construction of buildings and infrastructure, respectively)</li> <li>• Procedure for processing of “foundation only” permits</li> <li>• Provision of dedicated plan checkers and inspectors for the Project</li> <li>• Procedure for utilizing third party plan checkers and inspectors</li> <li>• Procedure for utilizing video inspections</li> <li>• Pre-approval of extended working hours, as set forth in the Project’s Environmental Impact Report</li> <li>• Installation of Ballpark furniture, fixtures and equipment prior to issuance of a Temporary Certificate of Occupancy (“TCO”) for the Ballpark</li> <li>• Procedure for issuance of phased TCO’s on non-Ballpark development</li> <li>• Provision of a priority project manager, within the City Administrator’s office, to effectuate all of the above and act as a facilitator for all subsequent Project permits and approvals</li> </ul> <p>All of the above shall be at Developer’s sole cost and expense, as set forth in Section</p>

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	20, “City Costs”, below.
<b>15. Defaults</b>	<ol style="list-style-type: none"><li>1. <b>City Event of Default.</b> A breach of any material obligation by the City shall be <b>cured</b> within the times required after written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “<b>City Event of Default</b>”.</li> <li>2. <b>Developer Event of Default.</b> The occurrence of any of the following breaches shall be cured within the times required after written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “<b>Developer Event of Default</b>”:<ol style="list-style-type: none"><li>a. Developer’s failure to have a legal or equitable interest in the Property;</li><li>b. Developer’s failure to Commence Construction of the Ballpark when required by the Agreement, or, after Commencement of Construction, to proceed with construction in a sustained and continuous manner;</li><li>c. Developer’s failure to pay any monetary amount when due;</li><li>d. Developer’s failure to perform or fulfill any other material term, provision, obligation, or covenant of the Development Agreement;</li><li>e. A voluntary or involuntary attempt by Developer to undertake a Transfer in violation of the Agreement; or</li><li>f. A filing of bankruptcy, dissolution, or reorganization by Developer or any general partner, managing member, or parent entity of the Developer.</li></ol></li> <li>3. <b>Notice and Cure:</b> If breaches under paragraphs 1 or 2 arise, then either the City or the Developer, as the case may be, shall notify the other Party in writing of its purported breach or failure, giving such defaulting Party forty-five (45) calendar days for monetary defaults and sixty (60) calendar days for all other defaults, to cure such breach or failure, or, if such breach is of the type that cannot reasonably be cured within the 60-day period, then such defaulting Party shall have such reasonable time to cure such breach so long as the defaulting Party commences such cure within the initial 60-day period and diligently pursues such cure to completion.</li> <li>4. <b>Developer Remedies for City Event of Default:</b> If a City Event of Default occurs after Developer provides the City notice and cure rights pursuant to paragraph 3 above, the Developer may pursue any of the following remedies:<ol style="list-style-type: none"><li>a. Terminating the Agreement;</li><li>b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages);</li><li>c. Seeking equitable relief from a court of competent jurisdiction, including,</li></ol></li></ol>

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	<p>but not limited to, specific performance; or</p> <p>d. Pursuing any other remedy at law or in equity, subject to the limitations of Section 4.b and except to the extent the Development Agreement contemplates a different remedy for such City Event of Default.</p> <p>5. <b>City’s Remedies for Developer Event of Default:</b> If a Developer Event of Default occurs, the City shall provide the Developer notice and cure rights pursuant to paragraph 3 above. If the Developer does not cure or begin to cure the breach within the time period specified, the City may pursue any of the following remedies:</p> <ul style="list-style-type: none"><li>a. Terminating the Agreement subject to the revocation procedures set forth in OMC § 17.152.060 through 17.152.230;</li><li>b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages);</li><li>c. Seeking equitable relief, including injunctive relief and specific performance;</li><li>d. Pursuing any remedies available to the City at law or in equity, subject to the limitations of subparagraphs 5.a and 5.b, and except to the extent the Development Agreement contemplates a different remedy for such Developer Event of Default (such as, for example, specific remedies included in the separate workforce program, community benefits program or non-relocation agreement);</li><li>e. For a Developer Event of Default related to Developer’s failure to construct requisite parks and infrastructure, as and when required by the Phasing Plan, or any subdivision or public improvement agreements, in addition to any remedies the City may otherwise have under such improvement agreements, the City’s sole remedy shall be to seek specific performance and to withhold building permits or Certificates of Occupancy, as relevant, for any element of the Project that is tied to the applicable park or infrastructure.</li></ul> <p>6. <b>Limited Cross-Defaults:</b> If Developer conveys or transfers some but not all of the Project or a party takes title to foreclosed property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of “Developer” under the Development Agreement, there shall be no cross-default between the separate parties that assumed Developer obligations, with the limited exceptions of (i) the City’s rights to early termination as set forth in Section 2 and (ii) the City’s right to enforce Developer’s Phasing Plan obligations against a transferred development parcel (<i>i.e.</i>, the right to withhold building permits or occupancy permits to the extent permitted under paragraph 5 above).</p>
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<p><b>16. Lender Protections</b></p>	<p>Development Agreement to include customary protections for mortgage and mezzanine lenders, including (i) City obligation to deliver to any Developer’s lenders a copy of any notice of default or determination of noncompliance given to such Developer; (ii) Lenders shall have the right, but not the obligation, to cure within a specified period upon receipt of the notice, including such additional time to obtain possession of the Property, provided that Lender provides proper notice to the City and takes requisite steps to diligently obtain possession; (iii) the Development Agreement shall be assignable to the Lender or any other person who acquires title to all or any portion of the Property through foreclosure or deed-in-lieu of foreclosure, provided such party agrees in writing to assume all of the obligations of the Development Agreement, including any uncured defaults; provided however, that, should the Lender acquire title, then the City shall agree to toll any deadlines for performance of any construction obligations for a period equal to the time required to obtain title plus six months; and (iv) City obligation to deliver estoppels to current and prospective lenders acknowledging that there is not actual default, the Development Agreement is still in effect, there have been no amendments to the Development Agreement, and such other factual matters as reasonably requested by such lender (the form of the Estoppel Certificate shall be attached as an Exhibit).</p>
<p><b>17. Assignment</b></p>	<p>Developer’s rights to transfer its rights and obligations under the Development Agreement shall be as follows:</p> <ol style="list-style-type: none"><li>1) Developer may not transfer its interest in the Development Agreement, in whole or in part, prior to Commencement of Construction of the Ballpark except to (a) an affiliate or (b) an entity acquiring the Oakland Athletics team and its real estate holdings, in either instance for the purpose of development of the Ballpark.</li><li>2) After Commencement of Construction of the Ballpark, Developer has the right to transfer all or any portion of its rights under the Development Agreement to the same extent that it validly transfers, under the Port transaction documents, all or any portion of its real property interest in the Project Site.</li><li>3) Prior to any transfer of the Development Agreement hereunder, the City shall review and approve the proposed Assignment and Assumption Agreement to ensure the inclusion of the requisite rights and obligations associated with the proposed real property transfer. A form of Assignment and Assumption Agreement for a full transfer of Developer’s interest will be attached to the Development Agreement. The parties shall endeavor to substantially use such form for any transfer of partial interest.</li></ol>

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<b>18. Periodic Review</b>	The Development Agreement shall be subject to Periodic Review procedures to be set forth in the Development Agreement.
<b>19. Force Majeure</b>	<p>“Force Majeure” shall mean event(s) that cause material delays in the Developer’s performance of its obligation to Commence Construction of the Ballpark by the Ballpark Deadline, due to domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots; acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; inability to secure necessary labor, materials, or tools due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Project Site.</p> <p>The Ballpark Deadline may be extended by a period of time equal to the duration of a Force Majeure event; provided, however, within thirty (30) days after Developer first reasonably determines that the Force Majeure event will result in a delay in performance, Developer shall have first notified the City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period that such cause or causes will delay Developer’s ability to Commence Construction and the City shall have agreed in writing to such extension, which agreement shall not be unreasonably withheld or delayed.</p> <p>Notwithstanding the foregoing, under no circumstances shall the aggregate Force Majeure extensions exceed four (4) years.</p>
<b>20. City Costs</b>	<p>Developer shall reimburse all actual and reasonable costs incurred by the City in connection with (1) monitoring, administration and enforcement of the Development Agreement and other Project approvals, (2) processing of all current and future Project approvals, and (3) defense of all Project approvals; but excluding costs covered by Administrative Fees (the foregoing, collectively, “City Costs”) The process for such payment shall require the City to submit supporting documentation and provide Developer with audit rights.</p> <p>In addition, Developer shall pay (based on a payment process to be set forth in the Development Agreement) the City for its costs incurred to provide City services to the Ballpark and surrounding neighborhoods in connection with baseball games and other events at the Ballpark, which may include (but are not limited to):</p> <ul style="list-style-type: none"><li>• Parking and traffic engineering and control services;</li></ul>

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	<ul style="list-style-type: none"><li>• Police and other emergency services;</li><li>• Litter pickup/street and sidewalk cleanup.</li></ul>
<b>21. Non-Relocation</b>	<p>As material inducement for the City to enter into the Development Agreement and for the City’s financial participation committed to in the Development Agreement, Developer shall enter into a non-relocation agreement (“Non-Relocation Agreement”), in a form of agreement to be agreed upon by the parties, which shall include, at a minimum, the following terms:</p> <ul style="list-style-type: none"><li>a) <b>Covenant to Play:</b> The new Ballpark shall become the “home” stadium for the Oakland Athletics and the Oakland Athletics shall covenant to play all of its home games at the Ballpark, commencing as of the opening of the Ballpark, subject to certain limited exceptions to be agreed upon.</li><li>b) <b>Maintenance of Franchise:</b> The Oakland Athletics shall, throughout the Term of the Non-Relocation Agreement:<ul style="list-style-type: none"><li>1) Maintain its membership and good standing in the Major League Baseball (“MLB”) franchise;</li><li>2) Maintain its corporate headquarters and principal place of business in Oakland;</li><li>3) Continue to use Oakland as the primary geographic team identity, consistent with existing practices.</li><li>4) Agree to i) hold, maintain, and defend the right of the Team to play baseball as a Major League Club; and ii) not encourage or solicit the contraction of the team by MLB.</li></ul></li></ul> <p><b>1. Transfer Rights and Obligations:</b> Any transfer of interest in the ownership of the Oakland Athletics shall bind successors to this Non-Relocation Agreement, and shall require the Oakland Athletics to provide, prior to transfer, evidence to the City that the prospective transferee has (i) assumed the obligations under this Non-Relocation Agreement and (ii) obtained the right to play at the Ballpark either through a license agreement or an assumption of Ballpark lease with the Port. Such evidence shall be provided in the form of the assumption and assignment agreement to be attached to the Non-Relocation Agreement. For the sake of clarity, other than the foregoing, the Non-Relocation Agreement will not afford the City any approval rights in connection with any transfer of ownership interests in the Oakland Athletics.</p> <ul style="list-style-type: none"><li>c) <b>Default Remedies:</b> The City shall be entitled to specific performance, injunctive and other equitable relief for the Oakland Athletics defaults under the Non-Relocation Agreement. If the City fails to receive adequate equitable relief and the team relocates during the Term or violates any material covenant of the Non-Relocation Agreement, the Oakland Athletics</li></ul>

**STAFF’S PROPOSED NON-BINDING TERMS**

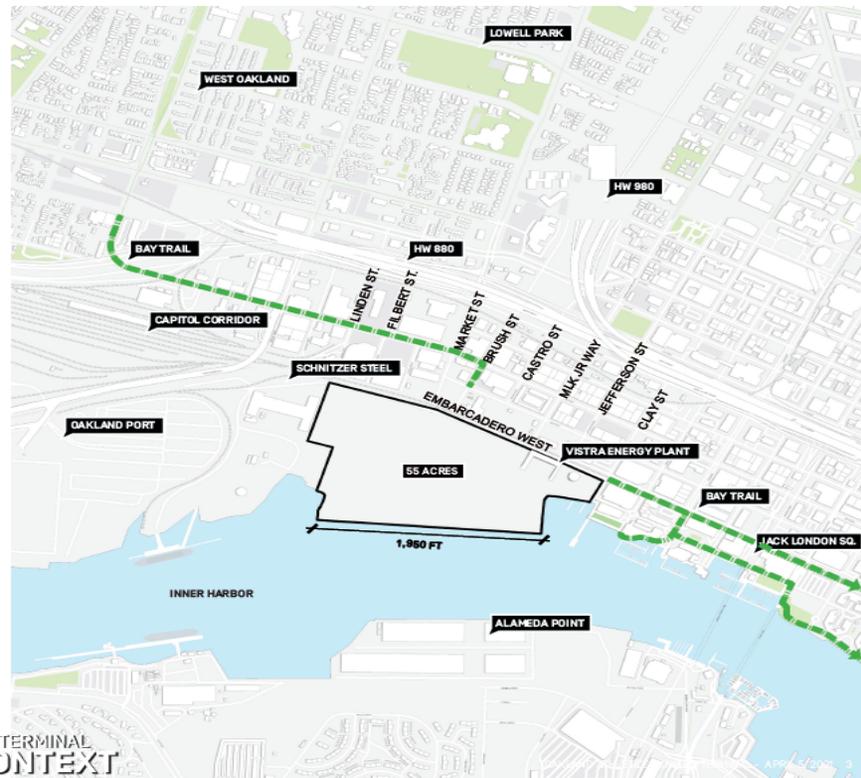
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	<p>shall, for the entire remaining term of any outstanding public bond indebtedness encumbering the Project tax increment, be obligated to pay an amount equal to the difference between the Project tax increment and the debt service due on any such outstanding public debt .</p> <p>d) <b>Term:</b> The Term of the Non-Relocation Agreement shall be 25 years. Notwithstanding the foregoing, the Oakland Athletics shall, for the entire remaining term of any outstanding public bond indebtedness encumbering the Project tax increment, be obligated to pay an amount equal to the difference between the Project tax increment and the debt service on any such outstanding public debt.</p>
<p><b>22. CEQA Compliance</b></p>	<p>The City will not approve a Development Agreement or other binding Project approvals or take any other discretionary actions that will have the effect of committing the City to the development of the Project until the final environmental analysis for the Project is completed and approved in accordance with CEQA. If the Project is found to cause significant adverse impacts that cannot be mitigated, the City retains absolute discretion to: (a) modify the Project to mitigate significant adverse environmental impacts; (b) select feasible alternatives to avoid significant adverse impacts of the proposed Project; (c) require the implementation of specific mitigation measures to address adverse environmental impacts of the Project identified in the CEQA approval documents; (d) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; or (e) approve the proposed Project upon a finding that the economic, social, or other benefits of the Project outweigh unavoidable significant adverse impacts of the Project.</p>
<p><b>23. Exhibits</b></p>	<p>The following Exhibits are attached to this Term Sheet and incorporated herein by this reference:</p> <p><b>Exhibit A:</b> Site Map <b>Exhibit B:</b> Master Phasing Diagram <b>Exhibit C:</b> Open Space Phasing Diagram <b>Exhibit D:</b> Key Principles of the Howard Terminal Community Benefits Agreement <b>Exhibit E:</b> Arts Plan <b>Exhibit F:</b> Key Financial Terms</p>

Waterfront Ballpark District at Howard Terminal  
Development Agreement Term Sheet  
Oakland A's Presentation Draft April 23, 2021

Exhibit A

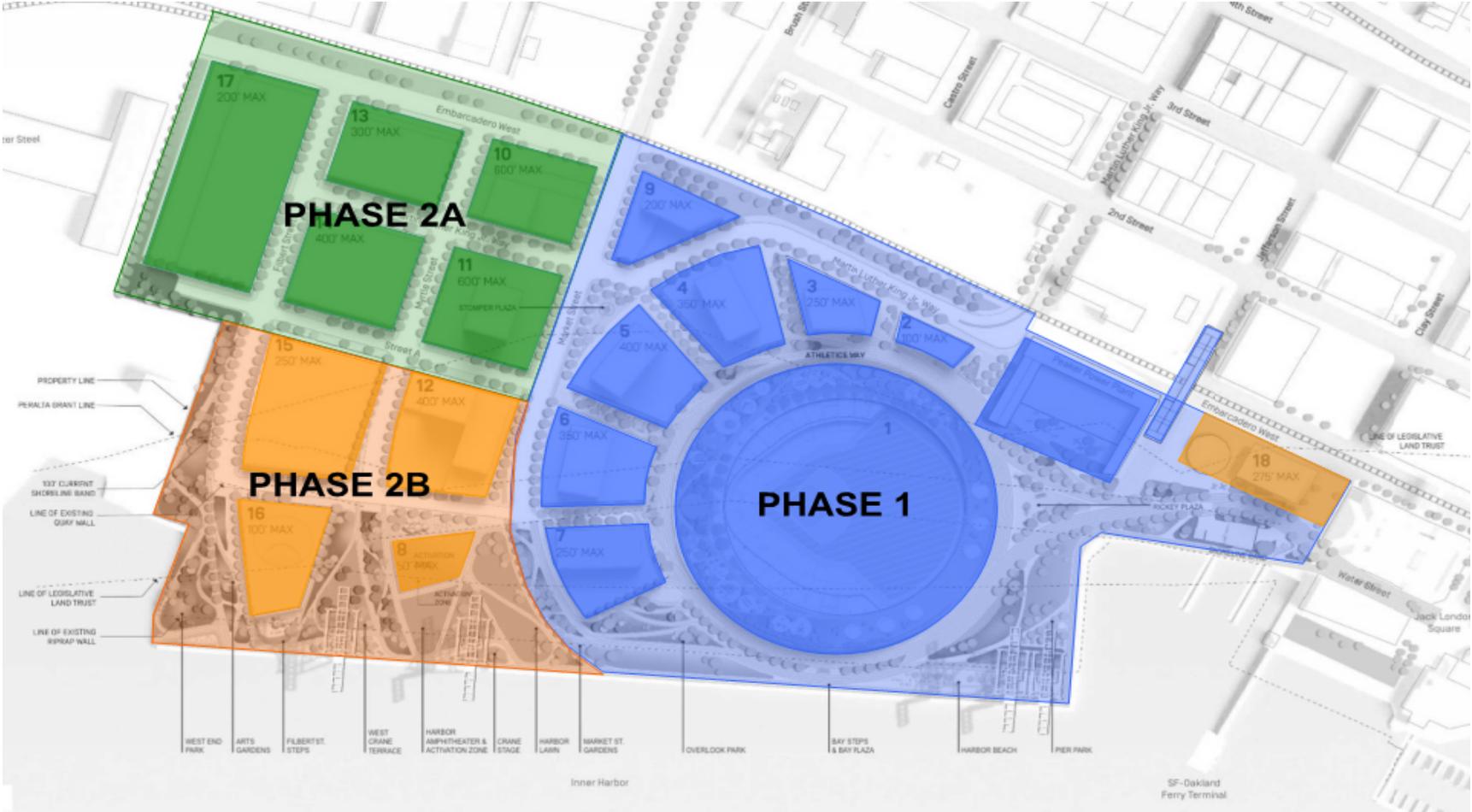
Site Location



**Waterfront Ballpark District at Howard Terminal  
Development Agreement Term Sheet  
Oakland A's Presentation Draft April 23, 2021**

**Exhibit B**

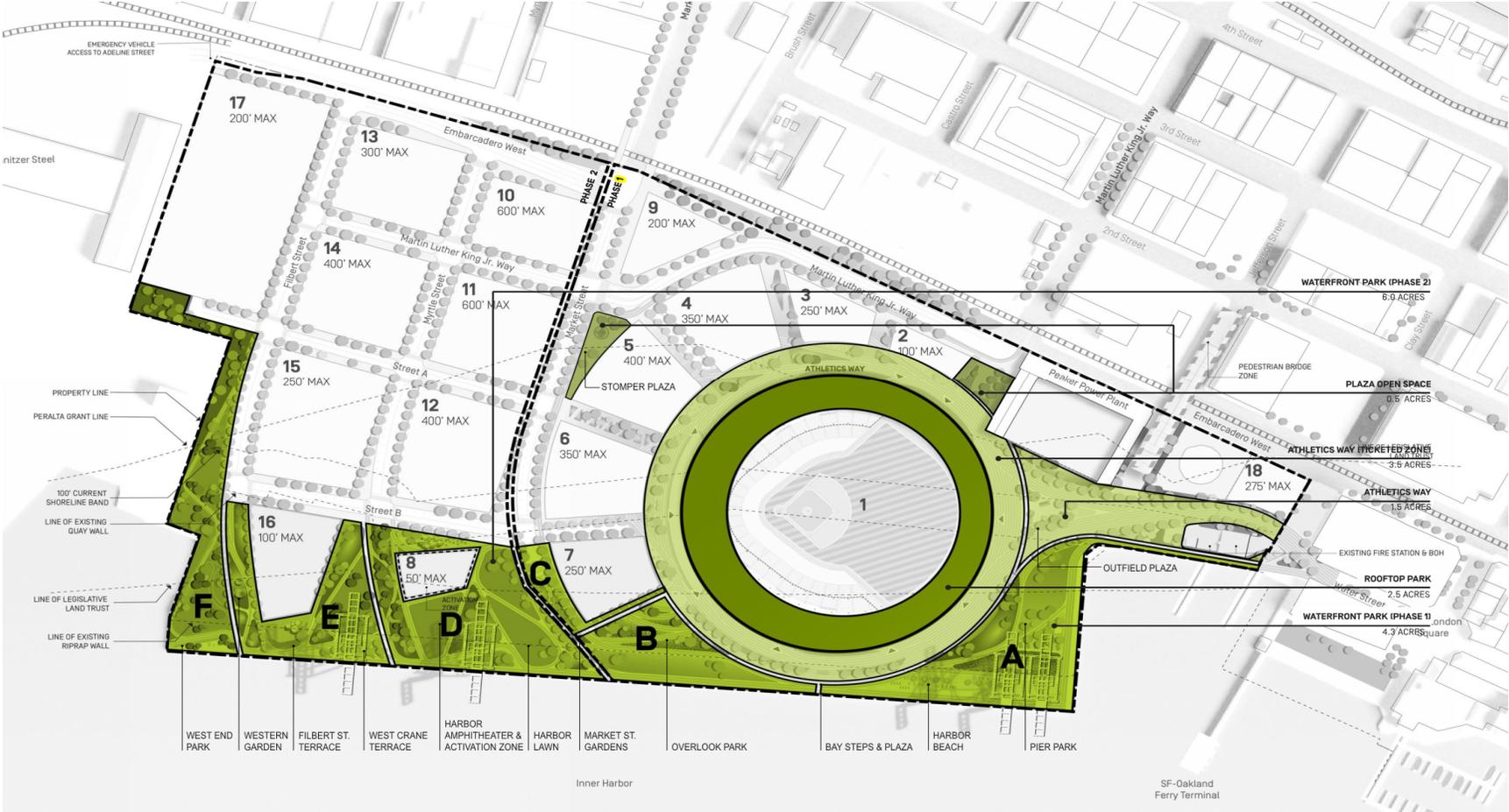
**Master Phasing Diagram: Project Phasing**



**Waterfront Ballpark District at Howard Terminal  
Development Agreement Term Sheet  
Oakland A's Presentation Draft April 23, 2021**

**Exhibit C**

**Master Phasing Diagram: Open Spaces**



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**Exhibit D**

**Key Principles of the Howard Terminal  
Community Benefits Agreement**

This is a summary of the key principles underlying the Howard Terminal Community Benefits Agreement (CBA) to ensure that the development of the Howard Terminal property provides equity-based, structural, long-term benefits to the surrounding communities. The Oakland A's, the City of Oakland and the Port of Oakland have agreed to these principles with the sincere expectation that they will be followed throughout the consensus-based CBA development process.

**Statements of Intent**

1. The relocation of the Oakland A's to the Howard Terminal will result in the redistribution of commercial activity and changes in land use with potential impacts that disproportionately affect Oakland's disadvantaged residents.
2. The Howard Terminal Community Benefits Agreement (CBA) is intended to help remedy inequities experienced by the most vulnerable or historically underserved populations, particularly those in areas most directly affected by the Oakland A's Howard Terminal Project -- West Oakland, Chinatown, Old Oakland, and Jack London Square.
3. The provisions of the CBA should extend to all development within the Howard Terminal Property, as defined by Assembly Bill (AB) 1191.
4. The CBA should be sustainable and long lasting for at least the term of the Oakland A's lease and all later leases of the Howard Terminal Property, regardless of whether any given parcel is ultimately developed by the A's or another developer.
5. Ideally, combined benefits will create synergistic outcomes that offer cumulative mitigation.
6. The obligations to be set forth in the CBA will be identified and prioritized by community members to carry out this intent.

**Operating Principles**

1. The CBA applies to all development, development rights, use and occupancy of the Oakland Sports and Mixed-Use Project, also known as the "Howard Terminal Project" for the life of the Howard Terminal Project. The CBA applies to all developers of the Howard Terminal projects and all employers, commercial tenants, subcontractors, etc. that operate on the project site. The CBA applies regardless of whether any given parcel of the Howard Terminal Property is leased or developed by the Oakland A's or some other entity. It shall be effective from development through operation, for at least 66 years.
2. The terms of the CBA will exceed any minimum requirement of local, state, or federal law for projects such as the Howard Terminal Project.

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3. High priority is given to terms that serve the needs of historically underserved, vulnerable and at-risk populations, as identified in the City's Equity Indicators Report, as well as other relevant resources, which may include data from local, regional, state, and federal governments, as well that from private foundations and academia.
4. Each CBA obligation shall include a quantifiable goal or other objective means of determining whether that obligation has been met and meaningful remedies available in the event of non-compliance.
5. The CBA will include a permanent mechanism for ongoing community monitoring and enforcement to ensure that the CBA meets its objectives and has sufficient transparency and community accountability.
6. Community oversight and enforcement will include, at a minimum, those individuals or organizations represented on the Steering Committee that execute the CBA and their successors and assigns, including representatives of the four impacted neighborhoods of West Oakland, Chinatown, Old Oakland, and Jack London Square.
7. The following "best practices", and any others developed by the Steering Committee, will be used to develop the CBA:
  - a. Historical inequity, as described by the "Baseline Indicators Report," Oakland Municipal Code Section 2.29.170.1, and other identified sources, is to be addressed by the CBA, and the mitigation of identified historical inequity may constitute a rational basis for a CBA term,
  - b. To the extent possible, each CBA obligation will include the assessment of equity factors to determine whether the obligation has been met,
  - c. The collaborative process should create win-win situations which result in measurable long-term outcomes,
  - d. The CBA terms shall not reinforce or increase current and/or historical inequities faced by vulnerable populations in the four nearby or other communities, and
  - e. Discussions must be transparent and sufficient information must be provided on a timely basis for parties to evaluate the feasibility and viability of proposals.

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**Exhibit E**

**Howard Terminal Arts Plan Process**

This exhibit to the Term Sheet for the Howard Terminal Development Agreement outlines the process through which an Arts Master Plan (“**Arts Plan**”) may be developed, approved and implemented for the Project. If an Arts Plan is developed, approved and implemented pursuant to the guidelines below, all development within the Project Site shall be exempt from the City of Oakland (the “**City**”) public art ordinance (OMC Chapter 15.78 - PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT, the “**Public Art Ordinance**”), as the intent of that ordinance will be met or exceeded by the Arts Plan that is approved for the site.

The Developer and City shall use good faith efforts to collaboratively develop and adopt an Arts Plan pursuant to the guidelines below. If such efforts fail to result in an approved Arts Plan, the Developer shall instead comply with the Public Art Ordinance, and the Arts Plan shall not apply.

***Arts Master Plan Goals and Outcomes***

The Arts Plan shall be developed to meet the following goals:

Create an Artistic Hub at Howard Terminal that celebrates the City’s creativity, energy and diversity

- Reflect the community’s diverse population and culture
- Feature both established and emerging artists and organizations, who reflect Oakland’s diverse population
- Feature local artists and organizations, while also expanding the reach of the program to embrace work from other geographies
- Celebrate the area’s cultural and maritime history

Public Engagement

- Site physical art intentionally throughout the Project Site, resulting in a cohesive, freely accessible (as defined by OMC Chapter 15.78.030) public art experience
- Explore offsite art opportunities within the four adjacent neighborhoods (Jack London District, Chinatown, Old Oakland and West Oakland) to better integrate the Project Site with the neighboring community

Define “Art” Broadly

- Consider both performing and visual arts in creation of the Arts Plan
- Consider opportunities for art spaces (e.g. studio space, gallery space, performing arts etc.) in addition to static physical art installations
- Consider opportunities for temporary and rotating exhibits, as well as multidisciplinary arts festivals and ongoing programming within the Project Site and the four impacted neighborhoods
- Consider opportunities to include art to be incorporated into the architecture/landscape architecture on site. For the purposes of this section, "artists" shall not include members of the

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architectural, engineering, design, or landscaping firms retained for the design and construction of the Project

- Consider opportunities for contribution of non-commissioned art that adds depth and breadth to the public art experience, in addition to new commissions and projects
- Ensure that permanent work is appropriately durable to withstand the test of time and interaction with the public

#### Build on Precedent Efforts in the City

- Incorporate the community's priorities related to Culture Keeping and History, as reflected in the Project's *Community Benefits Recommendations Summary Report* available on the City's website at [https://cao-94612.s3.amazonaws.com/documents/FINAL\\_062521-HT-CBA-Recommendations-Final-Report-1.pdf](https://cao-94612.s3.amazonaws.com/documents/FINAL_062521-HT-CBA-Recommendations-Final-Report-1.pdf)
- Reflect the Goals and Priorities of the City's Cultural Plan

#### *Arts Master Plan Elements*

The Arts Plan must include the following elements:

##### Value

The total value of the arts installations, facilities and programming to be provided pursuant to the Arts Plan shall equal or exceed the contribution that would otherwise be required of the Project under the Public Art Ordinance, generally as follows:

- Residential Development: One-half of one percent (0.5%) of building development costs, excluding the cost of any affordable housing development; plus
- Non-Residential Development: One percent (1.0%) of building development costs.

The Arts Plan shall also set forth a process for valuing Developer contributions of existing art, so as not to dis-incentivize procuring or commissioning art from local and emerging artists.

##### Balance in the Arts Plan

The Arts Plan will address the general apportionment of value between:

- Newly created art
- Existing art
- Permanent installations
- Temporary installations and/or programming
- Arts spaces and facilities

##### Identification of Priority Opportunities for Art

The Arts Plan shall include a description of the priority opportunities for art and arts spaces (if proposed), across the Project Site and within any of the four neighborhoods adjacent to the site: West

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Oakland, Old Oakland, Jack London District and Chinatown. The Arts Plan should be expansive, identifying more opportunities than ultimately may be executed, with identification of the most essential opportunities that will be prioritized for implementation. Potential categories of art include, but are not limited to:

- New or previously created art to be installed within the Project Site in freely-accessible spaces (e.g. new/existing sculpture placed in/near the Ballpark or elsewhere on Project Site, art integrated into new on site construction, art installations/performative art/illumination relating to the existing shipping container cranes on site)
- New or previously created art to be located off site in freely-accessible spaces (e.g. art installations in I-880 underpasses, art related to the West Oakland Walk concept)
- Support for temporary exhibits on or off site in freely-accessible spaces (e.g. creating a rotating art gallery or performance space on site)
- Support for ongoing Arts and Cultural programming on site or off site
- Identification of opportunities for arts spaces, such as artist studios, performance space, and/or galleries, on site or off site
- A maritime-focused interpretive program designed to meet the requirements of AB1191

#### Phasing

The Arts Plan will include a description of how art installation, programming and/or spaces are to be phased relative to vertical and horizontal development on the Project Site. Generally, the Arts Plan will be implemented proportionately as vertical development occurs on the Project Site; provided, however, that the Developer may elect to implement public art, facilities or programs at a rate that exceeds the pace of development on site.

#### Maintenance

The Arts Plan will include a section on maintenance and ongoing operations, demonstrating sustainable sources of operational funding for arts programming and the maintenance and security of physical art and arts space identified in the plan, as necessary.

#### Community Benefits Elements

The Arts Plan will describe how the community's priorities related to Culture Keeping and History, as reflected in the Project's *Community Benefits Recommendations Summary Report*, available on the City's website at [https://cao-94612.s3.amazonaws.com/documents/FINAL\\_062521-HT-CBA-Recommendations-Final-Report-1.pdf](https://cao-94612.s3.amazonaws.com/documents/FINAL_062521-HT-CBA-Recommendations-Final-Report-1.pdf), are addressed in the Arts Plan.

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#### ***Arts Master Plan Development and Approval***

##### Plan Development

The Developer will prepare a draft Arts Plan, pursuant to these guidelines, for City review and approval. Preparation of the plan will include consultation with the City's Public Art Advisory Committee (PAAC), the City's Cultural Affairs Unit and Planning Department, the Port of Oakland ("Port"), and the Bay Conservation & Development Commission ("BCDC"). The Developer may elect to convene an Arts Advisory Group consisting of interested community members, City, Port and/or BCDC staff, and/or experts in public art and culture, to provide input on development and implementation of the Arts Plan. The Developer shall submit the draft prior to or together with its application for a Final Map for the Project site.

##### Plan Approval

The City Administrator or his or her designee will be authorized to approve the Arts Plan, after considering PAAC and public input, no later than submittal of the Developer's application for the first building permit for the Ballpark.

##### Amendments

Minor Amendments to the Arts Plan that do not materially affect the phasing, quantity or quality of art or arts spaces provided in the Arts Plan may be approved by the City Administrator or his or her designee.

Major Amendments to the Arts Plan that materially affect the phasing, quantity or quality of art or arts spaces provided in the Plan, must be presented to the PAAC for review and comment prior to approval by the City Administrator or his or her designee.

#### ***Arts Master Plan Implementation***

##### Selection of Public Art

All art to be installed on the Project Site will be selected by the Developer in conformance with the approved Arts Plan. The PAAC and Cultural Affairs Division will be consulted by the Developer for certain major works in key areas, such as new parks and open space or public rights-of-way, as identified in the Arts Plan.

All art to be installed off site in public spaces will be recommended by the Developer and approved by the City.

If established as identified above, an Arts Advisory Group will provide input on implementation, as set forth in the Arts Plan.

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**Exhibit F  
Key Financial Terms**

Infrastructure	
On-Site Infrastructure	Developer to fund the cost of all onsite infrastructure, parks & open space, which expenses may be reimbursed by up to 80% of the proceeds of an IFD over the Project site.
Off-Site Transportation Improvements and Grade Separated Crossings	<p>Based on cost estimates provided by the A’s, the projected costs of offsite transportation infrastructure improvements, grade separation, and parking management total \$351.9M. The parties are still negotiating how these costs will be allocated. Funding sources must be secured or authorized prior to entering into the Development Agreement.</p> <p>Developer to collaborate with and support the City in pursuing local, regional, State, Federal and other funds to defray the costs of offsite transportation infrastructure, parking management, and grade separation, which sources shall be secured and/or authorized prior to entering into the Development Agreement. Developer’s costs in securing such funds, if any, may be reimbursed by the proceeds of an IFD over the Project site.</p>
Capital Improvements	Developer to fund renovations to Oakland Fire Department Station No. 2 in lieu of payment of Capital Improvements Impact Fees.
Maintenance	Developer agrees to establish a Community Facilities District over the Project site to pay for maintenance of all onsite infrastructure, parks and open space, and grade separated crossings. City to pay for maintenance of all offsite infrastructure.

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Community Benefits	
Affordable Housing	<p>City to require construction of on-site affordable housing, in lieu of payment of fees pursuant to O.M.C. Chapters 15.72.100 and 15.68.080 and consistent with California Redevelopment Law. California Redevelopment Law cannot be waived by the City.</p> <p>The project will target a total of 30% affordability as follows:</p> <p>The number of new on-site affordable units must total at least 15% of all new onsite units, or 17.5% of total the market rate housing units (in either case, equivalent to approximately 450 units, assuming full buildout of the Project), and shall be provided as follows:</p> <ul style="list-style-type: none"> <li>• Onsite units affordable to very low income households to be provided in compliance with California Redevelopment Law</li> <li>• All affordable units to be deed-restricted for a period of at least 55 years</li> <li>• Affordable housing production to proceed at pace with market rate housing production</li> </ul> <p>In addition, the City and County will set aside IFD funds (see Other Community Benefits below) over the Project site to support offsite displacement prevention strategies targeting another 450 units (15%), including new construction, preservation, renovation, down payment and senior assistance in the four impacted neighborhoods (West Oakland, Chinatown, Old Oakland, and the Jack London District).</p> <p>All Developer expenses incurred for construction of onsite affordable housing in excess of Affordable Housing Impact Fee, and Jobs/Housing Impact Fee requirements and California Redevelopment law may be reimbursed by the proceeds of an IFD over the Project site.</p>

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<p>Other Community Benefits</p>	<p>City/Port to establish a Community Fund, to be administered over the course of the 66-year Port lease, comprised, at a minimum, of funding from the following sources:</p> <ul style="list-style-type: none"><li>• Port’s Social Justice Trust Fund - \$10 million projected over 10 – 15 years for workforce development.</li><li>• City and County set-aside from IFD - \$50 million projected over 15 – 20 years for affordable housing.</li><li>• 0.75 percent condominium transfer fee - \$340 million projected over 66 years.</li><li>• Payments in lieu of Transportation Impact Fees due under the O.M.C. - \$11 million projected over 10 years.</li></ul> <p>City staff to work collaboratively with community stakeholders to establish a mutually acceptable framework for (a) governance of the fund and (b) community oversight to ensure that community benefits commitments included in the Development Agreement are met, both such requirements to be set forth in greater detail in the Development Agreement.</p>
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## AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Betsy Lake  
Interim Assistant City  
Administrator

**SUBJECT:** Study Session on the Waterfront  
Ballpark District at Howard Terminal

**DATE:** July 1, 2021

City Administrator Approval

Date: Jul 2, 2021

### RECOMMENDATION

**Staff Recommends That The City Council Conduct A Study Session And Receive An Informational Report As Follows: (A) Conduct A Study Session On The Proposed Non-Binding Terms Of A Development Agreement With The Athletics Investment Group LLC D/B/A The Oakland Athletics, A California Limited Liability Company, Including Terms For, But Not Limited To, A Potential Infrastructure Financing District, Affordable Housing, And Non-Relocation, Relating To The Proposed Project; And (B) Receive An Informational Report On The Proposed Oakland Waterfront Ballpark District Project To Be Developed On The Property Known As The Howard Terminal At The Port Of Oakland (Project), Including But Not Limited To The Following: (1) Port Of Oakland's And City's Project Decision Responsibilities, Including The City-Port Regulatory Framework; (2) Project Approvals And Timelines; (3) Community Benefits; (4) Analysis Of Environmental Toxic Contaminants At Project Site And Anticipated Remediation Process; And (5) Potential Impacts To Nearby Maritime Industry And Port-Related And Non-Port Related Jobs.**

### EXECUTIVE SUMMARY

The Oakland Athletics (Oakland A's or A's) have proposed development of the Waterfront Ballpark District at Howard Terminal on Port of Oakland land at the westerly end of Jack London Square. The proposed project would include a new, 35,000-person capacity ballpark, together with up to 3,000 residential units, 1.5 million square feet of office space, and 270,000 square feet of mixed retail, cultural and civic uses, as well as a 3,500-seat performance theater, up to 400 hotel rooms, and approximately 18 acres of new, publicly-accessible open space (the Project). At \$1 billion, the A's iconic new waterfront Ballpark at Howard Terminal would represent the largest private investment to date in any Major League Baseball (MLB) park nationwide.

If approved, the Waterfront Ballpark Project at Howard Terminal will keep the A's rooted in Oakland for decades to come. Properly executed, the Project has the potential to accelerate long-needed infrastructure and transportation improvements that will allow people to move

safely to and around the waterfront and protect the economic engine of our seaport, expand the tax bases of both City and County, and achieve equitable jobs, housing, and other direct benefits for our community – all without the risk of leaving our taxpayers on the hook. In stark contrast to past Oakland sports deals, at Howard Terminal, the Oakland A's will privately finance, construct, operate and maintain the proposed Ballpark. No public funds will be used to build or operate the facility, nor will the City or County have operational duties or liabilities. Further, unlike the bonds issued to renovate the Coliseum, Staff's proposed financing structure won't put a dime of the City's or County's General Funds at risk.

With these guiding principles in mind, Staff has reviewed in detail the A's proposal of April 23, 2021, and presents below the results of that analysis, as well as its recommendations related to certain key issues requiring further negotiation, specifically:

A Financial Plan that:

- Invests the City's "but for" property taxes (new, additional tax revenues that will be generated by the Project) in critically needed public infrastructure, open space, and affordable housing by establishing a single Enhanced Infrastructure Financing District (IFD) over the Project site only;
- Attracts similar investment from Alameda County, commensurate with the substantial regional benefits the Project will provide; and
- Seeks to leverage local investments with state and federal funding to the maximum extent possible.

A Non-Relocation Agreement that:

- Reflects a commitment from A's to Oakland on par with Oakland's commitment to the A's; and
- Provides appropriate remedies in the event the team elects to leave Oakland in the future.

A Community Benefits Agreement that:

- Provides ample affordable housing opportunities on and off site;
- Provides equitable access to living and prevailing wage jobs for local residents; and
- Provides a flexible, long-term, community-directed source of funds to address community needs over the life of the 66-year Port lease.

## **BACKGROUND AND LEGISLATIVE HISTORY**

The Oakland A's have applied to the City of Oakland (City) for a Development Agreement, General Plan Amendment, Rezoning, Planned Unit Development, and associated environmental review, all to govern redevelopment of the approximately 55-acre site commonly known as Howard Terminal, located within the Port of Oakland (Port) on the Oakland Estuary at the southerly terminus of Market Street. The site is Port-owned and is currently used primarily for truck parking and as a container depot.

The Project will require multiple discretionary approvals at the state and local levels, including but not limited to the City's approval of a General Plan Amendment, Rezoning, Tentative Tract

Map, Preliminary and Final Development Plans and a Development Agreement, and the Port's approval of various real estate agreements, including an Option Agreement and Port Building Permit. The City and Port also must each ensure that the shared regulatory framework contemplated in the 2020 "Memorandum of Understanding Between City and Port Regarding Howard Terminal Oakland A's Ballpark Project" (MOU), approved by Resolution No. 87998 CMS dated January 21, 2020 is implemented. Once the local approvals are complete, the Project requires, at a minimum approval, from the State Lands Commission (SLC) of a trust exchange agreement for the property and trust-consistency determination with regard to the proposed uses on trust lands, issuance of a Major Permit from the Bay Conservation and Development Commission (BCDC) for the Project, and approval from the Department of Toxic Substances Control (DTSC) of a remedial action workplan (or equivalent) for the site. All agencies are working collaboratively with City Staff and the Oakland A's to review and regulate the proposed Project.

This Informational Report provides the relevant background information for the scheduled study session on the Waterfront Ballpark District at Howard Terminal, provides an update on each of the items listed under the title of the report, and is organized accordingly. Additional information is provided in the Frequently Asked Questions (FAQs) about the Waterfront Ballpark District at Howard Terminal on the City's website at <https://www.oaklandca.gov/resources/waterfront-ballpark-district-at-howard-terminal-faqs> and provided here as **Attachment 1**.

## **ANALYSIS AND POLICY ALTERNATIVES**

### **1. DEVELOPMENT AGREEMENT TERM SHEET**

In February 2020, the A's submitted an application for a Development Agreement for the proposed Project, and shortly thereafter, in April 2020, the City and A's began negotiating a Development Agreement term sheet. A "term sheet" is a non-binding document that memorializes a general agreement between parties in many different types of complex business negotiations. On May 13, 2019, the Board of Port Commissioners unanimously approved the nonbinding terms of its own contemplated agreements with the A's for the Project, as documented in the Exclusive Negotiating Term Sheet Agreement available at <https://www.portofoakland.com/wp-content/uploads/Howard-Terminal-microsite-Term-sheet.pdf>. A term sheet is often used as a framework or outline to guide the negotiation of subsequent binding contract documents. A term sheet is not a binding project approval, entitlement or contract.

With limited exceptions, most of the terms contained in the term sheet released by the A's on April 23, 2021, provided in **Attachment 2**, were negotiated and mutually agreed upon between City and A's between April 2020 and April 2021. However, the A's first submitted their proposed Financial Plan (Exhibit F to the A's Proposed Term Sheet in **Attachment 2**) in April 2021, and that exhibit does not represent a consensus of A's and City Staff. Staff is continuing to evaluate, revise, and attempt to arrive at consensus with the A's on a new Term Sheet and Financial Plan. Staff's proposed term sheet will be presented to the City Council on July 20, 2021.

The sections below first discuss the Financial Plan, including the fiscal impacts of the Project and Staff's recommendation regarding the use of an IFD, followed by a discussion of, and Staff's recommendations regarding the proposed non-relocation agreement and community benefits, including affordable housing, jobs and a community fund.

#### **(a) FINANCIAL PLAN – INFRASTRUCTURE FINANCING DISTRICT**

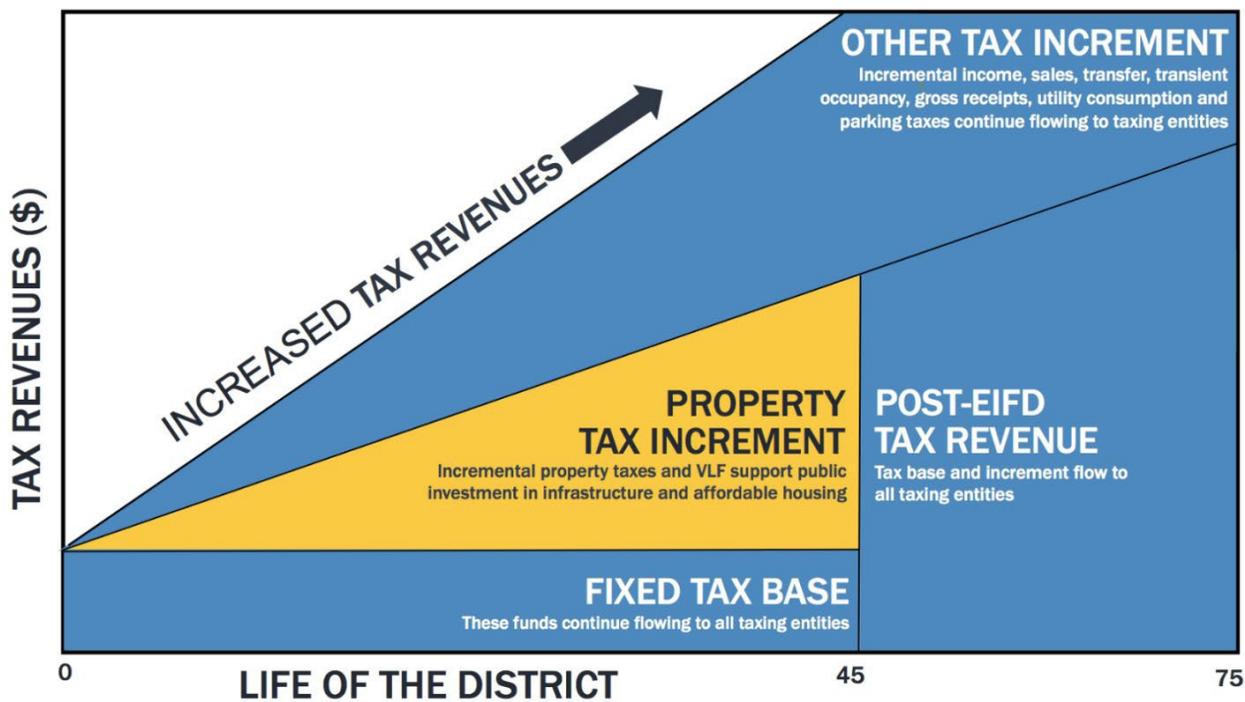
The City and the Oakland A's are in agreement that the Ballpark and all of the new commercial and market-rate residential development in the Waterfront Ballpark District at Howard Terminal will be 100 percent privately financed. The A's have asked the City and County to seek grants and use project-generated revenues to help fund the infrastructure and safety improvements, public parks, affordable housing, and other community benefits needed to make the Waterfront Ballpark District successful, resilient, safe and equitable. This sort of public-private partnership is common on projects of this size because many of the contemplated infrastructure improvements and amenities benefit the City and region as a whole, and not just the Project. Many safety and infrastructure improvements that the Project would accelerate and fund are needed now, even absent the proposed Project, including protection against sea level rise, anti-displacement measures and new affordable housing, safer separation and protection of Port-serving rail and truck routes, and stronger bike, pedestrian, and transit connections between West Oakland, Downtown and Old Oakland, Chinatown, and Oakland's waterfront.

In addition to State and Federal transportation funds, the primary mechanism contemplated to fund these improvements is a form of tax-increment financing known as an IFD. IFD stands for "Infrastructure Financing District" and is sometimes also called an EIFD, or "Enhanced Infrastructure Financing District." IFDs were originally created by the State legislature in 2014 and have been amended and expanded over the years since. Although an IFD and an EIFD have slightly different rules under State law, they are very similar, and the terms IFD and EIFD are often used interchangeably. An IFD is governed by a Public Financing Authority (PFA) comprised of representatives from each participating taxing entity. The PFA is tasked with adopting and implementing a detailed Infrastructure Financing Plan for the district.

When an IFD is established, the district's existing "base-year" level of property tax revenue is fixed. Then, as assessed values and property tax revenues grow over the years due to new development, the additional (also known as "incremental") property tax revenues over and above the fixed base year revenues are used to help finance infrastructure and affordable housing needed to support the new development project. Based on a current assessed value of the Waterfront Ballpark District site of approximately \$29.5 million, the City today receives about \$73,000 per year in property taxes from Howard Terminal. Over the next 16 years, if the proposed Project is built out, that assessed value is expected to grow to \$7.6 billion, a more than 250-fold increase, with a corresponding increase in the City's share of property tax revenue of more than \$11.5 million each year.

Taxing entities, such as the City and County, must take formal actions to contribute their respective shares of these new tax revenues into the IFD. IFD proceeds may be used on a "pay as you go" basis or leveraged through bond financing to reimburse or fund infrastructure and affordable housing costs. When all bonds are paid off, usually after 45 years, all of the respective shares of property tax revenue resume flowing into the City or County's General Fund. Only property taxes can be contributed to an IFD, and other taxes, like sales and transfer

taxes, flow to the City's and County's General Funds throughout the project's life cycle, as illustrated in **Figure 1** below.



**Figure 1: Tax Increment**

IFDs are generally paired with a geographically coterminous Community Facilities District (CFD), also sometimes known as a "Mello Roos District," formed pursuant to the California Mello Roos Community Facilities District Act of 1982. When a CFD is created, the property owners within the district agree to impose a "special tax" on their property, over and above regular property taxes. The special tax would apply only to the Howard Terminal site, and no property owner outside of the Project site would be subject to it. The special taxes are collected by the County tax collector and because they are considered secure revenue, investors will lend against that revenue. When paired with an IFD, CFD bond issuances are generally timed and sized such that the incremental revenues captured by the IFD are adequate to service the CFD debt without additional cost to the property owner. This structure (CFD bonds backed in part by IFD revenues) has been used successfully by each IFD that has issued debt to date statewide, and is recommended by Staff for the following reasons:

1. An IFD over the project site (as illustrated on **Attachment 3**) would utilize those incremental tax revenues that would not exist "but for" the Project to pay for critically needed infrastructure, open space and affordable housing that will broadly benefit the City and region, in addition to the Project.
2. CFD bonds are non-recourse to the issuing entity (the City), which means they don't put the City's General Fund at risk or increase base property tax rates, either in the district or elsewhere in the City.
3. CFD bonds are issued regularly and are well accepted by the debt markets.

### Fiscal Impact of the Proposed Project

The City's goal is for the Project to create a net fiscal benefit to the City and its taxpayers, even after accounting for the increased costs that the City will incur to provide City services to new residents and workers.

Century Urban is a local firm that has been retained by the City to evaluate the economics of the proposed Project. Its July 2021 report on "Fiscal Impacts of the Waterfront Ballpark District at Howard Terminal" (Fiscal Impact Report) is included as **Attachment 4**. Based on Century Urban's analysis, absent an IFD, the City could expect to see the following increases in **Table 1**<sup>1</sup>, below, to one-time and ongoing revenues and expenses, were the project built today:

**Table 1: Fiscal Impact to the City**

<b>Total One-Time Revenue to General Fund</b>	<b>\$ 60,050,000</b>
Total Annual Tax Revenue to General Fund	\$ 34,469,000
Total Annual Parking Revenue to General Fund	\$ 12,520,000
Total Recurring Expenses, Per Year	\$ (10,250,000)
Total Parking Management Expenses, Per Year	\$ (11,170,000)
<b>Total Annual Recurring Net Revenue</b>	<b>\$ 25,569,000</b>

In addition to new General Fund revenues, the City could expect to see \$960,000 in annual Measure C Transient Occupancy Tax funding for cultural affairs, and \$1,582,000 in annual Measure Z Parking Tax for public safety and violence prevention. The Oakland Unified School District (OUSD) could expect to realize approximately \$13.5 million in one-time School Facilities Impact Fees, and OUSD and the Peralta Community College District would receive \$13 million in new annual revenues as a result of the project.

Projected total annual tax revenues to the City's General Fund include \$10.4 million per annum in incremental property taxes and property taxes in lieu of vehicle license fees (VLF). Should the City elect to form an IFD over the Project site and invest all or a portion of its incremental property tax and/or VLF in public infrastructure and affordable housing through the IFD, annual recurring net General Fund revenue would be reduced commensurately with that investment. With all eligible incremental taxes dedicated to an IFD, the project would still yield more than \$15 million additional net General Fund revenue to the City annually.

### IFD – Oakland A's Proposal

The A's Proposed Term Sheet included two IFDs (as illustrated in Exhibit F to **Attachment 2**) – one over the Project site and one off-site covering the Jack London District and portions of West Oakland. Staff recommends against using an offsite IFD for a number of reasons. While an IFD over the Howard Terminal site itself would clearly capture those incremental taxes that would

<sup>1</sup>All estimates are provided in 2020 constant dollars as if the project were fully built and stabilized

not exist “but for” buildout of the proposed Project, an IFD over the adjacent neighborhoods is likely to capture at least some naturally occurring incremental property tax revenues that, absent the Project, would otherwise flow to the City’s General Fund. The City has been operating with a structural imbalance for a number of years, with growth in expenses outpacing that of revenues. An offsite IFD could exacerbate this structural imbalance, reducing the City’s ability to provide services and infrastructure enhancements in the near term and long term to the City as a whole, and would in essence be using General Fund dollars to subsidize the Project.

Over the past 20 years, assessed values Citywide have appreciated approximately 6.4 percent per annum, on average. Projections provided by the A’s for their proposed Jack London Square IFD anticipate assessed value growth within that area of 6.8 percent per annum, on average, over the forthcoming 45-year period. While there is no certainty that assessed values in Oakland will continue to grow as rapidly going forward as they have over the past 20 years, this would suggest that more than 90 percent of the anticipated growth in assessed values and property tax increment within the A’s proposed Jack London Square IFD could occur with or without the proposed Project. Further, the majority of the property located within the A’s proposed Jack London Square IFD is within the Downtown Specific Plan Area. In many cases, adoption of the Downtown Specific Plan would result in changes to allowable uses and/or the allowable density or intensity of development within the Plan Area. While it is reasonable to assume that construction of the Ballpark and the substantial ancillary development contemplated for Howard Terminal would accelerate development on neighboring blocks, it is impossible to parse the degree to which the growth in assessed values within that area would be due to the City’s independent planning efforts and “background” growth versus the “catalytic” effects of the proposed Project.

Further, formation of an offsite IFD presents a number of logistical challenges. As noted above, the only use of IFDs to date has been to create a revenue stream in the future that can support the issuance of debt through a CFD. This structure works well in situations where there is single ownership of the land (as with an on-site IFD over Howard Terminal) and has been successfully used in several recent development projects on public land in San Francisco, including the Giants’ Mission Rock, Pier 70, and Treasure Island projects. However, the diverse ownership within the A’s proposed Jack London District IFD makes the use of both CFDs and IFDs challenging. Forming a CFD requires that two-thirds (2/3) of the affected property owners within the proposed district “opt in” to a higher property tax rate. The IFD law includes a protest process, such that protests lodged by a majority of the landowners and residents within the proposed district would prevent its formation and protests lodged by at least a quarter would necessitate an election. Thus, there is no certainty that the A’s proposed Jack London Square IFD could be successfully formed, nor, if formed in the absence of a corresponding CFD, successfully issue debt.

Finally, the proposed offsite IFD is a poor fit for the A’s intended use – namely, to provide funds to construct offsite infrastructure and grade separations. IFDs function primarily as reimbursement mechanisms. The 80 percent of the A’s proposed Jack London District IFD allocated to infrastructure, for example, is expected (based upon the A’s projections of increment) to generate pay-go and bond proceeds of less than \$39 million by opening day of the ballpark, or less than 15 percent of the anticipated costs of the improvements it has been proposed to fund.

## IFD - Staff Recommendation

Development of the Howard Terminal site requires significant investment in infrastructure, both on- and off-site, as shown in **Table 2**<sup>2</sup>, below:

**Table 2: Infrastructure Costs**

Onsite Infrastructure	\$ 194,400,000
Grade Separated Crossings	\$ 147,100,000
Offsite Transportation Improvements	\$ 138,600,000
Bay Trail Extension & Parks (18.3 acres)	\$ 132,600,000
<b>Total Infrastructure &amp; Open Space Costs</b>	<b>\$ 612,700,000</b>

The cost of those improvements is beyond what can be borne by the City and developer alone. In order to bring the Project to fruition, unlock the potential of the Howard Terminal site, grow the City's and County's tax bases, and achieve equitable benefits for our residents, public investment from both the City and County is needed.

Therefore, City staff recommends formation of an IFD over the Howard Terminal site only, as shown on the figure provided as **Attachment 3**, ensuring that the Project pays for itself. Investing new project-generated revenues into public infrastructure and benefits, without putting either the County or City's General Funds at risk, is a responsible way to maximize the public benefits of this transformative development.

### (b) NON-RELOCATION

As discussed below, Staff is recommending that the City's final package of approval's include a binding Non-Relocation Agreement with the A's. As compared to professional football and basketball, relocation in MLB is extremely rare.<sup>3</sup> This is due in part to the advent of "non-relocation" or "commitment" agreements associated with new ballpark construction. Since the 1980s, at least 30 non-relocation agreements have been signed between public entities and MLB teams, and at present, these agreements are nearly universal elements of ballpark projects that involve any level of public investment. A non-relocation agreement essentially binds a team to remain headquartered in its home city and to play most or all of its home games in its new facility. Specific performance covenants are included in non-relocation agreements, as monetary remedies are generally considered to be insufficient to make the host city "whole" in the event of a team's early departures. The need for such covenants was amply demonstrated by numerous relocations in the two decades between 1990 and 2010 whereby major league sports teams, absent a specific performance covenant, were allowed to relocate simply by paying the remaining rent on their existing facilities. Non-relocation agreements are put in place to protect substantial investment by a city, county or other public entity and in recognition of the loss of tax revenues, indirect economic benefits and reputation that would

<sup>2</sup> All figures are in today's dollars.

<sup>3</sup> In the past 50 years, 10 professional football teams have relocated, and 13 professional basketball teams. Only one MLB team has relocated since 1971. All leagues are similarly sized (30 – 32 teams per league).

result if the team were to leave. In addition, in order for required public or private financing to be executed, a non-relocation agreement of at least the term of the debt to be issued will be required.

Staff reviewed in detail five MLB non-relocation agreements signed in the last eight years, as well as an article from the Marquette Sports Law Review which surveys an additional 25 earlier agreements. These agreements are remarkably consistent in their content. Based on this research, below are the terms Staff is negotiating with the A's as well as the current status of such terms (shown in *italics*):

- **Covenant to Play:** all home games to be played in the new stadium, subject to limited exceptions. *The A's have agreed to this provision.*
- **Maintenance of Franchise:** maintenance of Oakland Athletics franchise as a major league baseball team in good standing with headquarters in Oakland and using Oakland as the team's primary geographic identifier. *The A's have agreed to this provision.*
- **Transfer Rights:** requirement that any new owner of the A's team be subject to the non-relocation agreement, through the execution of a preapproved form of assignment agreement. *The A's have agreed to this provision.*
- **Non-Relocation:** prohibition against engaging in discussions with any parties about relocating the team outside Oakland, except during the final years of the term of the non-relocation agreement. *The A's have not agreed to this provision.*
- **Default Remedies:** in case of a breach of the agreement, availability to the City of equitable and injunctive relief through the Courts and, if those are unsuccessful, substantial liquidated damages paid to the City. *The A's have agreed to equitable and injunctive relief, but not to liquidated damages.*
- **Term:** a term of the non-relocation agreement equal to the longer of the A's ballpark lease with the Port or the term of any outstanding debt issued for the Project by any public entity. *The A's have agreed to only a 20-year term for the agreement, contingent on no increase in city taxes (For reference, the proposed term of the ground lease between the A's and Port for the Ballpark is 66 years, and the proposed EIFD is expected to run for 45 years.)*

### **Non-Relocation Agreement – Staff Recommendation**

Moving forward, Staff recommends that any agreement between the City and the A's that includes public investment also include a non-relocation agreement that incorporates all of the elements noted above, including a term equal (at a minimum) to the length of any contemplated public financing, and reasonable liquidated damages in the event of a breach of the agreement.

### **(c) COMMUNITY BENEFITS**

As noted above, the Oakland A's have requested a Development Agreement for the Project, which, if approved, would govern the future development of the proposed Project for a specified period of time. Generally speaking, development agreements serve to reduce the risks associated with development through a local agency's agreement to "freeze" certain regulatory requirements. In exchange for this added certainty provided by a Development Agreement, developers often provide community benefits that go beyond any benefits that would otherwise result from meeting City or other regulatory requirements. Community benefits are an

opportunity for the developer to share a portion of the additional property value created through the City's actions (such as rezoning and increased density) with the community, while taking into account the financial feasibility of the project.

In addition to community benefits, the proposed Waterfront Ballpark District at Howard Terminal would provide substantial public benefits, including:

- Retention of the City's last remaining professional sports franchise;
- 18.3 acres of new, publicly accessible parks and open space;
- An approximately 1.5-mile extension of the San Francisco Bay Trail;
- Approximately .5 miles of new transit-only lanes connecting existing neighborhoods and transit facilities in Downtown Oakland, Chinatown, Old Oakland, the Jack London District, and the Oakland waterfront;
- Approximately 1.25 miles of new protected bike lanes connecting the West Oakland neighborhood and Bay Area Rapid Transit (BART) station with Downtown Oakland and the Oakland waterfront;
- Key intersection improvements between Interstate-880 and the Seaport, which will move trucks and cargo in and out of the Port of Oakland more safely and efficiently while reducing traffic congestion and truck idling;
- At-grade rail safety improvements throughout the Jack London District, both at and between crossings;
- New public art valued at \$15.3M;
- Projected new revenues to Oakland schools and community colleges of \$13.0 million per year at full buildout;
- No net new greenhouse gas emissions;
- Leadership in Energy and Environmental Design (LEED) Gold (or equivalent) standards for new construction;
- Protection against sea-level rise; and
- Remediation of existing toxic contaminants in soil and groundwater.

To arrive at a recommended set of community benefits for the proposed Project in addition to those public benefits articulated above, in late 2019, the City, Port and Oakland A's initiated a multi-stakeholder community- and equity-centered community benefits process. The process was organized around a Steering Committee and seven Topic Cohorts: Community Health & Safety, Culture Keeping & History, Economic Development/Employment, Education, Environment, Housing, and Transportation. The *Draft Community Benefits Recommendations Summary Report* resulting from Steering Committee's work is available on the City's website at [https://cao-94612.s3.amazonaws.com/documents/FINAL\\_062521-HT-CBA-Recommendations-Final-Report-1.pdf](https://cao-94612.s3.amazonaws.com/documents/FINAL_062521-HT-CBA-Recommendations-Final-Report-1.pdf) and provided hereto as **Attachment 5**. This report is not an agreed-upon package of community benefits, but instead is a document that explains the extensive community process and can guide future funding allocations.

### **Community Benefits - Oakland A's Proposal**

As noted above, on April 23, 2021, the Oakland A's publicly released their proposed Development Agreement Term Sheet for the Project. The A's Proposed Term Sheet included a

\$450 million (nominal) allocation from the two proposed IFDs for community benefits. Under the Oakland A's proposal, all community benefits would be funded entirely by property tax increment captured over 45 years by two proposed IFDs, one over the Howard Terminal site, and a second over the Jack London District and portions of West Oakland. The A's proposal included no commitments to specific community benefits, noting only that "the City of Oakland and community will direct how those funds are spent".

The A's proposed approach presents a number of challenges. First, IFD proceeds can only be spent on "public capital facilities." Although these facilities can include parks, childcare facilities, libraries and affordable housing, IFDs are explicitly prohibited from funding "the costs of ongoing operation or providing services of any kind". Therefore, utilizing IFD proceeds as the sole source of funding for community benefits would, by operation of law, severely limit their scope. An initial analysis of the Community Benefits Recommendations (Estolano Advisors, June 2021) indicates that the majority of potential benefits identified by the Steering Committee could not be funded by an IFD. Second, an IFD has a maximum 45-year life. Throughout the community benefits process, the Steering Committee consistently advocated that community benefits should extend for the entire duration of the 66-year Port lease. Finally, IFD funds accumulate slowly at first and grow over time as new development is completed and placed on the tax roll, which means that without another source of upfront or early funding, most of the contemplated community benefits would not be realized for many years.

### **Community Benefits - Staff Recommendation**

Staff recommends an alternative approach to community benefits, generally as follows:

- Provide affordable housing opportunities on- and off-site, including both new construction and displacement prevention strategies including preservation, renovation, down payment and senior assistance in the four impacted neighborhoods of West Oakland, Chinatown, Old Oakland, and the Jack London District.
- Provide equitable access to living and prevailing wage jobs for local residents.
- Provide a flexible, long-term source of funding and community governance structure to address community needs over the life of the 66-year Port lease.

Each of these strategies is addressed in greater detail below.

### **Community Benefits - Affordable Housing**

Absent a Development Agreement, new development in the City of Oakland, including the proposed Project, is required to pay Affordable Housing and Jobs/Housing Impact Fees, respectively. Pursuant to the OMC, the proposed Project currently would be subject to impact fees of \$22,000 per market-rate residential unit, and \$5.77 per square foot of commercial office, or \$74.7 million in total, assuming full buildout of the proposed Project, as shown in **Table 3**, below.

**Table 3: Affordable Housing and Jobs/Housing Impact Fees**

Residential	3,000	Units	\$22,000	\$ 66,000,000
Commercial Office	1,500,000	Square Feet	\$5.77	\$ 8,655,000
<b>Total Housing Impact Fees</b>				<b>\$ 74,655,000</b>

In lieu of the payment of Jobs/Housing Impact Fees, the OMC allows for the production of new affordable housing units (up to 80 percent of Area Median Income, or AMI) equal to the number of gross square feet of office space, less 25,000 square feet, multiplied by a factor of .00004. In lieu of payment of Affordable Housing Impact fees, the OMC allows for the production of new affordable housing units (up to 50 percent AMI) equal to 5 percent of total units, or (up to 120 percent AMI) equal to 10 percent of total units. In total, in lieu affordable units required to be provided onsite pursuant to the OMC, assuming full buildout of the proposed Project and no payment of fees, would range from approximately 209 to 359 units, or 7 – 12 percent of total housing units, depending upon level of affordability, as follows in **Table 4**<sup>4</sup>:

**Table 4: Required Affordable Housing Production in Lieu of Fees**

Residential	5%	50% AMI	150	
	10%	120% AMI		300
Commerical Office		80% AMI	59	59
<b>Total Required Units</b>			<b>209</b>	<b>359</b>

The Community Benefits Steering Committee recommendations related to affordable housing onsite far exceed the OMC and precedents under State law. In addition, the prioritized Steering Committee recommendations gave equal or greater weight to offsite strategies including preservation and affordable homeownership. The Housing Topic Cohort’s recommendations include:

- Housing development at the Waterfront Ballpark District should include at least 1,000 units<sup>5</sup> of housing affordable to households with incomes at or below an average of 50 percent of AMI.

<sup>4</sup> Although the Project Site is not subject to the Surplus Land Act (Government Code 54220 et seq.) because this property is “exempt surplus land” pursuant to Government Code Sections 54222.3 and 54221(f), the majority of the Project site lies within the former Oakland Army Base Redevelopment Plan Area (Plan Area), and thus is subject to the Inclusionary Housing requirements of that Plan, which survive despite the dissolution of redevelopment. That Plan requires at least 15 percent of all residential units affordable to low or moderate income households, with at least 40 percent of those units affordable to very low income households. As the vast majority of land within the Plan Area is not zoned for residential uses, an initial analysis of housing production completed or entitled to date within the Plan Area indicates that a minimum of 8 percent of units within the Project must be affordable to very low, low or moderate income households in order to maintain compliance with the Plan under State law. This percentage is subject to change with further analysis and other development within the Plan Area, but is generally consistent with the number of in lieu units required under the OMC.

<sup>5</sup> This reflects recommendations that Staff received from East Bay Housing Organizations (EBHO) from its October 24, 2019 Memorandum of Affordable Housing Position Statement for developments at Howard Terminal and Coliseum City that “35% of all residential units in each project area to be restricted to 60% AMI or below”, as well recommendations from the Oakland United Coalition dated June 22, 2021

- Twenty (20) percent of the total affordable units onsite should be reserved for households earning no more than 30 percent of AMI, and the remainder reserved for households earning up to 60 percent of AMI.
- Investment fund for purchase of non-regulated housing to stabilize these properties as permanently affordable.
- A minimum \$50 million fund to provide homeownership opportunities that prioritize displaced and qualified long-time West Oakland residents.
- Onsite affordable homeownership programs targeting 60-100 percent of AMI.

To understand the rough order of magnitude cost of the Topic Cohort recommendations, **Table 5** below shows the estimated gap funding required to build each affordable unit onsite<sup>6</sup>:

**Table 5: Affordable Housing - Gap per Unit @ 60% AMI**

Sources:		
LIHTC Investor Equity		\$ 269,000
Other Permanent Funding Sources		
Deferred Developer Fee	7%	\$ 49,000
Permanent Financing		\$ 161,000
Total Sources		\$ 479,000
Uses:		
Total Development Cost		\$ 700,000
Total Uses		\$ 700,000
<b>Gap Per Unit</b>		\$ (221,000)

Thus, the projected cost to provide 1,000 units of affordable housing onsite at 60 percent AMI (slightly higher than the topic cohort’s recommendation of 50 percent AMI) is \$220.8 million. Taking into account the recommended \$50 million fund for homeownership opportunities, the cost of the Housing Topic Cohort’s recommended onsite program is estimated at \$270.8 million, which is \$196.1 million (or 263 percent) more than the fees otherwise due pursuant to the OMC. Implementation of affordable homeownership opportunities onsite and preservation strategies offsite would further increase the program’s cost, and would not result in an economically feasible project.

### **Affordable Housing – Staff Recommendation**

With these considerations in mind, Staff recommends that the Project target 30 percent affordability using onsite and offsite strategies as follows:

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that “The Project shall provide housing for a range of income levels, including not less than 35% of the number of housing units associated with the Project affordable to extremely low, very low, low, and moderate income households, providing a range of affordability options.”

<sup>6</sup> Century Urban, June 2021.

Onsite, in lieu of payment of impact fees pursuant to the OMC, the developer provide affordable housing units onsite equal to at least 15 percent of all new onsite units, or 17.5 percent of market rate housing units, constructed within the Project, (in either case, equivalent to approximately 450 new affordable units assuming full buildout of the Project). Affordable housing production should generally proceed on pace with market rate housing production, should be affordable to households with a maximum AMI of 120 percent and a weighted average AMI not to exceed 60 percent and should be deed-restricted for a period of 55 years. To support the production of affordable housing in excess of OMC requirements, Staff recommends that the expenses incurred for construction of onsite affordable housing in excess of the Affordable Housing and Jobs/Housing Impact requirements otherwise due under current code (estimated at \$74.7 million assuming full buildout) be eligible for reimbursement from the proceeds of an IFD over the project site, as and when such proceeds become available.

Offsite, consistent with the top housing priority identified in the *Draft Community Benefits Recommendations Summary Report*, Staff recommends establishment of a fund to implement displacement prevention strategies, including but not limited to new construction, preservation, renovation, downpayment assistance, legal and rental assistance in the four impacted neighborhoods (West Oakland, Chinatown, Old Oakland, and the Jack London District). Financed primarily by the City and County's IFD, the fund is expected to reach \$50 million over the first half of the 45-year span of the IFD. For more information, see "Community Fund", below.

### **Jobs – Staff Recommendation**

Because the proposed Project is located primarily on property jurisdictionally controlled by the Port, it is anticipated that the Port's policies with regard to construction and operations jobs will apply to the Project.

All project-related construction on Port owned property or funded, in whole or in part, by or through the Port, will be subject to the Port's Maritime Aviation Project Labor Agreement (MAPLA). General and subcontracts subject to the MAPLA are required to provide for monthly contributions of \$0.30 cents per craft hour worked to the Port's Social Justice Trust Fund, currently estimated at \$9.96 million in total over the approximately 15-year projected buildout of the Project. Consistent with the MAPLA and the equity-centered recommendations of the Howard Terminal Community Benefits Steering Committee, this money will be used to assist local residents in eliminating employment barriers and gaining entry into and remaining in the building trades (see "Community Fund" below).

In addition, it is anticipated that the Port's tenets related to operations jobs, generally as set forth in the Port's 2017 Operations Jobs Policy for the Centerpoint Oakland Global Logistics project (available at [https://cao-94612.s3.amazonaws.com/documents/CenterPoint-Operations-Jobs-Policy\\_Final.pdf](https://cao-94612.s3.amazonaws.com/documents/CenterPoint-Operations-Jobs-Policy_Final.pdf)), will form the basis for an operations jobs policy for the proposed Project. These include living wages and benefits for workers; priority consideration for unemployed individuals, armed forces veterans, single parents, ex-offenders and foster care adults; and a ban on asking applicants about prior criminal offenses.

### **Community Fund – Staff Recommendation**

Throughout the community benefits process, the community consistently advocated that community benefits should extend for the entire duration of the 66-year lease and that there should be a long-term source of funding to implement those benefits. Over the course of the approximately 18-month community benefits process, it became clear that the typical approach of providing community benefits primarily through and during the Project's construction phase is misaligned with the community's sentiments.

Several recommendations from the Topic Cohorts included establishment of a community fund, which is also the approach Staff is recommending, subject to further analysis of the specific legal framework. This fund could be used to implement both IFD-eligible and non-IFD-eligible benefits, and long-term funding can originate from multiple sources, including the A's. The community fund structure, including governance, implementation, and oversight, may be developed with a Community Advisory Committee and use the *Community Benefits Recommendations Summary Report (Attachment 5)* to guide the development of an initial, five year strategic plan (and periodic updates) and define funding criteria and priorities.

Staff recommends establishment of such a Community Fund, to be administered over the course of the 66-year Port lease, comprised, at a minimum, of funding from the following sources:

- Port's Social Justice Trust Fund - \$10 million over 10 – 15 years for workforce development.
- City and County set-aside from IFD - \$50 million over 15 – 20 years for affordable housing.
- 0.75 percent condominium transfer fee - \$340 million over 66 years.
- Payments in lieu of Transportation Impact Fees - \$11 million over 10 years.

Anticipated deposits to the Community Fund over 66 years would total \$411 million, generally as illustrated in **Table 6**<sup>7</sup> below:

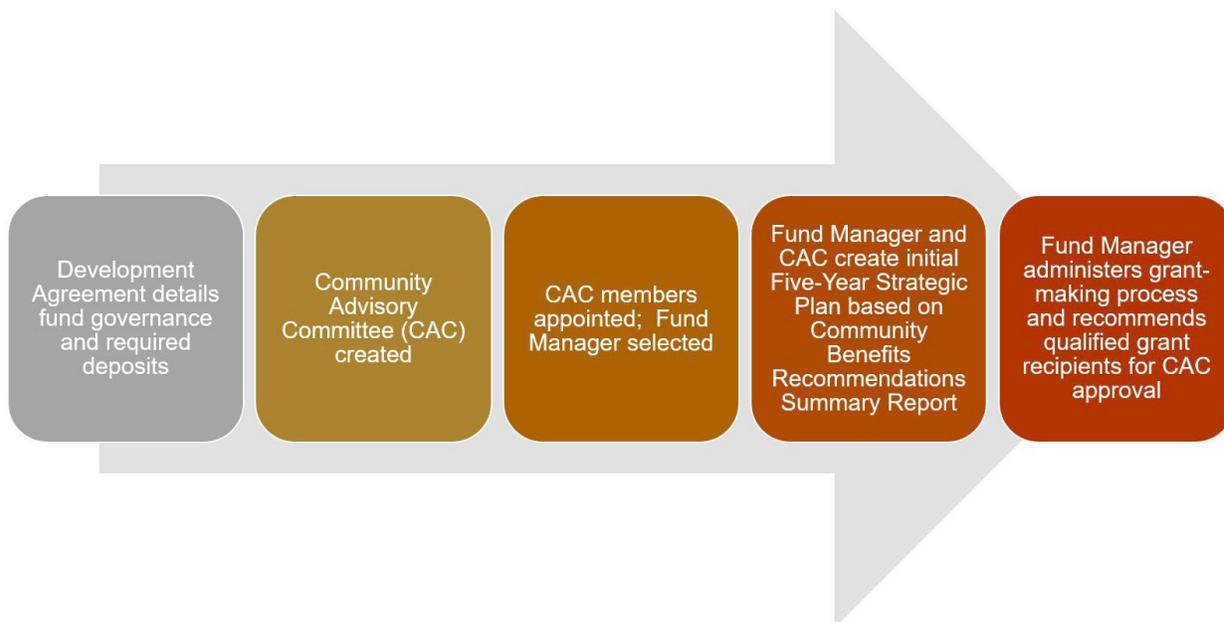
**Table 6: Estimated Community Benefits Fund Deposits by Decade, All Sources**

Start Year	End Year	
0	9	\$ 34,379,000
10	19	55,976,000
20	29	36,674,000
30	39	49,286,000
40	49	66,237,000
50	59	89,017,000
60	66	79,962,000
<b>Total Estimated Deposits</b>		<b>\$ 411,531,000</b>

Finally, Staff recommends further engagement with the Steering Committee and other interested stakeholders to arrive at consensus on a legally permissible fund design and

<sup>7</sup> Year 1 is assumed to be 2026. All deposits are expressed in nominal dollars as of the year of the deposit.

governance, to be set forth in greater detail in the Development Agreement, and generally anticipated to be as shown in **Figure 2**:



**Figure 2: Community Fund**

## 2. ADDITIONAL ISSUES

### (a) PORT OF OAKLAND'S AND CITY'S PROJECT DECISION RESPONSIBILITIES, INCLUDING THE CITY-PORT REGULATORY FRAMEWORK

The Project site includes parcels which are, in accordance with the Oakland City Charter, jurisdictionally controlled, in separate parts, by the Port and the City. Pursuant to the Charter, the Port is a department of the City, but vested with the exclusive authority to control and manage certain lands of the City, referred to as the Port Area. Approximately 50 acres of the 55-acre project site lie within the Port Area and are controlled by the Port. The remaining 5 acres are privately owned. The Port's land use regulations and the City's General Plan both apply to the 50 acres of Project site located within the Port Area. As noted above, the Port and City, without waiving any of their respective authorities and jurisdiction over lands within the Port Area and consistent with Article VII of the Charter, have entered into a nonbinding MOU which describes a contemplated shared regulatory framework that, if ultimately approved, would apply to the Project.

As part of the MOU, the City is processing all development permits for the proposed Project as applied under the Oakland Municipal Code. The development permits for the Project reviewed by the City include a Planned Unit Development, Tentative Tract Map, and the Development Agreement that is the subject of this Informational Report. The City is also processing the request for a General Plan Amendment and Rezoning.

The Port has been engaged in negotiations with the A's regarding various real estate agreements, including the Option Agreement. It is anticipated that the Port will also continue to

process Port Building Permits (sometimes referred to as a Port Development Permit) for the project in addition to the entitlements processed by the City.

## **(b) PROJECT APPROVALS AND TIMELINES**

As noted in Staff's February 11, 2021 Information Memorandum available at <https://cao-94612.s3.amazonaws.com/documents/Howard-Terminal-info-report-w-attachments.pdf>, the A's selected Howard Terminal as the preferred site for their new ballpark in 2018, and in November 2018, the City issued a Notice of Preparation of a Draft Environmental Impact Report (EIR) for the proposed Project. Public scoping meetings on the EIR were conducted by the City of Oakland Landmarks Preservation Advisory Board on December 17, 2018, and by the City of Oakland Planning Commission on December 19, 2018. An extended, 45-day public comment period for the EIR scoping concluded in mid-January 2019. Thereafter, City staff and consultants, working collaboratively with Port staff and consultants, prepared a Draft EIR pursuant to the California Environmental Quality Act (CEQA), State CEQA Guidelines, and California Assembly Bill 734 (AB 734; California Environmental Quality Act: Oakland Sports and Mixed-Use Project) to analyze the potential physical environmental impacts of the proposed Project.

AB 734, enacted in 2018, requires that any challenges, including appeals, be resolved within 270 days following Project approvals, so long as the Project meets the following conditions:

1. The Project will create high-wage, highly skilled jobs that pay prevailing and living wages;
2. The ballpark and ancillary residential and commercial development will receive Leadership in Energy and Environmental Design (LEED) Gold certification or equivalent;
3. The Project will not result in any net additional emissions of greenhouse gases;
4. The Project achieves a 20-percent reduction in the number of vehicle trips collectively by attendees, employees, visitors, and customers, as compared to operations absent transportation demand management;
5. The Project is located within a priority development area identified in the sustainable communities strategy Plan Bay Area 2040;
6. The Project will be subject to a comprehensive package of community benefits; and
7. The Project will comply with the City of Oakland's Bird Safety Measures.

The Draft EIR was ready for publication in February 2020; however, at the Oakland A's request, publication of the Draft EIR was delayed in order to allow additional time for review and certification of the Project by the California Air Resources Board (CARB) and the Governor pursuant to AB 734. CARB subsequently issued its determination for the Project on August 25, 2020, and in September 2020, work to update the Draft EIR in anticipation of an early 2021 publication commenced. The Governor's certification was received on February 11, 2021, and the City published the Draft EIR for public review and comment 15 days thereafter, on February 26, 2021, beginning a 45-day public comment period. On March 19, 2021, in response to requests from the public, the City's Environmental Review Officer extended the comment period from 45 days to 60 days, which extended the end of the comment period to April 27, 2021.

The Draft EIR and all other documents submitted to or relied upon by the lead agency in the preparation of the Draft EIR can be accessed and downloaded from the following website: <http://www.waterfrontballparkdistrict.com>. Consistent with the procedural requirements of AB 734, the City conducted an informational workshop on March 6, 2021 to inform the public of

the key analyses and conclusions of the Draft EIR. That workshop can be viewed on the City's website at: <https://www.oaklandca.gov/events/march-6-2021-oakland-waterfront-ballpark-district-project-deir-information-workshop>.

The City received in excess of 400 comments on the Draft EIR, and is currently working with the City's environmental consultant to prepare the Final EIR/Response to Comments document. Staff anticipates that the Final EIR will be ready to be published in the Fall of 2021 and will proceed to the City Council for consideration of certification after receiving a recommendation from the City Planning Commission. Staff estimates that the item will be before the City Council for consideration in late 2021 or early 2022. This estimated schedule is also dependent upon the applicant, the A's, submitting all materials related to the development applications cited above, which are to be reviewed and considered concurrently with the certification of the EIR.

Finally, it is anticipated that subsequent Project approvals by the various agencies discussed in Item 5, below, will rely in whole or in part on the City's EIR. As such, the Port, SLC, DTSC and the BCDC, among others, are acting as Responsible Agencies under CEQA, and their discretionary approvals, including but not limited to those described below, may only be undertaken following the City's certification of a Final EIR for the Project.

### **(c) ANALYSIS OF ENVIRONMENTAL TOXIC CONTAMINANTS AT PROJECT SITE AND ANTICIPATED REMEDIATION PROCESS**

The California DTSC is the regulatory agency overseeing investigation and cleanup of the Project site and will continue in this regulatory role for the foreseeable future. There are three principal parts of the Project site (Howard Terminal, Gas Load Center, and Peaker Power Plant), which are regulated by the DTSC under separate existing governing documents and separate Land Use Covenants (LUCs), which currently prohibit the residential uses proposed by the Project.

In 2019, the Oakland A's entered into a Voluntary Cleanup Agreement (VCA) with DTSC, and continue to be engaged in a process with DTSC to consolidate the existing cleanup decision documents for the different portions of the Project site into a single set for the entire site. The new, consolidated decision documents are proposed to address all three current DTSC sites within the Project site, as well as the Embarcadero/Clay parking lot (BevMo parking lot) and the public rights of way. DTSC would then approve a new consolidated remedial action workplan (RAW) for the entire Project area, requiring the preparation of a site management plan or equivalent document and an operations and maintenance (O&M) plan and agreement, as well as recordation of two LUCs, one for all the Port-owned portions of the Project area, and one for the portions to be owned by the Oakland A's, that would allow activities and uses (such as residential) which are proposed in the Project but currently prohibited on the site under existing LUCs.

In October 2020, DTSC approved the Human Health and Ecological Risk Assessment prepared on behalf of the Oakland A's for the Project site<sup>8</sup>, which will guide the target clean up levels of

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<sup>8</sup>[https://www.envirostor.dtsc.ca.gov/public/deliverable\\_documents/3917614161/Howard%20Terminal\\_Human%20Health%20and%20Ecological%20Risk%20Assessment%20Approval%20Letter\\_10.22.20.pdf](https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/3917614161/Howard%20Terminal_Human%20Health%20and%20Ecological%20Risk%20Assessment%20Approval%20Letter_10.22.20.pdf)

the site to be established in the required RAW. Consistent with typical practice, the DTSC will rely on the Project EIR for CEQA compliance when undertaking consideration of the RAW. Therefore, the RAW cannot be approved until the EIR is first certified by the City. DTSC approval will be required before any grading or construction commences on the Project site, consistent with mitigations established in the Draft EIR for the Project.

**(d) COMMUNITY BENEFITS**

See Discussion in Part 1, above.

**(e) POTENTIAL IMPACTS TO NEARBY MARITIME INDUSTRY AND PORT-RELATED AND NON-PORT RELATED JOBS**

A number of individuals and organizations representing interests in the maritime industry at the Port have raised concerns regarding the proposed Waterfront Ballpark District and its potential impacts on Port operations. To ensure that these concerns are adequately considered and addressed, Port staff has been regularly consulted throughout the process of environmental review.

Howard Terminal hasn't been leased for container cargo operations since 2013 and cannot accommodate the modern ultra-large ships that currently call the Port. The 50-acre site is separated from any adjacent Port-owned maritime terminal acreage by Schnitzer Steel, a privately-owned metal recycling operation. There remains under-utilized capacity for cargo and freight operations to expand along the Port's deeper water outer harbor, as well as in the more than 160 acres of converted Army Base land conveyed to the Port in 2003 and 2006.

Some of the primary issues that have been raised include:

- Project construction and operational traffic conflicts with Port traffic could cause delays to trucks servicing the seaport;
- Safety conflicts of game day attendees (auto, pedestrian, and bike) with seaport truck traffic;
- Increased recreational watercraft in the shipping lanes and turning basin could cause conflicts with commercial shipping vessels;
- Impacts from ballpark lighting and fireworks on ships maneuvering in the turning basin;
- Increased noise complaints from new residents in closer proximity to the seaport and other nearby industrial operations;
- Potential domino effect of converting Port and other industrial waterfront property to mixed use and/or conversion of other adjacent industrial land in close proximity to the seaport;
- Conflicts with railroad crossings, concerns with safety and delays to rail service; and
- Loss of truck parking and container storage and staging at Howard Terminal.

Those industry concerns that are relevant for CEQA purposes were analyzed in the Draft EIR for the Project in Chapter 4.10 (Land Use). To minimize the potential for conflicts between residential and industrial uses, both the Draft EIR and the Port's May 2019 Exclusive Negotiation Term Sheet with the Oakland A's restrict residential development to the easterly portion of the project site, nearest Jack London Square and away from the seaport and other industrial users. Traffic analyses have also been prepared that include recommendations to

reduce potential conflicts with and delays to Port operations, which are summarized in Section 4.15.5 of the Transportation Chapter in the Draft EIR (beginning on page 4.15-192).

Independent of the City's CEQA analysis, the Port of Oakland Board of Port Commissioners has been working with maritime interests to develop a set of Seaport Compatibility Measures, as documented in the Exclusive Negotiation Term Sheet with the Oakland A's, which was unanimously approved by the Board of Port Commissioners in May 2019, to further reduce any potential conflicts between the Project and ongoing seaport operations. These Seaport Compatibility Measures would be part of any future real estate agreement between the Port and the Oakland A's.

The Port has stated that it anticipates potential *benefits* of the project, including diversification of its business, greater nationwide visibility, more visitor traffic at Jack London Square, and a boost for neighboring businesses.

Century Urban estimates that the Project will generate over 7,100 full-time equivalent non-Port jobs after full buildout and nearly 25,000 full-time equivalent jobs during construction.

### **FISCAL IMPACT**

There is no fiscal impact from this agenda item, as it is informational only. However, as stated above, the City's goal in any future Development Agreement that may be approved for the Waterfront Ballpark District at Howard Terminal is to create a net ongoing fiscal benefit to the City and its taxpayers, even after accounting for the increased costs that the City will incur to provide City services to new residents and workers. The Informational Report and Study Session are intended to inform the creation of such a non-binding term sheet, including a Financial Plan.

### **PUBLIC OUTREACH / INTEREST**

The Waterfront Ballpark District at Howard Terminal has been the subject of multiple public processes, including public processes related to the various state legislation, including AB 734, AB 1191 and Senate Bill 293, and the California Environmental Quality Act. In addition, the City, Port and A's have conducted extensive outreach surrounding the community benefits process as discussed above. The upcoming study session is another opportunity for public outreach.

### **COORDINATION**

This report was created in coordination with the Planning and Building Bureau and has been reviewed by the Office of the City Attorney and the Finance Department.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** The Waterfront Ballpark District at Howard Terminal provides an economic redevelopment opportunity; the ultimate economic impact will depend on the final terms of the Development Agreement.

**Environmental:** The environmental impacts of the Waterfront Ballpark District at Howard Terminal are being analyzed in the CEQA document for the project, as described above.

**Race & Equity:** The project has convened a community benefits process that is equity centered; the ultimate impact will depend on the final community benefits package.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

This Informational Report and Study Session are informational only, would not result in any discretionary approval, and are not a “project” subject to CEQA.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Conduct A Study Session And Receive An Informational Report As Follows: (A) Conduct A Study Session On The Proposed Non-Binding Terms Of A Development Agreement With The Athletics Investment Group LLC D/B/A The Oakland Athletics, A California Limited Liability Company, Including Terms For, But Not Limited To, A Potential Infrastructure Financing District, Affordable Housing, And Non-Relocation, Relating To The Proposed Project; And (B) Receive An Informational Report On The Proposed Oakland Waterfront Ballpark District Project To Be Developed On The Property Known As The Howard Terminal At The Port Of Oakland (Project), Including But Not Limited To The Following: (1) Port Of Oakland’s And City’s Project Decision Responsibilities, Including The City-Port Regulatory Framework; (2) Project Approvals And Timelines; (3) Community Benefits; (4) Analysis Of Environmental Toxic Contaminants At Project Site And Anticipated Remediation Process; And (5) Potential Impacts To Nearby Maritime Industry And Port-Related And Non-Port Related Jobs.

For questions regarding this report, please contact Molly Maybrun, Project Manager III, at (510) 238-4941.

Respectfully submitted,

*Elizabeth Lake*

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BETSY LAKE  
Interim Assistant City Administrator  
City Administrator’s Office

Prepared by:  
Molly Maybrun  
Project Manager III  
City Administrator's Office

Attachments (6):

Attachment 1: FAQs about the Waterfront Ballpark District at Howard Terminal

Attachment 2: April 23, 2021 Oakland A's Proposed Term Sheet

Attachment 3: Proposed EIFD Boundary Figure

Attachment 4: Fiscal Impact Report

Attachment 5: Howard Terminal Community Benefits Recommendations Summary Report

Attachment 6: June 15, 2021 Oakland Waterfront Ballpark District Presentation to the Alameda County Board of Supervisors



*SENT VIA E-MAIL*

July 15, 2021

City of Oakland City Council  
Council President & District 2 Councilmember Nikki Fortunato Bas  
At Large Member & Vice Mayor Rebecca Kaplan  
District 1 Councilmember Dan Kalb  
District 3 Councilmember Carroll Fife  
District 4 Councilmember & Oakland City Council President Pro Tempore Sheng Thao  
District 5 Councilmember Noel Gallo  
District 6 Councilmember Loren Taylor  
District 7 Councilmember Treva Reid  
1 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor  
Oakland, CA 94612

**RE: Port Considerations of the Oakland A's Howard Terminal Proposed Project**

Dear Honorable Members of the Oakland City Council,

In 2019, the Port of Oakland (“Port”) and the Athletics Investment Group LLC dba The Oakland Athletics (“Oakland A’s”) entered into an EXCLUSIVE NEGOTIATION TERM SHEET FOR HOWARD TERMINAL (“Port Term Sheet”) dated May 13, 2019. The Port Term Sheet sets forth the terms for negotiating the potential lease of certain parcels and sale of other parcels of Port property commonly known as the “Howard Terminal”. The Port Term Sheet also enabled the Oakland A’s to submit its application to the City for the necessary approvals from the City Council for the development of a proposed new baseball stadium and a residential and commercial mixed-use development on Howard Terminal and adjacent privately-owned parcels (“Project”).

Since the Oakland A’s application to the City, City and Port staff have collaborated to outreach to community and seaport industry stakeholders, study the environmental impacts, examine land use and transportation compatibility and facilitate community benefits discussions. These efforts, led by City Staff, have produced a framework for City Council’s consideration of the City’s negotiating term sheet on financing of infrastructure, the community benefits and seaport compatibility, among other topics, as described in the City Staff Report for the City Council’s July 20, 2021 Special Meeting.

This letter outlines the Port’s role in that framework. The Board of Port Commissioners (“Port Board”) adopted the Port Term Sheet on the premise that the proposed Project can be an asset to the Port, the City, the communities and businesses that thrive at the Port. The Port Board continues to believe that the Howard Terminal Project, if conditioned on appropriate infrastructure investments, and operations planning and implementation, will be compatible with the Port’s commitment to grow and modernize the seaport’s cargo and freight activities and, at the same time, create transformational value to the Port’s and the City’s waterfront to serve both commerce and people in Oakland and the region.

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This letter and attachments supplement the comprehensive information provided in the published City Staff Agenda Report for the Community and Economic Development Committee Study Session held on July 7, 2021 ("CED Staff Report"). In response to questions raised at the study session regarding the role and jurisdiction of the Port in considering the Project, this letter provides more detailed descriptions relating to:

1. The Port's jurisdiction in the context of the City Council authority to amend the General Plan, and approve housing developments in the Port Area;
2. The inclusion in the Project of measures, designs, and operational standards to ensure that the Project does not impact or interfere with the Port's use or operations outside of the Project ("Seaport Compatibility Measures" or "SCMs"); and
3. The Port's policy framework and role in providing community benefits.

#### Port Approvals in Relation to City Council Authority

The Port of Oakland is a department of the City that is governed and managed by the Board of Port Commissioners ("Port Board") and its appointed staff. Under the Charter of the City of Oakland ("City Charter"), the Port Board has the "complete and exclusive power" to control and manage Port Areas. The Port Areas consist of State Tidelands that are granted to the City. (For a discussion of the Port's authorities under the City Charter and restrictions on use of State Tidelands and trust funds, see Attachment 1 to this letter.)

The Howard Terminal is a State Tidelands in the Port Area under the control and management of the Port Board. However, the Port Board's Authority to approve the Project is subject to certain City Council powers under the Charter. Currently, the City's General Plan does not permit the uses the Oakland A's are proposing at Howard Terminal. The City Council must first amend the General Plan to allow these proposed uses. In addition, the Port Board cannot consider the approval of the proposed residential use in the Project until and unless the City Council consents to such use.

Therefore, as part of the Port Board's consideration of the Project, the Port will review the Project for compliance with the findings and mitigations and conditions in a Final Environmental Impact Report ("FEIR") as may be approved and certified by the City Council. As well, the Port Board must consider whether the Project conforms to the land use designation and conditions as may be adopted by the City Council's general plan amendment and zoning actions. As noted in the CED Staff Report, there are approximately 5 acres of the proposed Project that are privately owned that are not under the Port Board's jurisdiction.

#### Seaport Compatibility Measures

An important consideration for the City Council and the Port Board is the Project's compatibility with Port operations. The Port Term Sheet agreement provides that the Port and the Oakland A's must negotiate for inclusion in the Project a set of measures, designs, and operational standards to ensure that the Project does not impact or interfere with the Port's use or operations outside of the Project, or "Seaport Compatibility Measures" or "SCM's"<sup>1</sup>.

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<sup>1</sup> Attachment D of the Port Term Sheet provides that the Port will consult seaport and maritime stakeholders regarding SCMs to be ultimately negotiated with the Oakland A's. Attachment D also outlines considerations to guide these negotiations, including:

(i) "the Port's current or reasonably anticipated future use, operation, and development of Port facilities, properties, and utilities of Port tenants, Port contractors, or operators engaged in the maritime use of the Port Area;

The policy considerations underlying Seaport Compatibility Measures overlap and intersect with the City's considerations underlying its environmental review and land use regulations. At their essence, the SCMs are meant to address land use compatibility, health and safety, transportation safety, and congestion considerations. These same considerations also are important in the City's review of the EIR, consideration of amendments to the General Plan, and adoption of land use regulations.

Recognizing the City's and the Port's overlapping policy interests in the Project's compatibility with the seaport operations at the Port, City staff has assisted and participated in the Port's meetings with over 100 members of the seaport and maritime operations community. These have included representatives of truckers, terminal operators, logistics and warehouse operators, agricultural exporters, labor, railroad, shippers, and import/export facilitators. Port staff collated and distilled stakeholder feedback to identify compatibility issues and potential measures. Many of the potential SCMs were analyzed and addressed in some form or degree in the Draft EIR ("DEIR"). Public commenters to the DEIR have suggested additional SCMs or refinements to SCMs for analysis. For illustration purposes, a partial list of these SCM categories already included in the DEIR is attached to this letter as Attachment 2.

The SCMs may be implemented through infrastructure improvements, such as a vehicular and pedestrian/rail grade separation. Others SCMs are operational in nature, such as event-day traffic control or waterside safety measures. It is anticipated that a significant portion of the needed infrastructure to enhance vehicular and pedestrian safety at rail crossings may be eligible for state or federal transportation or infrastructure funding. Designs and measures to segregate Project traffic from streets and roads used heavily by Port operations are anticipated to be built into the Project.

Through the process described above of stakeholder consultations, technical analysis, EIR study and financial planning, the following categories of SCMs have emerged as broadly supported by stakeholders and as feasible:

*Categories of Requested and Analyzed Seaport Compatibility Measures include:*

1. Physical grade separation of vehicle, bicycle, and pedestrian traffic from train operations:
  - a. a new vehicular grade above and across Embarcadero to minimize interference of Project traffic with train operations, and to minimize physical conflict between trains, seaport-related traffic (such as trucks), and Project vehicular traffic; and
  - b. one or more new or enhanced pedestrian bridges to reduce pedestrian crossing of train tracks at grade.
2. Increased at-grade rail safety measures to assure safe pedestrian at grade crossings of train tracks at controlled intersections and to deter pedestrian and bicycle mid-street crossings:
  - a. physical barriers to prohibit mid-street pedestrian crossings;
  - b. enhanced intersection controls;
  - c. signalization;
  - d. bicycle lanes and buffering; and

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- (ii) the health and safety of the Port's employees, tenants, contractors, or operators engaged in Port operations in the Port Area (and their respective employees) as well as of the future occupants of the Premises;
  - (iii) measures to ensure that the future users, owners, lessees, and residents of and in the Project shall be notified of potential impacts of Port maritime and marine operations on their use and waive rights to claims arising therefrom; and
  - (iv) measures to ensure that the Project minimizes vehicular congestion from the Project and avoids conflict between vehicular and pedestrian traffic generated by the Project with Port seaport operations, including cargo truck routes and traffic."

- e. other potential design measures.
3. Estuary/waterside safety measures to prevent Project-related watercraft or activities from interfering with maritime related ship and boat operations and to ensure safe navigation of the Estuary and turning basin:
  - a. operational controls, enforcement, and public information (such as signage) measures to prohibit recreational watercrafts from idling or congregating in navigation waters;
  - b. special event day enforcement;
  - c. lighting mitigation or design standards to prevent Project-generated lights from interfering with navigation;
  - d. reflective surface minimization measures to reduce lighting and glare from interfering with navigation; and
  - e. ongoing process for the Port, the City, the Oakland A's, and stakeholder collaboration to address any needed changes to operating plan as issues arise.
4. Transportation improvements and management plan to prevent Project-related traffic and congestion from interfering with safe and efficient movement of seaport freight and trucks to and from the seaport:
  - a. street and intersectional improvements;
  - b. signage;
  - c. operational controls and regulations;
  - d. enhanced event-day traffic control and enforcement;
  - e. separation of Project-related traffic from seaport truck routes and maritime traffic by restricted routing, physical improvements, and enforcement;
  - f. street parking restrictions (off project site) and additional intersection management during events;
  - g. timely completion of local street improvements to ensure traffic compatibility; and
  - h. ongoing process for the Port, the City, the Oakland A's, and stakeholder collaboration to address any needed changes to the operating plan as issues arise due to unforeseen impacts.
5. Land use compatibility measures to enhance compatibility between industrial operations at Seaport and Project residential and commercial developments:
  - a. requirements already in the Port Term Sheet that require the future users, owners, lessees, and residents of the Project to be notified of potential impacts of Port maritime and marine operations on their use, and to waive rights to claims arising therefrom, such as through disclosures and releases recorded against the land;
  - b. requirement already in the Port Term Sheet that provides land parcel "buffer" between industrial use and residential use; and
  - c. zoning and land use designations or regulations to assure appropriate and consistent buffer distancing between residential and industrial uses.
6. Retain turning basin expansion provisions to ensure sufficient area for the expansion of the Inner Harbor Turning Basin to accommodate large ships calling on the Port:
  - a. provisions already in the Port Term Sheet reserving Port's options to use portions of Howard Terminal to construct turning basin expansion.

It should be noted that, as further stakeholder consultations take place and as further research and analysis is completed, further SCMs and refinements of them may be requested and considered.

In the stakeholder consultations, many Maritime and community stakeholders frequently urge the City and the Port to better collaborate in land use and transportation planning beyond those for the Howard Terminal or the Project. Indeed, the years of planning and analysis for Howard Terminal have led to closer City/Port collaboration on other efforts, such as the City's General Plan Process, the Port's seaport land use and infrastructure investment plan, truck parking study and management, truck and heavy weight route designations, industrial use preservation and coordination to secure federal, state, and regional transportation funding.

### Port's Dedication to Delivering Project-Derived Community Benefits

Just as the Port is dedicated to negotiating Seaport Compatibility Measures into the Project, the Port is equally dedicated to including benefits derived from the Project that would accrue to the community ("Community Benefits"). The Port's pioneering Maritime and Aviation Project Labor Agreement ("MAPLA") and its innovative Operations Jobs Policy would provide the policy framework for negotiations with the Project applicant and for delivering Project-generated workforce development, local jobs, and equity funds benefits to the community.

As is the case with developing SCMs, the policy interests of the City and the Port align in developing Community Benefits based on input by community stakeholders. To this end, the Port has participated and supported the City staff in facilitating a multi-stakeholder community- and equity-centered process to help shape a Community Benefits Agreement ("CBA") to be adopted as part of any approval of the Project. The Port is a member of the CBA Steering Committee.

Dating back to the late 1990s, the Port has implemented Community Benefit policies that promote local hiring on its projects, support organizations that prepare disadvantaged workers to enter Port-related careers, and ensure that local, small, and very small businesses are utilized on Port projects. In 2000, after extensive public input and negotiations with Alameda County Building and Construction Trades Council, the Port adopted its MAPLA. MAPLA policies apply to capital projects contracted by the Port and to certain Port tenant projects in its seaport and airport areas. Since its inception, MAPLA projects have resulted in over 58% of total construction trades hours being performed by a local workforce<sup>2</sup>. It has also generated over \$590,000 in contributions to the MAPLA Social Justice Trust Fund that has been donated to local workforce development agencies to train local workers.

In 2017, the Port expanded its local hire goals to operations jobs in addition to construction work, with an emphasis on disadvantaged workers, by adopting the Seaport Logistics Complex Operations Jobs Policy ("Operation Jobs Policy"). The Operations Jobs Policy was the product of vigorous public input and negotiations with labor, community and social justice representatives related to the development of the CenterPoint warehouse at the Seaport Logistics Complex. The policy required local and disadvantaged worker hiring goals, a fair chance hiring policy, strong worker protections and funds for local workforce development support.

- *MAPLA*: MAPLA applies to Port projects over \$150K that are a part of the Port's Capital Improvement Program ("CIP") or performed by a Port tenant pursuant to a Port Building Permit. Contractors are required to pay \$0.30 per work hour into a Social Justice Trust Fund that is used to support local workforce training and jobs placement. The CED Staff Report anticipated that work hours to build the Project would generate significant funds to the Social Justice Trust Fund for contribution to Community Benefits equity funds during construction.
- *Port's Operations Jobs Policy tenets*: Key aspects of this landmark jobs agreement with CenterPoint development include living wages and benefits for workers, priority consideration for unemployed

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<sup>2</sup> The Port of Oakland operations have environmental, jobs and economic impacts on its geographic vicinity area that is larger than the City of Oakland (e.g., Port-bordering areas of Alameda, San Leandro, and Emeryville). Therefore, the Port definition of "local" varies from the City's definition for certain policies. Under MAPLA, a "local hire" worker is defined as an individual residing in the Port's Local Impact Area ("LIA") [Oakland, Alameda, San Leandro and Emeryville] and Local Business Area [Alameda and Contra Costa Counties]. While Oakland residents do receive preference for MAPLA construction jobs along with residents in the surrounding areas, the MAPLA does not contain an Oakland-specific hiring requirement.

individuals, armed forces veterans, single parents, ex-offenders, and foster care adults; and a ban on asking applicants about prior criminal offenses. The specific Operations Jobs Policy requirements do not currently apply to the proposed Howard Terminal Project. However, the Port anticipates that policies underlying the Operations Jobs Policy would serve as the basis for analysis, negotiations and consideration as part of the Project requirements.

- *Local, small, and disadvantaged business utilization policies:* The Port has bid preferences and goals for including local, small, and disadvantaged businesses on Port projects. Therefore, contracts let by the Port related to the Project, if any, will be subject to bid preferences for local small or disadvantaged businesses.

Contractor contributions to the Social Justice Fund derived from any construction of the Project would provide needed funds during the construction phases of the Project, in the early period of the 66-year term of the CBA. Consistent with the equity-centered recommendations in the Community Benefits Summary Report, this early contribution may be used to assist local residents in eliminating employment barriers and entering and remaining in the building trades.

The Port is also considering a source of project-generated funding for the later years of the CBA term. As described in the CED Staff Report, sales of the Project condominiums are expected to generate condominium transfer fees both under the terms of the Port Term Sheet and pursuant to the City's negotiation with the Oakland A's. (For a discussion of the financial terms provided for under the Port Term Sheet, see Attachment 3 to this letter). As the CED Staff Report indicated, contribution of this condominium transfer fee revenue could generate significant funds for Community Benefits in the later period of the CBA term as transfer fees are not expected until the condominium units are built, sold, and resold over time.

### Conclusion

The City and the Port have collaborated on outreach to stakeholders and the community and conducting analysis to identify and refine Seaport Compatibility Measures and Community Benefits. This letter identifies the SCMs that, through stakeholder consultations and technical analysis, have emerged as been broadly supported by stakeholders and feasible. The Port's PLA and community benefits policies, as well the condominium transfer fees, offer both the framework and resources for the Port's commitments to Community Benefits from resources generated by the proposed Project if it is approved. The Port Board continues to believe that the Howard Terminal Project, if conditioned on appropriate infrastructure investments and operational planning and implementation, will be compatible with the Port's commitment to grow and modernize the seaport's cargo and freight activities and, at the same time, create transformational value to the Port's and the City's waterfront to serve both commerce and people in Oakland and the region. The Port Board looks forward to the continued analysis and evaluation of the proposed Project prior to considering any potential approval actions.

Respectfully submitted,



Danny Wan  
Executive Director

## Attachment 1

### Port Authorities Under City Charter and State Tideland Trust Relating to Howard Terminal

The City of Oakland City Charter assigns to the Board of Port Commissioners the power to:

“To take charge of, control, and supervise the Port of Oakland, including all the water front properties, and lands adjacent thereto, or under water, structures thereon, and approaches thereto, storage facilities, and other utilities, and all rights and interests belonging thereto, which are now or may hereafter be owned or possessed by the City, including all salt or marsh or tidelands and structures thereon granted to the City in trust by the State of California for the promotion and accommodation of commerce and navigation.”<sup>3</sup>

As the above dictates, the Port Board has control over tidelands that were granted to the City by the State in trust and/or acquired with trust proceeds (“State Tidelands”)<sup>4</sup>. All such State Tidelands and other properties over which the Port Board has control and jurisdiction are referred to as the “Port Area” in the Charter. The Port Area includes the Oakland International Airport, the seaport, Jack London Square, and, with some exceptions, public lands along the Oakland waterfront including the Howard Terminal.

The Port Board’s authority to control and manage the State Tidelands in the Port Area is subject to restrictions under the Public Trust Doctrine. Under the Public Trust Doctrine<sup>5</sup>, State Tidelands may be only used for public access and commercial purposes related to navigation, fishing, boating, natural habitat protection and other water-oriented activities for the benefit of the general public in the State (“Trust Purposes”). Also, funds derived from the use of State Tidelands (i.e., all Port funds) must be used for Trust Purposes.

The Howard Terminal is a State Tidelands. Therefore, each of the uses proposed in the Project must be determined by the California State Lands Commission as either consistent with the Trust Purposes or to be released from the trust by exchange. Under Tideland Trust requirements, any lease or sale of Howard Terminal must be for fair market value.

### City Council Has Authority to Amend General Plan and Approve Housing Development

In addition to conditions on use of State Tidelands, the Port’s development and use of the Port Area is also subject to certain conditions in the City Charter. Relevant to the consideration of the Project are two provisions of the City Charter: (1) Section 727<sup>6</sup> dictates that the Port may develop and use property within the Port Areas “in conformity with the General Plan of the City”; and (2) Section 706(23)<sup>7</sup> requires the Port Board to obtain the consent of the City Council when approving any residential housing development. Currently, the City’s General Plan does not permit the uses the Oakland A’s are proposing at Howard Terminal; the City Council must first amend the General Plan to allow these proposed uses. In addition, the Port Board cannot consider

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<sup>3</sup> City Charter Section 706(2)

<sup>4</sup> “Tidelands are one type of sovereign land held by California. These are the lands that are historically situated between the ordinary high water and ordinary low water mark of tidal waters. Today, Tidelands managed and controlled by the Port are mostly filled tideland, including Howard Terminal.

<sup>5</sup> For a description of the Public Trust and the Public Trust doctrine, refer to the California State Lands Commission website at <https://www.slc.ca.gov/public-engagement/>.

<sup>6</sup> City Charter Section 727: “Land Use and Development. The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission; provided, that the Board may appeal to the Council for final determination of adverse decisions of such board or commission, in accordance with uniform procedures established by the Council.”

<sup>7</sup> City Charter Section 706 (23): “To provide in the Port Area, subject to the provisions of Section 727, for other commercial development and for residential housing development; provided that any residential housing development shall be approved by the Board with the consent of the City Council.

the approval of the proposed residential use in the Project until and unless the City Council consents to such use.

Subject to the City's actions described above, the Port Term Sheet provides for the negotiation between the Port and the Oakland A's of certain lease and sale agreements for properties at Howard Terminal ("Transaction Documents"). In addition to reaching agreement with the Port as the owner of the land on the Transaction Documents, the Oakland A's must also obtain a building permit from the Port for construction of any building or structure on Howard Terminal<sup>8</sup> ("Port Building Permit"). Under the terms of the Port Term Sheet, the Port anticipates consideration of the EIR and Transaction Documents Sheet and the Port Building Permit concurrently.

Among the Port Board's consideration, the Port will review the Project for compliance with the findings and mitigations and conditions in a Final Environmental Impact Report ("FEIR") as may be approved and certified by the City Council. As well, the Port Board must consider whether the Project conforms to the land use designation and conditions as may be adopted by the City Council's general plan amendment and zoning actions. As noted in the CED Staff Report, there are approximately 5 acres of the proposed Project that are privately owned that are not under the Port Board's jurisdiction.

Because of the sequential and concurrent jurisdiction of the City Council and the Port Board over Howard Terminal, the City and the Port have entered a "Memorandum of Understanding Between City and Port Regarding Howard Terminal Oakland A's Ballpark Project" ("MOU"). The MOU sets forth the anticipated administrative and procedural steps in the City's and the Port's potential exercise of each's respective authorities. Under the MOU, City and Port staff agree to cooperate and mutually consult in the preparation of the Environmental Impact Report ("EIR") that the City is preparing as lead agency under the California Environmental Quality Act, and to cooperate in the processing of permits and any approvals. In exercising each party's authority, the City and the Port would aspire "to avoid duplication or conflicting rules". The MOU notes that the Port Board reserves its rights to adopt regulations in addition to those that the City Council may have adopted but may also adopt the same regulations as adopted by the City Council by reference.

Of course, the City's and the Port's actions are not the only regulatory approvals needed before the Project may proceed. The Project applicant must also apply for and receive the necessary approvals and permits from the State Lands Commission, the San Francisco Bay Conservation and Development Commission, and the Department of Toxic Substances Control, among others.

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<sup>8</sup> City Charter Section 708: "Building Permits. No person or persons shall construct, extend, alter, improve, erect, remodel or repair any pier, slip, basin, wharf, dock or other harbor structure, or any building or structure within the "Port Area" without first applying for and securing from the Board a permit so to do, in accordance with the rules and regulations adopted by it. In approving or denying the right to said permit, the Board shall consider the application therefor, the character, nature and size and location of the proposed improvement, and exercise a reasonable and sound discretion in the premises...."

**Attachment 2:**

**Summary of Certain Seaport Compatibility Measures (SCMs) included in the Draft Environmental Impact Report**

Category of Seaport Compatibility Measures	Seaport Compatibility Measures Incorporated in the Draft EIR
1. Physical grade separation of vehicle, bicycle, and pedestrian traffic from train operations	<b><u>Mitigation Measure TRANS-3b:</u></b> Pedestrian and Bicycle Overcrossing (likely at Clay or Jefferson)
2. Increased at-grade rail safety measures to assure safe pedestrian at grade crossings of train tracks at controlled intersections and to deter pedestrian and bicycle mid-street crossings	<b><u>Mitigation Measure TRANS-3a:</u></b> Implement At-Grade Railroad Crossing Improvements <b><u>Alternative 3:</u></b> The Proposed Project with Grade Separation
3. Boating and recreational water safety plan and lighting/glare measures to prevent Project-related watercraft or activities from interfering with maritime related ship and boat operations and to ensure safe navigation of the Estuary and turning basin	<b><u>Mitigation Measure LUP-1a:</u></b> Boating and Recreational Water Safety Plan and Requirements <b><u>Improvement Measure AES-1:</u></b> Construction Lighting Design Features. During construction, light sources associated with proposed Project construction shall be shielded and/or aimed so that no direct beam illumination is directed/aimed outside of the Project Site boundary to the extent feasible... <b><u>Improvement Measure AES-2/MM LUP-1b:</u></b> Design Lighting Features to Minimize Light Pollution... if the ballpark orientation or design of light stands changes such that light and glare levels in the shipping channel or Inner Harbor Turning Basin would be substantially different than analyzed in the Lighting Technical Report, the Project sponsor shall be required to assess the changes in a supplemental Lighting Technical Report subject to review and approval by the City and the Port.
4. Transportation improvements and management plan to prevent Project-related traffic and congestion from interfering with safe and efficient movement of seaport freight and trucks to and from the seaport.	<b><u>Transportation Non-CEQA Recommendations:</u></b> local roadway improvements, for example on Adeline Street, that facilitate truck movement. <b><u>Mitigation Measure TRANS-1a:</u></b> Transportation and Parking Demand Management (TDM) Plan (to achieve 20% reduction in vehicle miles traveled for non-ballpark development). <b><u>Mitigation Measure TRANS-1b:</u></b> Transportation Management Plan (TMP), which includes operational strategies to optimize access to and from the ballpark. TMP includes strategies to address Port operations, such as: <ul style="list-style-type: none"> <li>• Traffic Control Officers (TCOs) at 5<sup>th</sup> Street &amp; Adeline and at 3<sup>rd</sup> Street &amp; Adeline for all ballgames and events to direct bike/ped/auto traffic to Market and MLK</li> <li>• Variable message signs near West Oakland Bart station and 880 off-ramps to guide ballpark traffic to Market and MLK</li> <li>• Performance measures for truck travel time between Port and freeways and for auto cut-through traffic in Seaport</li> </ul>

	<p><b>Mitigation Measure TRANS-1c:</b> Implement at Transportation Hub on 2nd Street (to support non-auto transportation)</p> <p><b>Mitigation Measure TRANS-1d:</b> Implement bus only lanes on Broadway (to support non-auto transportation)</p> <p><b>Mitigation Measures TRANS-2a and TRANS-2b:</b> Implement bike lanes on 7th Street from Mandela Parkway to Martin Luther King Jr. Way and on Martin Luther King Jr. Way from Embarcadero West to 8th Street</p>
<p>5. Land use compatibility measures to enhance compatibility between industrial operations at Seaport and Project residential and commercial developments.</p>	<p><b>Mitigation Measure LUP- 1c:</b> Land Use Siting and Buffers. All proposed sensitive uses (including residences and childcare facilities) on the Project site shall be prohibited west of Myrtle Street...place residential uses over 1,000 feet from the UPRR railyard to the northwest of the Project site...</p> <p><b>Improvement Measure LUP-1:</b> Statement of Disclosure... on the lease or title to all new tenants or owners of the Project, or any portion thereof, acknowledging the commercial and industrial character of the Project's environs...</p> <p><b>Mitigation Measure NOI-2a:</b> Sound Control Plan for concert events</p> <p><b>Mitigation Measure NOI-3:</b> Noise Reduction Plan for Exposure to Community Noise (e.g. sound-rated windows)</p> <p><b>Mitigation Measure AIR-5a:</b> Install MERV16 Filtration Systems, to reduce pollutant exposure for Project building occupants.</p>
<p>6. Retain turning basin expansion provisions to ensure sufficient area for the expansion of the Inner Harbor Turning Basin to accommodate large ships calling on the Port.</p>	<p><b>Maritime Reservation Scenario:</b> A version of project with the turning basin is evaluated in the EIR.</p>

### **Attachment 3**

#### **Fair Market Value Payments Under the Port Term Sheet and Increment Tax Revenue for the City**

As the City Council is considering the terms of financing for the Project, a summary of the financial terms under the Port's Port Term Sheet is helpful here. As described in Attachment 1, the Port must receive "fair market value" for any lease and sale of Howard Terminal in order to fulfill requirements Tideland Trust obligations. Under the Port Term Sheet, the Project would make payments to the Port equal to the fair market value of the land pursuant to various lease and sale agreement. These payments consist of lease payments that include an initial minimum guaranteed annual rent payment of \$3.8 million, and various variable "participation" rent such as a 10% share of the net parking revenues generated on Howard Terminal and a \$3 per drop off and pick up by transportation network companies (e.g., Uber or Lyft). To pay fair market value for the purchase of certain sale parcels, the Oakland A's are committed to negotiating a fee to be paid to the Port upon each sale and transfer of a residential condominium unit occurring after the initial sale by the developer equivalent to 0.35% of the sale price ("Condominium Transfer Fee"). The Port is not a taxing entity and does not currently receive any local tax revenues that accrues to other public agencies such as the City, the County, the school district, and others. Therefore, none of the incremental tax revenues derived from any development of the Project will be paid to the Port.

As the CED Staff Report details, the incremental tax revenues that would accrue to the City from a fully built-out Project would add up to over \$26.6 million (in today's dollars) of additional net tax revenues annually to the City (net of Project expenses), as well as over \$60 million in one-time City revenues derived from construction activities. In addition, the City will expect to receive \$1.6 million annually in parking tax revenues to fund public safety and violence prevention and \$960,000 for cultural affairs.<sup>9</sup> These revenues are net of operations and maintenance expenses the City would incur to provide public services such as police, traffic control, and public works for the Project site. Under the Infrastructure Financing District ("IFD") financing mechanism described in the City Staff Report, \$10.4 million of the net incremental property tax revenues would be used annually to pay infrastructure costs under the IFD.

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<sup>9</sup> Additionally, other taxing entities such as Alameda County and the school district would receive their share of tax revenue increments.

**PORT OF OAKLAND MARITIME AND AVIATION  
PROJECT LABOR AGREEMENT  
(MAPLA)**

ENTERED INTO BETWEEN  
THE CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS,

AND THE

BUILDING & CONSTRUCTION TRADES COUNCIL  
OF ALAMEDA COUNTY, AFL-CIO  
AND ITS AFFILIATED LOCAL UNIONS

Reference Date:  
February 1, 2016

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## APPENDICES

Appendix A	Letter of Assent
Appendix B	List of Master Labor Agreements (on file with the MAPLA Administrator)
Appendix C	Social Justice Labor Management Cooperation Trust Fund
Appendix D	Letter of Understanding Regarding Direct Owner-Operator and Owner-Operator Hardship Exemptions
Appendix E	Maritime and Aviation Project Labor Agreement Substance Abuse Policy
Appendix F	Addendum and Memorandum of Agreement Regarding Construction Trucking Work

**PORT OF OAKLAND MARITIME AND AVIATION  
PROJECT LABOR AGREEMENT**

**RECITALS**

This Maritime and Aviation Project Labor Agreement (“Agreement” or “MAPLA”), dated for reference purposes as of February 1, 2016, is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and the Building and Construction Trades Council of Alameda County (“Council”) and its affiliated local Unions that have executed this Agreement, together with contractors and subcontractors of all tiers who shall become signatory to this Agreement by signing the Letter of Assent (attached as **Appendix A**).

The purpose of this Agreement is to promote efficiency of construction operations during the performance of Covered Project(s) (as defined in Article 2 (Scope of Agreement)), and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of Covered Project(s).

WHEREAS, the timely and successful completion of Covered Project(s) is of the utmost importance to the Port of Oakland (“Port”) to meet its needs and to avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the Covered Project(s), including those to be represented by the Unions signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, it is recognized that the Covered Project(s) or any portion of it may involve multiple contractors and bargaining units on the job site at the same time over an extended period of time, thus increasing the potential for work disruption, without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the Port, the Unions and the Contractor(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns, or other interferences with work; and

WHEREAS, the Parties desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on Covered Project(s) by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) so that a satisfactory, continuous, and harmonious relationship will exist among the Parties; and

WHEREAS, the Parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise if Union and non-union workers of different employers were to work side by side on Covered Project(s), thereby leading to labor disputes that could delay completion of such work; and

PORT OF OAKLAND MARITIME AND AVIATION PLA

BTC: 
Port:

WHEREAS, the Parties place high priority on the recruitment, training and employment of historically disadvantaged residents of the Port's Local Impact Area (defined as the cities of Alameda, Emeryville, Oakland, and San Leandro), especially Oakland, for Covered Project(s), in part through the Parties' use, development, and implementation of comprehensive programs for MC3-certified pre-apprenticeship and Joint Labor-Management apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

WHEREAS, the Port also seeks to create business opportunities for small and disadvantaged companies and contractors in the LIA business community, especially for those located in Oakland; and

WHEREAS, the Agreement is not intended to replace, interfere with, abrogate, diminish, or modify existing local or national collective bargaining agreements in effect during the Agreement's duration, except to the extent that if the provisions of this Agreement are inconsistent with said collective bargaining agreements, the provisions of this Agreement shall prevail; and

WHEREAS, the Port is committed to provide open access to bidding opportunities for all contractors and to assure that an adequate supply of craft workers possessing the requisite skills and training are available to work on Port projects and to provide the Port with construction of the highest quality; and

WHEREAS, the contracts for Covered Project(s) will be awarded in accordance with Port Ordinances, procedures, and other applicable California law; and

WHEREAS, the Port has the absolute right to award its Construction Contracts for Covered Project(s) to the lowest responsive and responsible bidder; and

WHEREAS, the Parties pledge their full good faith and trust to work towards the mutually satisfactory completion of Covered Project(s) consistent with the Parties' priorities as outlined above;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

## **ARTICLE 1 DEFINITIONS**

Unless otherwise defined in specific sections of this Agreement, all capitalized terms shall have the following meanings:

- 1.1 "Agreement" or "MAPLA" means this Maritime and Aviation Project Labor Agreement.
- 1.2 "Board" means the City of Oakland Board of Port Commissioners, as set forth in the City of Oakland Charter Article VII.
- 1.3 "Completion" means that point at which there is Final Acceptance by the Port of all work

PORT OF OAKLAND MARITIME AND AVIATION PLA

or improvements required to be completed under a Construction Contract. "Final Acceptance" shall mean that point in time at which the Port has determined upon final inspection that all improvements or all work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals, and data have been submitted and training completed in accordance with the contract documents and the Port has executed a written acceptance of the Covered Project(s).

- 1.4 "Construction Contract" means a contract for which bids have been advertised, or invitations or solicitations for bids or proposals have been made by the Port during the term of this Agreement. For on-call contracts, "Construction Contract" means the particular instance of an on-call contract. For a hybrid professional services contract, "Construction Contract" means the Covered Project portion of the hybrid professional services contract.
- 1.5 "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise, and including the Project Manager, Construction Manager, General Contractor, Prime Contractor, or the equivalent, and their successors and assigns, that enter into a Construction Contract with the Port or into a contract with a Tenant for Covered Project(s), and any of its contractors or subcontractors of any tier.
- 1.6 "Council" means the Building and Construction Trades Council of Alameda County.
- 1.7 "Covered Project(s)" means the projects set forth in Article 2 (Scope of Agreement).
- 1.8 "Disadvantaged Workers" shall mean those LIA residents, prior to commencing Covered Project(s), who meet at least one of the following barriers to employment: (1) is currently homeless; (2) is currently a custodial single parent; (3) is currently receiving public assistance; (4) has a criminal record or other criminal justice system involvement; (5) has been continuously unemployed for the previous one year; (6) has been emancipated from the foster care system; (7) is a veteran of the U.S. military; or (8) resides in an Economically Disadvantaged Area. "Economically Disadvantaged Area" means a zip code within the LIA and that includes a census tract or portion thereof in which the median household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census, and as updated by the U.S. Census Bureau in its Median Annual Household Income data by census tract in the American Community Survey.
- 1.9 "Joint Administrative and Social Justice Trust Committee" or "JASTC" means the committee described in Article 6 (Joint Administrative and Social Justice Trust Committee).
- 1.10 "Joint Apprenticeship Training Committee" or "JATC" means a Labor-Management apprenticeship program that is registered with the State of California's Division of Apprenticeship Standards.

- 1.11 “Letter of Assent” means the agreement executed by each and every Contractor as a condition of performing Covered Project(s) at the Port, a form of which is attached hereto as **Appendix A**.
- 1.12 “List Trades” currently refers to the following unions: International Brotherhood of Electrical Workers, Local No. 595; Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Sheet Metal Workers’ International Association, Local Union No. 104; Sprinkler Fitters and Apprentices, U.A. Local 483; Glaziers, Architectural Metal & Glass Workers Local Union No. 169; and International Union of Elevator Constructors Local Union No. 8; unless otherwise agreed to by the Parties.
- 1.13 “Local Business Area” or “LBA” mean all of Alameda County and Contra Costa County.
- 1.14 “Local Impact Area” or “LIA” mean the cities of Oakland, Alameda, Emeryville, and San Leandro.
- 1.15 “MAPLA Administrator” means the person(s), business entity(ies), or Port employee(s) designated by the Port to oversee the implementation of and compliance with this Agreement.
- 1.16 “Master Agreement” or “MLA” mean the Master Collective Bargaining Agreement or Schedule A of each craft Union signatory hereto. The Unions for which there are Master Agreements are listed in **Appendix B**.
- 1.17 “New Hire Apprentice” means a LIA resident who, on the date that such individual is hired or assigned to perform the applicable Covered Project(s), is newly enrolled (for fewer than two years for List Trades and fewer than one year for all other non-List Trades) in a Joint Labor-Management apprenticeship program that is currently registered with the State of California’s Division of Apprenticeship Standards.
- 1.18 “Owner” means either the Port or a Tenant who contracts for Covered Project(s).
- 1.19 “Parties” means the Board, the Port, the Council, the Unions that are signatory to the Agreement, and Contractor(s) who become signatory to this Agreement by executing a Letter of Assent.
- 1.20 “Port” means the Port of Oakland, a department of the City of Oakland as set forth in City of Oakland Charter, Article VII, Section 700, and includes Port Department employees, agents, and administrative staff.
- 1.21 “Social Justice Committee” or “SJC” means the committee described in Article 5 (Social Justice Committee).
- 1.22 “Tenant” means an individual or business entity that holds a lease, license, concession agreement, space-use permit, or grant of the right of entry for use or occupancy of Port property in the Port’s Maritime or Aviation areas (as defined by the Port), other than

short term rental agreements such as “temporary rental agreements” for which the Port’s Executive Director has been delegated the authority to enter into by the Board pursuant to its Bylaws and Administrative Rules.

- 1.23 “Union,” “Unions,” or “Signatory Unions” mean the Council and any affiliated Union signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.
- 1.24 “Workforce Development Center” means any construction-related community-based organization, designated on an annual basis by the JASTC that provides referrals of qualified LIA/LBA residents for construction work and/or provides MC3-certified pre-apprenticeship training to LIA/LBA residents. Workforce Development Centers, in addition, may serve as a resource for preliminary orientation, assess construction aptitude, refer to pre-apprenticeship and apprenticeship programs or hiring halls, perform needs assessment, counsel and mentor, provide a support network for women, and/or provide employment opportunities and other needs as identified for prospective workers.

## ARTICLE 2 SCOPE OF AGREEMENT

- 2.1 Covered Project(s). Except for the exclusions described in Section 2.3, this Agreement covers contracts for On-Site Construction Work (as defined in Section 2.2) to the fullest extent and only within the craft jurisdiction of the Unions as set forth below:
- (a) a Construction Contract that appears on the Capital Improvement Program list for the Maritime Division or Aviation Division of the Port and that has an estimated cost that exceeds \$150,000; or
  - (b) a contract between a Tenant in the Port’s Maritime or Aviation areas and a Contractor that has an estimated cost that exceeds \$150,000 and for which the Port issues a building permit during the term of this Agreement.
- 2.2 On-Site Construction Work. “On-Site Construction Work” consists of the work described below, which shall be covered by this Agreement:
- 2.2.1 Work Within Craft Jurisdiction. All work performed on-site within the current craft jurisdiction of the signatory Unions, as defined by the MLAs or prevailing wage determinations in effect as of the effective date of this Agreement. Such work includes: all site preparation, field surveying, remediation, construction, alteration, retrofit, demolition, installation, improvement, painting or repair of buildings, structures, and other works of improvement, and related activities, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, modular furniture installation, and all soils and materials testing

and inspection. The Parties agree that work or jurisdiction added to an MLA or prevailing wage determination after the effective date of this Agreement shall not be covered by this Agreement (except for Construction Trucking Work under Section 2.2.4) except by mutual agreement of the Port and the Council. The term "on-site" referred to in this Section 2.2.1 and in Section 2.2.2 (Startup and Commissioning) means work performed on the construction project site, temporary yards, and other areas outside the construction project site established solely for and dedicated to Covered Project(s), as well as batch plants constructed solely to supply materials to Covered Project(s) at the Port.

- 2.2.2 Startup and Commissioning. All on-site craft work typically performed by signatory Union craft labor that is part of startup and commissioning, including, but not limited to, system flushes and testing, balancing, loop checks, rework and modifications, functional and operational testing up to and including the final running test prior to the Owner accepting the system from the Contractor. It is understood that the Owner's personnel, manufacturer's and/or vendor's representatives, and/or plant operating personnel may supervise and direct the startup, commissioning, rework and modification activity, and that the craft work is typically performed as part of a joint effort with these supervisory representatives and personnel. A manufacturer or its representatives may perform industry standard startup and commissioning work to satisfy its guarantee or warranty on a piece of equipment, consistent with Section 11.2 of Article 11 (Management's Rights).
- 2.2.3 On- and Off-Site Fabrication. All on-site fabrication work over which the Port or Contractor(s) possess the right of control (including work done for the project in any temporary yard or area established for the project). Additionally, this Agreement covers any off-site work, including fabrication necessary for Covered Project(s), that is covered by a current MLA or local addenda to a national agreement of the applicable Unions that is in effect at the effective date of this Agreement (i.e., Sheet Metal Workers' International Association, Local Union No. 104 (SMART) and United Association, Local 342.) To the extent possible, such work will be performed in the nine-county San Francisco Bay Area consisting of Alameda, Contra Costa, Solano, Napa, Sonoma, Marin, San Francisco, San Mateo, and Santa Clara Counties.
- 2.2.4 Construction Trucking. The delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble ("Construction Trucking Work") to the fullest extent and only as provided by law and the prevailing wage determinations of the California Department of Industrial Relations. Contractor(s), including brokers, of persons providing Construction Trucking Work shall provide certified payroll records to the Port within ten (10) days of written request or as required by bid specifications, to the fullest extent required by law or consistent with Port practice and policy. Construction Trucking Work

shall also be governed by the terms of **Appendix F** (Addendum and Memorandum of Agreement Regarding Construction Trucking Work).

- 2.3 Items specifically excluded from the scope of this Agreement include the following:
- 2.3.1 Work of non-manual employees, including but not limited to, superintendents, supervisors above the level of General Foreman, construction managers, staff engineers, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees. The Port acknowledges that the exclusions from coverage regarding “superintendents, supervisors above the level of General Foreman, staff engineers, quality control and quality assurance personnel” do not cover testing and inspecting work performed at the site of construction.
  - 2.3.2 Off-site testing facilities or off-site activities of inspection or testing services Contractors, including “runners” whose duties may cause them to be present at site(s) where Covered Project(s) is/are performed, but are present only incidentally to the performance of their normal work and who are not performing any testing or inspection work.
  - 2.3.3 All work performed by railroad, shipping lines, airlines, terminal operators, concessionaires, or stevedoring companies. Operation of equipment and machinery owned or controlled and operated by any non-Port entity, except where such equipment is being operated to perform Covered Project(s).
  - 2.3.4 All employees of design teams or any other consultant of the Port for, architectural/engineering design services and other professional services not expressly covered by the Agreement.
  - 2.3.5 Any work performed on or near or leading to or onto the site(s) of Covered Project(s) and undertaken by state, county, city, or other governmental bodies, or their contractors; or by public utilities or their contractors.
  - 2.3.6 Non-construction support services contracted by the Owner or the MAPLA Administrator in connection with Covered Project(s).
  - 2.3.7 All work by employees of the Port or by railroad or shipping lines, airlines, terminal operators, concessionaires, or stevedoring companies doing business at the Port.
  - 2.3.8 Construction work ancillary to Covered Project(s) but contracted by others. When the MAPLA Administrator is informed of such construction work, it

will notify the Council as soon as possible thereafter, but not later than twenty-four (24) hours prior to the commencement of such work.

2.3.9 Poles and billboards are within the jurisdiction of the Port's Commercial Real Estate Division and therefore are excluded from this Agreement.

2.4 For any Covered Project(s) for which the Port believes there may be insufficient bidders, the Port may refer the issue to the Council. Within five (5) working days of notice from the Port, the Port and the Council shall meet and attempt to resolve the issue.

2.5 Work Notices.

2.5.1 Port Work Notice. Immediately upon determining which company is the apparent low bidder for any Construction Contract, and not later than 48 hours after such determination, the Port shall be responsible for notifying the Council of the identity of the apparent low bidder and the next two apparent low bidders for all such work. The Port shall notify the Council no later than 48 hours after awarding Construction Contracts of the identity of the work in question and the Contractor to whom such contract was awarded. The Port shall notify the Council no later than 24 hours after issuing a notice to proceed to any Contractor that such notice has issued and shall provide the Council with a copy of such notice to proceed.

2.5.2 Tenant Work Notice. The Port shall notify the Council of the details of all Covered Project(s) to be performed by Tenants within 5 business days of the Tenant's submission of a complete permit application to the Port of the contemplated work, unless the work is to be performed in fewer than 48 hours, in which case the Port shall immediately notify the Council that the Tenant is commencing work.

2.6 This Agreement shall be limited to work within the scope of this Agreement, as set forth in this Article, for which bids have been advertised, or invitations or solicitations for bids or proposals have been made by the Port during the term of this Agreement. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work, or function awarded to any Contractor before the effective date of this Agreement or which may be performed by the Owner for its own account on the property or in and around the construction site.

2.7 Covered Project(s) within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 12 (Work Stoppages and Lockouts), 13 (Grievances), and 14 (Jurisdictional Disputes) shall apply to such work.

- 2.8 To the fullest extent allowable by law and by federal agencies, MAPLA will apply to Covered Project(s) funded in whole or in part by federal financial assistance or grants. However, any MAPLA provisions disallowed by federal agencies – such as (without limitation) binding arbitration or penalties that enforce local hire provisions – shall not apply to Covered Project(s) funded in whole or in part by federal financial assistance or grants. The JASTC will meet and confer to create appropriate and legal replacement provisions within the federal agencies' requirements.
- 2.9 No work authorizations, project, or bid may be split or separated into smaller work authorizations, projects, or bids for the purpose of evading the application of this Agreement.

### ARTICLE 3 EFFECT OF AGREEMENT

- 3.1 By executing this Agreement, the Unions and the Port agree to be bound by each and all of the provisions of the Agreement.
- 3.2 This Agreement shall be included in the bid documents as a condition of the award of all Construction Contracts.
- 3.3 By accepting the award of a Construction Contract, the Contractor agrees to be bound by every provision of this Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as **Appendix A**.
- 3.4 The Owner, the MAPLA Administrator, and/or Contractors, as appropriate, have the absolute right to award contracts or subcontracts on Covered Project(s) notwithstanding the existence or non-existence of any MLAs between the prospective Contractor and any Union party, and provided that such Contractor is willing, ready and able to comply with this Agreement and shall execute a Letter of Assent (in the form attached as **Appendix A**), should such Contractor be awarded Covered Project(s).
- 3.5 At the time that any Contractor enters into a subcontract with any subcontractor to perform Covered Project(s), the Contractor shall require the subcontractor as a precondition of accepting an award of Covered Project(s) to agree in writing, by executing the Letter of Assent (in the form attached as **Appendix A**), to be bound by every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting.
- 3.6 Any dispute as to the applicable source between this Agreement and any MLA for determining the wages, hours, and working conditions of employees for Covered Project(s) shall be subject to resolution under the procedures established in Article 13 (Grievances). It is understood that this Agreement, together with the referenced MLAs, constitutes a self-contained, stand-alone agreement and that, by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local,

area, or national agreement as a condition of performing work within the scope of this Agreement.

3.7 Subcontracting.

3.7.1 With regard to any Contractor that is independently signed to any MLA, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in Section 3.7.2 of this Section.

3.7.2 If a craft union (as used in this Section, "Aggrieved Union") believes that an assignment of Covered Project(s) has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its MLA as permitted by Section 3.7.1, the Aggrieved Union may submit a claim under the jurisdictional resolution process contained in Article 14 (Jurisdictional Disputes), and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft union under the subcontracting clause of its MLA, as permitted under Section 3.7.1, shall be valid and fully enforceable by that craft Union unless it conflicts with a jurisdictional award made pursuant to this Agreement. If the award made under the MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void ab initio.

3.8 This Agreement shall only be binding on the Parties and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such Party. Each Contractor and its successors and assigns, shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement.

3.9 The liability of any Contractor and the liability of the separate signatory Unions shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other signatory Union(s). The Unions and Council agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, MAPLA Administrator, and/or any Contractor.

3.10 The provisions of this Agreement, including the MLAs that are incorporated herein by reference, shall apply to the work covered by this Agreement notwithstanding the provisions of any other local, area, and/or national agreements that may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a MLA, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a MLA and is not covered by this Agreement, the provisions of the MLA shall prevail.

- 3.11 None of the provisions of this Agreement shall be construed to prohibit or restrict the Port or its employees from performing work not covered by this Agreement on or around the construction site. As areas of Covered Project(s) are accepted by the Owner, the Agreement shall have no further force or effect on such items or areas except where the Contractor is directed by the Owner to engage in start-up, repairs (including warranty work by the Contractor but excluding any warranty work as set forth in Article 11 (Management's Rights)), or punch list modifications to work by the Contractor.
- 3.12 It is understood that the Owner, at its sole option, may terminate, delay, or suspend any and all portions of the Covered Project(s) at any time.

#### **ARTICLE 4 PRE-JOB CONFERENCES**

- 4.1 Prior to the commencement of any Covered Project(s), the MAPLA Administrator shall notify the Council of the need to convene a pre-job conference. Every effort shall be made to hold such conference in a timely manner (minimum of 7 days) prior to the commencement of each and every construction phase or construction contract for the Covered Project(s). The pre-job conference shall be conducted by the Council and held at a location selected by the Council that is reasonably accessible for all attendees and is ADA-compliant. Such pre-job conference shall be attended by a representative each from the participating Contractor(s) and affected Union(s) and the MAPLA Administrator.
- 4.2 All Contractor(s) at all tiers that are required to participate in the pre-job conference shall be prepared to make craft assignments of work and to discuss in detail all issues that may impact or are relevant to the particular construction work being performed and shall include the following information:
- (a) A listing of each Contractor(s)'s scope of work, including the estimated start and completion dates;
  - (b) A listing of all subcontractors performing work under the direction of each Contractor(s) participating in the pre-job conference;
  - (c) The estimated number of craft workers required to perform the work;
  - (d) A copy of the signed Letter of Assent for each Contractor(s); and
  - (e) A listing of all specific work to be performed by the employees of an equipment vendor or manufacturer to protect the warranty on such equipment, as set forth in Section 11.2 of Article 11 (Management's Rights).
- 4.3 Craft workers shall not be required to attend the pre-job conference.

**ARTICLE 5**  
**SOCIAL JUSTICE COMMITTEE**

- 5.1 The Parties have agreed to various provisions of the Agreement to achieve the inclusion of historically disadvantaged businesses and individuals in the contracting and employment opportunities created by the Covered Project(s). In order to implement and monitor the progress of these social justice provisions, the Port and the Unions, in recognition of their mutual commitment to and the partnership they have established to achieve those goals, shall form a Social Justice Committee ("SJC"). The SJC will serve as the central forum for representatives of all interested or affected parties to exchange information and ideas and to advise the JASTC concerning the operation and results of the Port Social Justice Program and the ongoing role of this Agreement as an integral component of the Port's program. As part of these responsibilities, the SJC will assess the obstacles to success of achieving inclusion of disadvantaged workers in the construction opportunities and shall make recommendations for a program to overcome some of those obstacles.
- 5.2 Membership and Organization.
- 5.2.1 The Port and the Council shall mutually agree to and appoint representatives of all interested segments of the community to the SJC, which will include local, minority, and female business organizations, community-based organizations, training providers (i.e., MC3-certified pre-apprenticeship programs operating in the LIA and/or serving primarily residents of the LIA), Port employees, the Council, the Unions signatory hereto, the MAPLA Administrator, and Contractors participating under this Agreement.
- 5.2.2 The SJC will establish its rules of procedure.
- 5.2.3 The MAPLA Administrator shall chair the SJC.
- 5.3 Meetings.
- 5.3.1 The SJC will meet monthly or more frequently at the call of the Chair. The meetings shall be open to the public.
- 5.3.2 The Chair will establish agenda topics with input from the SJC and the Chair will send notices of meetings with the agenda in advance of the meetings to the SJC members.
- 5.3.3 The meetings will receive reports and consider work progress and practices, MSBE utilization, pre-apprentice recruitment, training and referral, apprentice development and utilization, and other issues of concern to the SJC.
- 5.3.4 The MAPLA Administrator and the Contractors shall report on monthly progress on these issues and provide ongoing workforce projections for their work.

5.4 Relation to the JASTC.

5.4.1 The SJC has the right to refer to the JASTC concerns about a Party's compliance with the Agreement's provisions relating to the utilization of LIA residents and businesses on Covered Project(s).

5.4.2 The SJC shall make advisory recommendations to the JASTC on elements of a Social Justice Program.

5.5 Actions by the SJC. Any action taken by the SJC will not be deemed official until it has been ratified by the JASTC.

**ARTICLE 6**

**JOINT ADMINISTRATIVE AND SOCIAL JUSTICE TRUST COMMITTEE**

6.1 The Parties recognize the necessity for cooperation and communication between Labor and Management, and the elimination of disputes and misunderstandings among the Parties. To this end, a representative of the MAPLA Administrator will meet monthly with the representatives of the signatory Unions to promote harmonious and stable labor/management relations on Covered Project(s), and to ensure effective and constructive communications between the labor and management parties.

6.2 A MAPLA Joint Administrative and Social Justice Trust Committee ("JASTC") will be formed consisting of seven (7) representatives selected by the Council and seven (7) representatives selected by the Port, two of whom shall be co-chairs for the JASTC ("Co-Chairs"), one appointed by the Port and one appointed by the Council. A quorum shall consist of a minimum of two (2) representatives of the Port and two (2) representatives of the Council, plus the two Co-Chairs or their designated alternates.

6.3 The purpose of the JASTC will be to help resolve issues or disputes as to the interpretation and implementation of all Articles of this Agreement (except as otherwise set forth in this Agreement), including resolving issues presented to it by the Social Justice Committee or by the Parties. Any issue not resolved through the JASTC may be referred by any Party for formal resolution under Step 2 of the grievance procedure in Article 13 (Grievances).

6.4 Social Justice Trust Fund.

6.4.1 The Parties acknowledge the existence of the Social Justice Labor Management Cooperation Trust Fund ("Social Justice Trust Fund" or "Fund") utilized to manage the MAPLA Social Justice Program. Attached as **Appendix C** is a two (2) page document entitled "Social Justice Labor Management Cooperation Trust Fund" that discusses the amount for Contractors' payments to the Fund as well as the process for making such payments; also included is a single page attachment entitled "Social Justice Trust Fund Contribution Letter of Transmittal." The Contractor agrees to be

bound by that certain Declaration of Trust Establishing the Social Justice Labor Management Cooperation Trust Fund dated October 6, 2000, as such has been or may from time to time be amended or supplemented.

- 6.4.2 This Section establishes a Contractor payment in the amount of thirty cents (\$0.30) per hour worked or paid into the Social Justice Labor Management Cooperation Trust Fund according to the terms and conditions set forth in **Appendix C**.
- 6.4.3 Organizations eligible for funding by the Social Justice Trust Fund are those that prioritize placing Disadvantaged Workers for placement in the apprenticeship program.
- 6.5 The JASTC shall meet at the call of the Joint Chairs at least on a quarterly basis, or at the request of the Social Justice Committee, and will establish its own rules of procedure.
- 6.6 The Parties agree that the timely, efficient, and economical completion of Covered Project(s) is of utmost importance. Accordingly, the JASTC shall review, as needed, the operational impacts of the Agreement and any related issues that arise.
- 6.7 Grievance Subcommittee. The JASTC shall appoint a Grievance Subcommittee consisting of one (1) representative selected by the Port, and one (1) representative selected by the Council for the purpose of convening to confer in an attempt to resolve a grievance that has been filed consistent with Article 13 (Grievances) or issues referred to the JASTC by the Social Justice Committee. The Grievance Subcommittee shall meet as required to resolve grievances by majority vote with such resolutions to be final and binding on all signatories of the Agreement. Failure of any Party to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Grievance Subcommittee, if such award is made by a majority vote, and the hearing shall proceed ex parte. If the Grievance Subcommittee is unable to resolve the grievance, the grievance may be referred to arbitration in accordance with Step 4 of Article 13 (Grievances).

**ARTICLE 7  
UNION RECOGNITION AND REFERRAL**

- 7.1 Contractors performing Covered Project(s) shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Union signatory hereto.
- 7.2 The Contractor has the right to determine the competency of all employees and the number of employees required, subject to the lawful manning provisions of applicable local MLAs (provided that such provisions will not be recognized if they unduly restrict the productivity or efficiency of the work and the full utilization of the workforce), and shall have the sole responsibility for selecting employees to be laid off, consistent with Section 10.5 of Article 10 (Union Security). The Contractor may reject any referral for

any lawful reason, provided the Contractor complies with its reporting pay obligations in Article 15 (Wages, Benefits, and Working Conditions).

- 7.3 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s). The selection of craft foremen and/or general foremen, and the number of foremen required shall be entirely the responsibility of the Contractor.
- 7.4 In the event that the Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union and the MAPLA Administrator of the name and Social Security Number of any applicants hired from other sources and shall refer the applicant to the Union to comply with Article 10 (Union Security) and for dispatch to perform Covered Project(s).
- 7.5 The Contractor recognizes the Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on Covered Project(s).
- 7.6 To ensure that Contractors will have an opportunity to employ their "core" employees for Covered Project(s), the Parties agree that in those situations where a Contractor not a party to a current MLA with the signatory Union having jurisdiction over the affected work is a successful bidder, the Contractor may request by name, and the local will honor, referral of persons who have applied to the Union for Covered Project(s) and who demonstrate the following qualifications:
- (1) possess any license required by state or federal law for the Covered Project(s) to be performed;
  - (2) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
  - (3) were on the Contractor's active payroll for at least sixty (60) out of the one-hundred eighty (180) calendar days prior to the contract award; and
  - (4) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when

the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. In no event shall the use of this Section relieve Contractors of local hire obligations under this Agreement.

## **ARTICLE 8 WORKFORCE DEVELOPMENT AND LOCAL HIRING**

### General Provisions

- 8.1 The provisions of this Article apply to the extent they are consistent with the MLAs, hiring hall rules and procedures, and Joint Apprenticeship Training Committee ("JATC") rules and procedures. All employees shall comply with the Union security provision of the applicable MLA for the period during which they are performing Covered Project(s).
- 8.2 The hiring procedures, including related practices affecting apprenticeship and training, will be operated so as to facilitate the ability of the Contractors to meet the requirements of this Article.

### Local Hire Provisions

- 8.3 The Parties agree to a goal that residents of the LIA will perform fifty percent (50%) of all hours worked, on a craft-by-craft basis but, if sufficient and qualified workers from the LIA are not available to achieve this goal, then residents of the LBA may be utilized. The Contractor shall make "Good Faith Efforts," as described below, to reach this goal through the utilization of normal hiring hall procedures listed in the MLAs and the resources of the Workforce Development Center(s).
- 8.3.1 The following items are a complete list (subject to revision by the JASTC except for item number one regarding the local hiring compliance form(s)) of the "Good Faith" steps that a Contractor shall take to demonstrate that it has made every effort to reach the local hiring goals of the MAPLA. All communication shall flow through the Contractor.

All Contractors shall:

1. Submit all required, local hire compliance plan form(s) mutually agreed upon by the Port and the Council, to the Prime Contractor, who will send copies to the Port outlining local workforce projections prior to the pre-job conference;
2. Attend a pre-job conference and discuss any local hire concerns before beginning Covered Project(s);
3. Use "Name Call", "Rehire", or other programs to reach local hiring goals when they are available as part of the hiring hall dispatch procedures;

4. Maintain copies of all dispatch requests for LIA residents along with Union responses;
  5. Request a worker from all currently designated Workforce Development Centers, consistent with Article 8, if the Unions cannot provide LIA residents to the Contractor upon request;
  6. Sponsor Disadvantaged Workers for apprenticeship, when possible; and
  7. Meet with the MAPLA Administrator or the Social Justice Committee (“SJC”) upon request to resolve compliance issues.
- 8.4 If, after going through the dispatch procedures in the MLA, the Contractor hires workers from the Workforce Development Center(s) to meet the LIA/LBA goals, the Contractor will contact the applicable Union dispatcher to request that worker as a name-call, and the Union will agree to dispatch such worker from the Union hall. The Workforce Development Center(s) will provide the necessary confirmation to the Union dispatcher that the worker has received and accepted the dispatch and will also provide confirmation to the Contractor.

#### Apprentice Provisions

- 8.5 The Parties recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry. The Contractors shall employ apprentices from California State-approved joint apprenticeship programs in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
- 8.6 Subject to any restrictions contained in law and in the MLAs, the Parties agree to a goal that apprentices will perform a minimum of twenty percent (20%) of the total craft work hours consistent with Labor Code Section 1777.5 *et seq.*, as amended. The Union agrees to cooperate with the Contractor in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with provisions contained within the MLAs.
- 8.7 The Parties agree to a goal that only LIA residents shall be utilized as apprentices but, that if sufficient and qualified apprentices from the LIA are not available to achieve this goal, then LBA residents may be utilized. The Contractor shall make good faith efforts to reach this goal through the utilization of MLA hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through the Workforce Development Centers.
- 8.8 The Parties agree that available, capable, qualified, and willing Disadvantaged Workers are prioritized for placement as New Hire Apprentices. Consistent with this Article, the Parties agree that twenty-five percent (25%) of all apprentice hours shall be performed by Disadvantaged Workers, if available.

- 8.9 For each Construction Contract, a Contractor and/or its subcontractors must hire at least one (1) LIA resident as a New Hire Apprentice for the first one million dollars (\$1 million) of construction bid value. For each additional five million dollars (\$5 million) of construction bid value (beyond the first \$1 million), a Contractor and/or its subcontractors must hire at least one (1) additional LIA resident as a New Hire Apprentice. New Hire Apprentices must have graduated from an MC3-certified or JATC-established pre-apprenticeship program. The Port may request an exemption from or modification of this dollar amount from the JASTC for operational reasons.
- 8.10 The New Hire Apprentice must work at least five hundred (500) hours unless the Contractor demonstrates to the SJC that the New Hire Apprentice worked the maximum feasible hours available for the New Hire Apprentice. A Contractor shall maximize the Covered Project(s)' hours for the New Hire Apprentices and shall document and report those hours to the SJC, which will evaluate if the Contractor acted reasonably and in good faith. Further, for apprentices hired to comply with this goal, there will be no limitation on where such apprentices will work subsequent to being hired for the Covered Project(s). A Contractor cannot hire more than one (1) LIA resident exclusively for a single trade to satisfy the hiring goals in this Section unless required by the nature of the work or unless approved by the JASTC based on a recommendation of the SJC.
- 8.11 To meet the goals described in Sections 8.6, 8.7, 8.8, 8.9, and 8.10, a Contractor may qualify for up to one-half (1/2) credit toward the goal by employing LIA resident New Hire Apprentices on "other work" the Contractor is performing during the life of Covered Project(s) only. In order to receive such credit, the Contractor must submit certified payrolls and a Contractor Credit Request Form concerning the use of LIA residents (to be mutually agreed upon by the Port and the Council) as documentation to the MAPLA Administrator. No credit for other work will be allowed until the Contractor has demonstrated a good faith effort to reach the goal on Covered Project(s) and has received written approval from the MAPLA Administrator.
- 8.12 LIA apprentices hired to perform Covered Project(s) who have graduated and become journeypersons may continue to be counted towards the Apprenticeship goals in this Section by the Contractor(s) for the duration of the Covered Project(s) or until such time as they are laid-off in the normal course of staff reductions at the end of the Contractor's scope of work, whichever is sooner. In order to receive such credit, the Contractor must submit certified payrolls and a Contractor Credit Request Form concerning the use of LIA residents (to be mutually agreed upon by the Port and the Council) as documentation to the MAPLA Administrator.
- 8.13 A Contractor shall make all requests for apprentices in writing. The Contractor shall report the number of LIA resident New Hire Apprentices, date of hire and hours worked to the MAPLA Administrator as well as any information about the Contractor's hiring efforts. The MAPLA Administrator will evaluate such information to determine whether the Contractor has acted in good faith to comply with this Section.

- 8.14 Each Signatory Union will be responsible for dispatching/referring LIA residents as New Hire Apprentices to a Contractor on a priority basis if they are available, capable and willing to work on Covered Project(s). If apprentice(s) are not available, a Contractor shall request workers from the Workforce Development Center. If LIA apprentice(s) are still not available, the Contractor shall adhere to MLA dispatch procedures.
- 8.15 The Unions and intermediate bodies will afford New Hire Apprentices the most liberal time payment and organizing entry fees otherwise available for new member applicants with respect to such Union or intermediate body.

Port and Council Commitments

- 8.16 To the extent permitted by law, the Unions will recommend and encourage that the JATCs give credit for bona fide, provable past experience to applicants, including work for non-Union Contractors who become signatory to this Agreement, provided those applicants are willing to become Union members. The experience and practical knowledge of applicants will be reviewed and tested by the applicable JATC. Applicants will be placed at the appropriate stage of apprenticeship or at the journey level, as the case may be. Final decisions will be the responsibility of the applicable JATC.
- 8.17 The Unions agree, for the life of this Agreement, to the annual placement of no fewer than twenty-five (25) LIA residents, at least ten (10) of whom will enter the List Trades. The LIA residents must have graduated from MC3-approved pre-apprenticeship programs. Those include, but are not limited to, Cypress Mandela, Rising Sun, Future Build, City-Build and Richmond-Build. The responsibility of the Port, working with the Unions and applicable community based organizations, is to maintain and track a list of such graduates. These graduated LIA residents will become part of a pool of New Hire Apprentices for the Contractors to draw from for hiring on Covered Project(s). The requirements of this Section are in addition to any other goals and requirements discussed in this Article.
- 8.18 For purposes of monitoring and compliance with respect to the placement requirements of Section 8.17, the Port and the Unions agree to the following process:
- 8.18.1 Each January, the Council shall submit a Plan for Compliance (as used in this Article, the "Plan") to the SJC. The Plan will include projections/schedules for new apprentice intakes and available information on the projected use of Disadvantaged Workers. It may also include the Union's commitment to job fairs, financial or human support in tutoring of LIA residents for math exam preparation, opportunities for LIA residents to enroll in Union pre-apprenticeship programs, support of and participation in LIA high school construction academies, etc.
- 8.18.2 The Council will submit a bi-annual in-person report to SJC on the status of recruitment, placement and retention of LIA new apprentices, including details of outreach in the LIA, based on available information.

- 8.18.3 If a Union is found to be in apparent non-compliance with the Commitments in Section 8.17 the SJC will request that the MAPLA Administrator invite the Council Representative before it for a presentation on why the goals are not being met, along with a revised proposed Plan. Any revisions to the commitments must be approved by the JASTC.
- 8.18.4 If approved, the MAPLA Administrator will track the Council's adherence to the revised Plan, offering assistance with local resources, as requested. If the Unions fail to meet the goals of the revised Plan, the SJC may refer the issue to the JASTC. At any time before referral to JASTC, the Unions will have the opportunity to seek resolution in the SJC.
- 8.18.5 The Port will, in coordination with the Council and other agencies, commit to supporting organizations that facilitate at least two Construction Job fairs per year aimed at identifying LIA residents that would be eligible for apprenticeship and pre-apprenticeship programs. These job fairs should identify a minimum of 50 interested applicants. In addition, the Port will make every effort to advocate for funding for MC3-certified pre-apprenticeship programs with the goal of 50 LIA graduates. Finally, the Port will support educational institutions and community based organizations that teach LIA residents the necessary math skills to enter into the List Trades. These education institutions and community-based organizations will graduate a minimum of 20 students that are LIA residents. Failure of any of these program targets to materialize relieves the Council of its obligations specified in Section 8.17.
- 8.19 The Unions agree to coordinate with the Workforce Development Centers to create and maintain an integrated database of hiring list members from the LIA and LBA, and agree that such Union out-of-work-list registrants may use the Workforce Development Center(s) as a facility from which they may be referred for Covered Project(s). Further, the Parties agree, that a Contractor may use the Workforce Development Center(s) as a resource for identifying LIA/LBA Union out-of-work-list registrants who could be made subject to applicable name call for the purpose of meeting the LIA/LBA hiring goals. A Contractor will contact the applicable Union dispatcher to request a name-call worker, and the Union will dispatch such a worker from the Union hall. The Workforce Development Center(s) will provide the necessary confirmation to the Union dispatcher that the worker has received and accepted the dispatch and will also provide confirmation to the Contractor. Contractors shall also use the Workforce Development Centers for the purpose of sponsoring New Hire Apprentices, when applicable.
- 8.20 On a quarterly basis, the appropriate Joint Apprenticeship Coordinator(s) will be invited to the JASTC to discuss progress on the number and status of apprentices.
- 8.21 The Unions, Contractors, and the Port will cooperate with the City and other community-based organizations in the LIA in conducting outreach activities to recruit and refer local resident applicants to programs for which they are qualified or qualifiable. The Unions

will conduct outreach activities to recruit and refer qualified LIA resident applicants to apprenticeship programs.

#### Compliance and Enforcement

- 8.22 In cases where the MAPLA Administrator identifies potential noncompliance with this Article, the SJC shall, by majority vote, make recommendations for resolution to the JASTC. The JASTC may impose sanctions for failure to meet the goals or demonstrate “good faith” effort to do so.
- 8.23 The MAPLA Administrator will track all Contractor requests for LIA New Hire Apprentices, including use of Disadvantaged Workers, and the Union responses to such requests. The Union’s failure to dispatch/refer such LIA New Hire Apprentices will be reported to the SJC on a monthly basis. Copies of the written requests shall be provided to the MAPLA Administrator within ten (10) days of request by the MAPLA Administrator.
- 8.24 In cases of alleged noncompliance with the goals of this Article, the issue may be referred to the SJC. The issue may then be referred by the SJC to the grievance procedure in Article 13 (Grievances). For purposes of resolution of any dispute arising under this Section, the Port, the Council, and the MAPLA Administrator shall be considered parties-in-interest with full right of participation in the grievance procedure.

#### Special Provisions

- 8.25 It is recognized that special procedures may be established by joint agreement of the Port and the Council for the purpose of implementing the requirements under this Article.
- 8.26 The Parties also agree that they will make good faith efforts to assist in the proper implementation of any related and applicable Executive Orders, regulations, or laws for the general benefit of LIA residents.

### **ARTICLE 9 MAPLA SMALL BUSINESS ENTERPRISE PROGRAM**

- 9.1 The Parties recognize the Port’s MAPLA Small Business Enterprise Program (the “Program”) under which MAPLA Small Business Enterprises (“MSBEs”) may be certified and be subject to the terms of this Article.
- 9.2 A MSBE is any economically independent and continuing business enterprise certified by the Port that:
- (A) Is located within Alameda County or Contra Costa County; and
  - (B) Is eligible for certification as a “small business” under the regulations of the State of California’s Department of General Services, Office of Small Business

Procurement and Contracts (described in California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 8), as amended.

- 9.3 Program Cap. The aggregate value of all bid packages (or portions thereof) chosen prior to advertisement by the Owner for exclusion from coverage of this Agreement under the Program will not exceed ten million dollars (\$10,000,000) over the duration of this Agreement. The Port has the discretion to exclude all or any portion of a bid package in compliance with this Article.
- 9.4 Program Cap Increase Option. If the JASTC determines, in its sole judgment, that the objectives of this Program will be furthered by the addition of up to five million dollars (\$5,000,000) to the Program's \$10,000,000 limit, it shall make such a decision, by majority vote. The MAPLA Administrator shall give notice to all JASTC members when it determines that the \$10,000,000 Program limit is being neared, and schedule the matter for inclusion on the JASTC's agenda.
- 9.5 Trade Cap. The Program may not exempt more than 20% of the total work performed by any particular craft over 5 calendar years from the effective date of this Agreement, unless mutually agreed upon by the Port and the Council. There is no annual limitation so long as exemptions do not exceed the overall 5-year trade cap.
- 9.6 MSBE Graduation. Any MSBE certified under the Program that has been awarded more than one million dollars (\$1,000,000) in work exempted from the Agreement under the Program shall be deemed "graduated" from the Program and may no longer qualify for an exemption. Such graduated MSBEs will thereafter be required to comply with the Agreement for all future contract awards within the Scope of this Agreement. If a subcontractor receives work under a contract subject to this Program, and if said subcontractor would exceed the aggregation limit, it must sign the Letter of Assent to the MAPLA, and the Contractor issuing the subcontract must so notify the subcontractor.
- 9.7 Annual Review. The Port and the Council shall annually review usage of the Program, including the levels of the Program Cap and the Trade Cap described in this Article, and may revise Program requirements upon mutual agreement.
- 9.8 This Article applies to subcontractors of any tier, as well as to the prime Contractor. This Article in no way limits the eligibility of any Contractor to bid for and receive work that is covered by MAPLA. This Agreement in no way limits the rights of signatory Unions to seek to organize and utilize legal and administrative remedies not precluded by this Agreement, according to applicable federal and state law, and to secure adherence to any such successful effort.

## ARTICLE 10 UNION SECURITY

- 10.1 The Contractor(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

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- 10.2 All construction persons who are employed by the Contractors shall, as a condition of employment, on or before the eighth (8<sup>th</sup>) day of consecutive or cumulative employment on Covered Project(s) be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for Union membership in the applicable Union signatory to this Agreement and shall stay current with such working dues and fees for the duration of Covered Project(s).
- 10.3 Authorized representatives of the Union shall have access to sites on which Covered Project(s) is/are performed, provided that such representatives fully comply with posted visitor, security, and safety rules, and the environmental compliance requirements of the Covered Project(s). It is understood that because of the geographical scope of the Covered Project(s) and the type of work being undertaken on the site(s) of the Covered Project(s), visitors may be limited to certain times, or areas, or to being accompanied at all times while on the site(s) of the Covered Project(s); with this in mind, however, the Contractor recognizes the right of access set forth in this Section and such access will not be unreasonably withheld from an authorized representative of the Union.
- 10.4 Union Stewards.
- 10.4.1 Each signatory Union shall have the right to designate a working journey person as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.
- 10.4.2 In addition to his/her work as an employee, the steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward shall be concerned with the employees of the steward's Contractor and if applicable, subcontractors, and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his/her Union duties.
- 10.4.3 When a Contractor has multiple, non-contiguous work locations on the site, the Contractor may request, and the Union shall appoint, additional working stewards to provide independent coverage of one or more such locations. In such cases a steward may not service more than one work location without the approval of the Contractor and the Union.
- 10.4.4 The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.
- 10.5 The Contractor agrees to notify the appropriate Union forty-eight (48) hours prior to the layoff of a steward, except in the case of disciplinary discharge for just cause. If a

steward is protected against such layoff by the provisions of any MLA, such provisions shall apply to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the appropriate Union shall be notified immediately prior to dismissal or discipline by the Contractor.

- 10.6 On work where the personnel of the Port may be working in close proximity to the construction activities, the Union agrees that the Union representatives, stewards and individual workers will not interfere with the Port personnel.

## **ARTICLE 11 MANAGEMENT'S RIGHTS**

- 11.1 The Contractor retains the full and exclusive authority for the management of its operations. Except as expressly limited by other provisions of this Agreement, the Contractor retains the right to direct the workforce, including the hiring, promotion, transfer, layoff, discipline or discharge for just cause of employees; the selection of foremen; the assignment and schedule of work; the promulgation of reasonable work rules; and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices that limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction.
- 11.2 There shall be no limitation or restriction by a signatory Union upon a Contractor's choice of materials, design or manufacture, nor, upon the full use and utilization of equipment, machinery, tools, or other labor saving devices. The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the Owner shall be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role. In limited circumstances requiring special knowledge of the particular item(s), when the Contractor, contracting with the vendor, demonstrates as specified in Section 4.2(e) of Article 4 (Pre-Job Conferences) that the work cannot be done by the craft workers, the work may be performed by employees of the vendor or manufacturer where necessary to protect a manufacturer's warranty. On-site repair done pursuant to a manufacturer's warranty may be performed by employees of the vendor or manufacturer.
- 11.3 The use of new technology, equipment, machinery, tools and/or labor-saving devices and methods of performing work may be initiated by the Contractor from time-to-time. Consistent with law and safe practices, the Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 13 (Grievances).

**ARTICLE 12**  
**WORK STOPPAGES AND LOCKOUTS**

- 12.1 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason (including disputes relating to the negotiation or renegotiation of the MLAs and disputes directed at non-construction services companies at the site(s) of the Covered Project(s)) by the Union(s) or employees at the site(s) of, affecting the site(s) of, or because of, a dispute concerning Covered Project(s) against any Contractor covered under this Agreement and there shall be no lockout by the Contractor for any reason. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to the Agreement, or by any other organization or individual at the site(s) of the Covered Project(s) is a violation of this Article. With respect to any dispute, complaint, or grievance that is subject to the grievance and resolution procedures under this Agreement, the Contractor agrees that it will not authorize any lockout, slowdown, or stoppage of work and the Unions will not authorize any strike, slowdown, or stoppage of work.
- 12.2 If an MLA expires before the Contractor completes the performance of the Construction Contract and the Union or Contractor gives notice of demands for a new or modified MLA, the Union agrees that it will not strike on work covered under this Agreement and the Union and the Contractor agree that the expired MLA shall continue in full force and effect for work covered under this Agreement until a new or modified MLA is reached. If the new or modified MLA provides that any wages and benefits of the MLA that accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified MLA that are applicable to employees who were employed on the projects during the interim, with retroactive payment due within seven (7) days of the effective date of the modified MLA.
- 12.3 The Contractor may discharge any employee violating Section 12.1 of this Article and any such employee will not be eligible for rehire under this Agreement for a period of up to 120 days. The Union shall take all steps necessary to obtain immediate compliance with this Article but shall not be held liable for conduct for which it is not responsible.
- 12.4 Notice to Alleged Violator.
- 12.4.1 If the Contractor contends that any Union has violated this Article or Section 14.4 of Article 14 (Jurisdictional Disputes) or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), it will notify in writing the Senior Executive of the Union(s) involved, setting forth the facts that the Contractor contends violate the Agreement at least twenty-four (24) hours prior to invoking the procedures of Section 12.5 (Expedited Arbitration), with copies of such notice to the Council and to the MAPLA Administrator. The Senior Executive will immediately instruct, order and use the best efforts of his/her office to cause the cessation of any violation of

the referenced Article. A Union complying with this obligation shall not be liable for unauthorized acts of its members.

12.4.2 If the Union contends that any Contractor has violated this Article or Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), it will notify the Contractor and the MAPLA Administrator in writing setting forth the facts that the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 12.5 (Expedited Arbitration). It is agreed by the Parties that the term "lockout" for purposes of this Agreement does not include discharge, termination, or layoff of employees by the Contractor, nor does it include the Contractor's decision to terminate or suspend Covered Project(s) or any portion thereof for any reason, provided the Union is given thirty (30) days' notice. This provision will not affect the Contractor's right to suspend or terminate work on any portion of Covered Project(s) for operational or special circumstances.

12.5 Expedited Arbitration. Any party, including the Owner, whom the Parties agree is a party in interest for purposes of this Article, or the MAPLA Administrator, shall institute the following procedure, in lieu of or prior to any other contractual procedure or any action at law or equity, when a breach of Section 12.1 of this Article, Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances) is alleged:

12.5.1 A party shall notify the MAPLA Administrator of its intent to invoke this procedure. Upon receipt of such notification, the MAPLA Administrator shall immediately contact Barry Winograd, the permanent arbitrator under this procedure, to ascertain his availability to hear this matter on an expedited basis. In the event of his unavailability, the MAPLA Administrator shall contact Robert Hirsch, the alternate arbitrator, to ascertain his availability. If neither arbitrator is available, then a selection shall be made from the list of arbitrators and pursuant to the process set forth in Article 13.2, Step 4. Notice to the arbitrator shall be by the most expeditious means available, with notices by facsimile, email, or telephone to the Port, the Council, and the party alleged to be in violation, and to the involved Union if a Union is alleged to be in violation.

12.5.2 Upon receipt of said notice, the arbitrator shall convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

12.5.3 The MAPLA Administrator shall select the place and time of the hearing and so notify the parties. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties to the hearing. A failure of any party or parties to attend said hearings shall

not delay the hearing of evidence or the issuance of any award by the arbitrator.

- 12.5.4 The sole issue at the hearing shall be whether or not a violation of Section 12.1 of this Article, Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues under Section 13.1.1 of Article 13 (Grievances), as applicable, has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or, except as expressly provided by Section 12.5.8 of this Article, to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such Award shall be served on all parties by hand or registered mail upon issuance.
- 12.5.5 Such award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 12.5.4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.
- 12.5.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.
- 12.5.7 The fees and expenses of the arbitrator shall be borne and shared equally by the involved parties.
- 12.5.8 Liquidated Damages. If the Arbitrator determines that a violation of Section 12.1 of this Article or Section 14.4 of Article 14 (Jurisdictional Disputes), has occurred in accordance with Section 12.5.4, the Union(s) shall, within eight (8) hours of receipt of the Award, direct all of the employees they represent to immediately return to work. If the trade involved does not return to work by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's Award, and the Union(s) has not complied with Section 12.3 of this Article, then the Union(s) shall be required to pay liquidated damages to the Owner in an

amount not less than \$10,000, or more than \$15,000, at the discretion of the arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$15,000, at the discretion of the arbitrator, for each subsequent shift thereafter on which the trade has not returned to work. If the Arbitrator determines that a lockout has occurred in violation of Section 12.1, and the Contractor does not return the locked-out employees to work within eight (8) hours of the Contractor's receipt of the Award, then the Contractor shall be required to pay liquidated damages to the Owner in an amount not less than \$10,000, or more than \$15,000, at the discretion of the Arbitrator, and will be assessed an additional amount of not less than \$10,000 and up to \$15,000, at the discretion of the Arbitrator, for each subsequent shift thereafter on which the employees have not been returned to work. The Arbitrator is empowered to award back pay to the employees who were locked out. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Section 12.3 of this Article.

- 12.6 Procedures contained in Article 13 (Grievances) shall not be applicable to any alleged violation of this Article, with the single exception that any employee discharged for violation of Section 12.1, above, may resort to the procedures of Article 13 (Grievances) to determine whether or not he or she was engaged in that violation and what remedy should be assessed.
- 12.7 Nonpayment of Wages or Trust Fund Contributions. In the case of nonpayment of trust fund contributions or wages on Covered Project(s), the Union shall give the Port and the Contractor(s) three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when non-payment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paychecks as a result of insufficient funds, of the intent to withhold labor from the Contractor's or their subcontractor's workforce, during which time the Contractor(s) shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from Contractor(s) who has/have failed to pay fringe benefits or to meet its/their weekly payroll shall not be considered a violation of this Article. The Port or the Contractor(s) may elect to issue joint checks for the disputed delinquencies. Upon written notification to the Union(s) of this election by the Port or Contractor, the Union(s) shall promptly order all employees to return to work, or if within the one (1) business day's or three (3) business days' notice period as applicable, shall not withhold labor from Contractor(s) with which the Union has a dispute over, respectively, payroll or trust fund contributions. In the event the Union or any of its members withhold their services from such Contractor(s) or subcontractor(s), the Port or the General Contractor(s) shall have the right to replace such Contractor(s) or subcontractor(s) with any other Contractor(s) or subcontractor(s) who execute(s) the Letter of Assent. The Union and the Contractor(s) agree to use their best efforts to resolve any disputes over payroll or trust fund contributions in a prompt and expeditious manner in order to minimize any disruption of Covered Project(s).

- 12.8 The Port is a party in interest in all proceedings arising under this Article, Article 13 (Grievances), and Article 14 (Jurisdictional Disputes), and shall be sent contemporaneous copies of all notifications required under these Articles, and, at its option, may initiate or participate as a full party in any proceeding initiated under these Articles.

### **ARTICLE 13 GRIEVANCES**

13.1 General Provisions.

13.1.1 Any question arising out of and during the term of this Agreement involving its interpretation and application (other than trade jurisdictional disputes or alleged violations of Section 12.1 of Article 12 (Work Stoppages and Lockouts), Section 14.4 of Article 14 (Jurisdictional Disputes), or emergency safety issues, which shall be handled under the expedited arbitration procedures set forth in Article 12 (Work Stoppages and Lockouts)) shall be considered a grievance and subject to resolution under the procedures in this Article.

13.1.2 The MAPLA Administrator shall administer the processing of the grievance, including the scheduling and arrangement of facilities for meetings at Step 3 and above, facilitation of the selection of the arbitrator to hear the case, and any other administrative matters necessary to facilitate the timely disposition of the case.

13.1.3 A grievance shall be considered null and void if not brought to the attention of the party against whom the grievance is filed within fifteen (15) working days after the charging party knew or should have known of the event giving rise to the dispute. All timelines in this Article may be modified in writing upon mutual agreement of the involved parties.

- 13.2 Grievances between the Parties regarding provisions of this Agreement shall be settled or otherwise resolved according to the following Steps and provisions:

Step 1. (a) Employee Grievances. All disputes involving discipline and/or discharge of employees working on Covered Project(s) shall be resolved through the grievance and arbitration provision contained in the MLA for the craft of the affected employee. To the extent consistent with the relevant MLA, no employee working on Covered Project(s) shall be disciplined or dismissed without just cause.

(b) Grievances Between Parties. A representative of the grieving party and the party against whom the grievance is filed shall meet and attempt to resolve the grievance. In the event the matter remains unresolved within ten (10) working days of the initial notice to the other Party:

- (i) If the dispute is between the Unions and the Port, the grieving party shall refer the dispute to the JASTC for resolution. If the grievance is not resolved through the JASTC within ten (10) working days of referral, the grieving party shall reduce the grievance to writing and proceed to Step 2; or
- (ii) If the dispute is between any other Parties, the dispute shall be reduced to writing and proceed to Step 2.

Step 2. The Union representative, together with the International Union's representative (at the discretion of the International Union), the representative of the involved Contractor, and the Port representative shall meet within seven (7) working days of the referral of the dispute to Step 2 to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the grieving party shall refer the dispute to Step 3 within seven (7) working days after the Step 2 meeting.

Step 3. Within ten (10) working days of referral of the grievance to Step 3, the Grievance Subcommittee of the JASTC shall meet to confer in an attempt to resolve the grievance. The decision of the Grievance Subcommittee shall be final and binding upon all Parties. If the Grievance Subcommittee does not reach a majority decision within twenty (20) working days of referral, the grieving party may, within thirty (30) working days of referral, refer the dispute through the MAPLA Administrator for resolution at Step 4.

Step 4. At Step 4, the dispute shall be submitted to arbitration.

(a) The Parties agree that the Arbitrator who will hear the grievance shall be selected from the following arbitrators: Thomas Angelo, Robert Hirsch, Barbara Kong-Brown, William Riker, and Barry Winograd. The parties shall flip a coin to determine who shall strike the first name and shall then alternately strike names from the list and the last remaining name shall be the neutral third party Arbitrator who shall have the power to resolve the dispute in a final and binding manner. Should a party to the procedure fail or refuse to participate in the hearing, and if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award.

(b) The Arbitrator's award shall be final and binding on all parties to the arbitration. The costs of the arbitration, including the Arbitrator's fee and expenses, shall be borne equally by the parties to the arbitration. In the event that an arbitration is cancelled and such cancellation results in a cancellation fee from the arbitrator and/or court reporter, the party initiating the cancellation request or causing the cancellation shall bear the full costs of the cancellation fee, unless the parties agree otherwise.

(c) The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify amend, alter, add to, or subtract from, any provisions of this Agreement.

(d) The Port and/or the Council are parties in interest in all proceedings under this Article, and must be notified by the involved Contractor of all actions at Steps 2 and 3 and shall, upon its request, be permitted to participate fully in all proceedings at these steps. The Port and/or Council shall not be liable for any costs under Step 4 unless it had initiated the grievance.

(e) Grievances between a Union(s) and a Union(s)' signatory Contractor(s) involving interpretation or application of the MLA shall be governed by the grievance procedures contained in the MLA.

- 13.3 Should an arbitrator listed in Article 12 (Work Stoppages and Lockouts) or this Article no longer be working as a labor arbitrator, the Port and the Council shall mutually agree to a replacement arbitrator.

#### **ARTICLE 14 JURISDICTIONAL DISPUTES**

- 14.1 The assignment of Covered Project(s) will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (as used in this Article, the "Plan") or any successor Plan.
- 14.2 All jurisdictional disputes on Covered Project(s) between or among the Building and Construction Trades Unions and Contractors parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.
- 14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article 5, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.
- 14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, sympathy strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individual employees violating this Section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference prior to commencing Covered Project(s). The Port and the

MAPLA Administrator will be advised in advance of all such conferences. The Prime Contractor shall attend all such meetings and the Owner may participate if it wishes. Pre-job conferences for different Contractors may be held together.

**ARTICLE 15**  
**WAGES, BENEFITS, AND WORKING CONDITIONS**

- 15.1 General Provisions. The Unions and Council shall help monitor compliance with wages, hours, and working conditions. This Article shall apply consistent with all applicable laws, with the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision), and with the working conditions set forth in the February 2015 Port of Oakland Standard Contract Provisions for Public Works Projects. The wages, hours, and other terms and conditions of employment on the Covered Project(s) shall be governed by the MLA of the respective crafts to the extent such MLA is not inconsistent with this Agreement.
- 15.2 Wages. All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rate determination. If a wage increase negotiated in a local agreement becomes the prevailing wage under state law, the Contractor will pay that rate retroactive to the effective date of the locally negotiated wage increase. If the prevailing wage laws are repealed during the term of this Agreement, the Contractor shall pay the wage rates established under the MLAs, except as otherwise provided in this Agreement.
- 15.3 Wage Payments. All employees covered by this Agreement shall be paid by check or, at the employee's option, by direct deposit and shall be paid no later than the end of the work shift on Friday. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff. Notification of layoff shall be at the Contractor's discretion but shall not be given later than the end of the work shift on the date that the layoff is to be effective. Such notification may be verbal.
- 15.4 Benefit Funds.
- 15.4.1 The Contractor will pay contributions to the established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions and will make all employee-authorized deductions in the amounts designated; provided, however, that the Contractor and the Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be included in this requirement and be paid by the Contractor for Covered Project(s). With respect to other Fund contributions, such as, but not limited to, contract administration funds, Contractors who are signatory to MLAs are not excused from making such contributions by virtue of this Agreement. The Contractor shall make contributions only to those Funds that have submitted a written letter of commitment to contribute financial

support to the Social Justice Program of this Agreement to help defray the costs of the Program, in an account of the SJC's designation, an account that will be established with the concurrence of the JASTC. Such level of commitment must be acceptable to the Port. The Parties agree to use their best effort to secure such commitments of the Funds. Contractors who are not signatory to MLAs may voluntarily make payments to such Funds or, in lieu thereof, shall pay an equivalent amount monthly to the account established by the SJC. Bona fide jointly-trusted benefit plans or authorized employee deduction programs established or negotiated under the applicable MLA or by the Parties during the life of this Agreement may be added, subject to the limitations upon such negotiated changes contained in Section 20.3 (Changes to MLAs). Such contributions shall be made in compliance with the applicable prevailing wage determination and shall be due and payable on the due date contained in the applicable MLA.

15.4.2 The Contractor adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractor authorizes the parties to such Trust Funds to appoint Trustees and successor Trustees to administer the Trust Funds and hereby ratifies and accepts the Trustees so appointed as if made by the Contractor.

15.4.3 Contractors of whatever tier shall make regular and timely contributions required by this Section in amounts required by this Agreement and on the time schedule set forth in the appropriate MLA.

15.5 As some of the MLAs and applicable multiemployer plan documents provide for payment of contributions to such benefit plans for plan participants even when they are working as superintendents for the employer and thus excluded from the scope of MAPLA, the exclusion does not preclude or supersede the provision of any current MLA allowing for such contributions, to the extent they are permitted under such benefit plans. The payment of such contributions will not affect the exclusion of superintendents from MAPLA coverage nor will it require contributions on behalf of any superintendents who are not, at the time of their work on Covered Project(s), current participants in the relevant plans.

15.6 Work Day and Work Week. Eight (8) hours per day between the hours of 6:00 a.m. and 5:30 p.m., plus one-half (1/2) hour unpaid for lunch, approximately mid-way through the shift, shall constitute the standard workday. Forty (40) hours per week shall constitute a regular week's work. The workweek will start on Monday and conclude on Friday. A uniform starting time will be established for all crafts on each project or segment of Covered Project(s). Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week. The Union(s) shall be informed of the work starting time set by the Contractor at the pre-job conference, which may be changed thereafter upon three (3) working days' notice to the Union(s) and the workers and the MAPLA Administrator.

15.7 Overtime. Overtime will be paid in accordance with the requirements of the applicable General Prevailing Wage Determination. There will be no restriction on the Contractor's scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime. Steward overtime shall be as provided in the applicable MLA, provided the steward is qualified to perform the work available. There shall be no pyramiding of overtime pay under any circumstances.

15.8 Schedules.

15.8.1 Shift work may be performed at the option of the Contractor(s) upon three (3) days' prior notice to the Union, unless a shorter notice period is provided in the applicable MLA, and shall continue for a period of not less than five (5) working days. Saturdays and Sundays, if worked, may be used for establishing the five (5) day minimum work shift. If two shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the second shift shall consist of seven and one-half (7-1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period. Any third shift shall consist of seven (7) hours of continuous work exclusive of one-half (1/2) hour non-paid lunch period. All shifts shall be paid eight (8) hours straight time pay with any premium or differential paid at the applicable MLA rate of pay. Multiple shifts, if worked, will not be required on Covered Project(s). When multiple shifts are worked, the number of employees on each shift of the operation may vary according to the conditions applicable to each shift and nothing will require that there be a "person-for-person" relief in successive shifts.

15.8.2 The last shift starting on or before 6:00 p.m. Friday shall be considered Friday work time; while the first shift ending at or after 6:00 a.m. on Monday shall be considered Sunday work time. The shift starting at or after 6:00 a.m. is designated as the first shift, with the second shift following. Pay for the second shift shall be at the employee's base wage rate for first shift, plus the second shift differential, if any, established in the applicable MLA.

15.8.3 Special Shifts. The hours of work per work week day, including start times and end times, shall not apply with respect to work for which special hours of work have been established in contract specifications by the Owner where (1) necessary to accommodate Maritime or Airport operating requirements; (2) special construction requirements necessary to comply with regulations of state agencies having regulatory jurisdiction or permit authority over the work, or (3) mitigation measures specified in the final environmental impact report for the work. Any Contractor that performs work covered by an MLA that provides for a work week of less than forty (40) hours shall follow the provisions of that MLA regarding the work week and may stagger the crews so that it has a sufficient number of workers at the site for

forty (40) hours per week, provided that the use of such work schedule may not interfere with the scheduling of other Contractors or the full use of any other craft or crew.

- 15.8.4 Tide Work. All work requiring a Contractor to establish a starting time or other special conditions which will vary from the regularly scheduled starting time set forth in this Agreement and which is established due to the tide schedule shall perform such work under the applicable MLA "Tide Work" provisions of the Craft performing the work.
- 15.8.5 Alternate Work Week. To the extent permitted by law, the Contractor may, upon five (5) days' notice to the appropriate Union(s), establish a work week of four (4) consecutive ten (10) hour work days (exclusive of one-half hour unpaid lunch, approximately midway through the shift). Such work week shall consist of the same four days each week, with a fifth day available as a make-up day if needed and if permitted by the applicable MLA. Compensation for such shifts will be at the straight-time rate of pay for the first ten (10) hours of work with the addition of shift premium, and overtime levels, if any required by the applicable prevailing wage determination.
- 15.8.6 Uninterrupted Work. The Parties acknowledge that certain construction activities may pose unique work scheduling issues, including a requirement for continuous work 24 hours per day, seven days a week, particularly during the placement of concrete. The Parties agree to establish, in good faith, hours of work provisions to assure uninterrupted work on concrete placement in accordance with contract specifications for Covered Project(s).
- 15.9 Holidays. Recognized holidays shall be New Year's Day, Martin Luther King's Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day. Holidays that fall on a Saturday shall be observed on the preceding Friday and holidays that fall on a Sunday shall be observed on the following Monday.
- 15.10 Pay.
- 15.10.1 Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification pursuant to an applicable MLA not to report to work, will receive two (2) hours pay at the regular straight time hourly rate. Employees who work beyond two (2) hours but not more than four (4) hours will receive four (4) hours pay. Employees who work more than four hours but not more than eight hours will receive eight (8) hours pay. Employees who work beyond eight hours will be paid for actual hours worked. Whenever reporting pay is provided for employees, they will be required to remain at the site(s) where Covered Project(s) is/are performed, available for work for such time as they receive pay, unless released earlier

by the principal supervisor of the Contractor(s) or their designated representative. Each employee shall furnish his Contractor with his current address and telephone number, and shall promptly report any changes in each to the Contractor.

- 15.10.2 One-Day Reporting Pay. When an employee is sent to the job site from the Union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for the shift, or when called out on the same day for one (1) day's work and appears within a reasonable time from the time of dispatch from the Union referral facility, the employee will be paid eight (8) hours.
- 15.10.3 Call Out Pay. Any employee called out to work outside of his shift shall receive a minimum of four hours pay at the appropriate rate, including any applicable premium. This does not apply to time worked as an extension (before or after) of the employee's normal shift.
- 15.10.4 Pay Under Discharge or Voluntary Departure from Job Site. When an employee leaves the job or work location of his own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 17.3 (Suspension of Work for Safety), the employee shall be paid only for the actual time worked.
- 15.10.5 Premium Rate Calculated. In all cases, if the employee is reporting on a day on which a premium rate is paid, reporting pay shall be calculated at that rate.
- 15.11 Time Keeping. The Contractor may utilize brassing systems to check employees in and out. Each employee must check himself in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.
- 15.12 Meal Period. The Contractor will schedule a meal period not more than one-half (1/2) hour duration at the work location at approximately the mid-point of the scheduled work shift (five hours), consistent with Section 15.6 (Work Day and Work Week); provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through his meal period, he shall be compensated in a manner established in the applicable MLA.
- 15.13 Travel and Subsistence.
- 15.13.1 Travel expenses, travel time, subsistence allowance and/or zone rates and parking reimbursements will be provided to the extent provided for in any applicable prevailing wage determination.

15.13.2 The Contractor shall provide workers with safe and secure parking at the site(s) of Covered Project(s). If such parking is not reasonably available, the Contractor shall provide a safe and secure remote parking site and transportation for workers between those remote parking area(s) and the employee's point of entry to the site(s) of Covered Project(s). Transportation for workers between such remote parking area(s) and the employee's point of entry shall be provided. Where employees are required to be transported to the site(s) of Covered Project(s), time shall begin and end at the remote parking area. Compensated time between the site(s) of Covered Project(s) and the parking area will be paid at the rate of pay (i.e., straight-time or overtime) at which the employee was working when the employee left the work site. Where an employee boards the last-scheduled vehicle for Contractor-provided transportation from the remote parking area before the scheduled starting time, the employee will be compensated from the starting time notwithstanding any unforeseen delay in arrival by the transport at the site.

15.14 Working Conditions.

15.14.1 There will be no organized breaks or other non-working time established during working hours unless provided for in a prevailing wage determination and/or Industrial Wage Order issued by the State of California. Individual nonalcoholic beverage containers will be permitted at the employee's work location.

15.14.2 The Owner and/or the MAPLA Administrator shall establish such reasonable rules as the Owner or the MAPLA Administrator deems appropriate and not inconsistent with this Agreement. These rules will be explained at the pre-job conference and posted at the site(s) where Covered Project(s) is/are performed by the Contractor and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge. In any dispute over the application of a rule, the grieving party may contest the reasonableness of the rule, the fact of the alleged violation, and the appropriateness of any discipline imposed.

15.14.3 There shall be no restrictions on the emergency use of any tools by any qualified employee; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

15.14.4 Recognizing the nature of the work being conducted on the site, employee access by a private automobile may be limited to certain roads and/or parking areas.

**ARTICLE 16**  
**HELMETS TO HARDHATS**

- 16.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment ("Center", as used in this Article) and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.
- 16.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans interested in working on Covered Project(s) and of apprenticeship and employment opportunities for Covered Project(s). To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

**ARTICLE 17**  
**SAFETY**

- 17.1 Safety. The Construction Safety Standards Manual (Document 00831) of the February 2015 Port of Oakland Standard Contract Provisions for Public Works Projects shall apply to all Covered Project(s).
- 17.1.1 Safe Working Conditions. It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Owner, the MAPLA Administrator or the Contractor. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Owner.
- 17.1.2 Rules. Employees shall be bound by the safety, security and visitor rules and environmental compliance requirements established by the Contractor, the MAPLA Administrator, or the Owner. These rules will be published and posted in conspicuous places throughout the work site. An Employee's failure to satisfy his obligations under this Article may subject him/her to discipline, including discharge.
- 17.1.3 Prohibited Items. The use, sale, transfer, purchase, and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited. Accordingly, the Parties agree to adopt appropriate procedures and safeguards for the testing of employees for prohibited or controlled substances. It is agreed, with respect to such testing procedures, that:

- (i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program;
- (ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time the person reported for the test(s);
- (iii) where a Contractor requests a person to report for purposes of a pre-hire substance abuse test, and does not intend to place the person in an active work position on that day, the person shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative; and
- (iv) once mutually agreed to by the Port and the Council, a uniform substance abuse prevention policy will become an Appendix to this Agreement. Until such a policy is mutually agreed to, the substance abuse policy attached as **Appendix E** will remain in effect.

17.1.4 Smoking. The Parties acknowledge that the environmental and safety restrictions governing conduct at the site(s) where Covered Project(s) is/are performed may prohibit smoking at any time in any location or facility. Violation of this restriction by any person may constitute grounds for removal from the site and may result in discipline, up to and including termination.

17.1.5 Security. The Parties acknowledge that some work within the scope of this Agreement will occur in restricted security areas of an operating airport and that employees who will be required to work in such areas will, as a condition of employment, be subjected to a personal background check and security clearance pursuant to Federal Aviation Authority regulations governing the Oakland International Airport. The Unions acknowledge that Union representatives will undergo the same clearance procedures as a condition to their access to these areas and therefore agree that such conditions will be imposed. Application and enforcement of such requirements may be grounds to terminate or deny an employee work on Covered Project(s) or to deny access of their representatives to areas necessary to the performance of Covered Project(s).

17.2 Inspections. The inspection of incoming shipments of equipment, machinery and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice. All employees shall comply with the security procedures established by the Owner, the MAPLA Administrator and/or the Contractor.

17.3 Suspension of Work for Safety. A Contractor may suspend all or a portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the Contractor requests

employees to remain at the site and be available for work, the employees will be compensated for the standby time at their basic hourly rate of pay.

- 17.4 Water and Sanitary Facilities. The Contractor is responsible to provide adequate supplies of drinking water and sanitary facilities for all employees. Proper notification of this requirement shall be provided to the Contractor at the pre-bid and pre-job conference mark-up to insure compliance with this Section.
- 17.5 Owner Controlled Insurance Program. All employees working under this Agreement shall be required to comply with the Owner Controlled Insurance Program whenever the Owner, in its sole discretion, requires it.

#### **ARTICLE 18 NON-DISCRIMINATION**

- 18.1 The Parties agree to comply with all non-discrimination requirements of federal, state, and local law for the purpose of protecting employees and applicants for employment for Covered Project(s).

#### **ARTICLE 19 SAVINGS AND INTERPRETATION**

- 19.1 Savings. If a court of competent jurisdiction determines that any article, provision, clause, sentence, or word of the Agreement is illegal, void, or in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect.
- 19.2 Partial Invalidation. If a court of competent jurisdiction invalidates, temporarily enjoins, or permanently enjoins the use of a portion of the Agreement in the bidding, awarding, or performance of Covered Project(s), the Parties agree negotiate as soon as possible in an effort to conform the Agreement to the terms of the court order and otherwise to keep the rest of the Agreement in full force and effect for Covered Project(s) to the maximum extent legally possible.
- 19.3 Total Invalidation. If a court of competent jurisdiction invalidates or enjoins the use of the entire Agreement, the Parties agree to negotiate as soon as possible in an effort to conform the Agreement to the terms of the court order and otherwise to keep the Agreement in full force and effect for Covered Project(s) to the maximum extent legally possible. For at least thirty (30) days following the court order (or a longer period mutually agreed to by the Parties), the Unions shall continue to fully comply with the provisions of Article 12 (Work Stoppages and Lockouts) and work without interruption, and the Port shall not solicit or advertise bids or proposals for work not covered by this Agreement if such work would have otherwise been Covered Project(s) had the Agreement not been invalidated or enjoined.
- 19.4 No Presumption Against Drafter. All Parties have participated equally in the negotiation and preparation of this Agreement, and therefore, the normal rule of construction that any

ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

- 19.5 Counterparts. This Agreement may be executed in counterparts (including copies by email or facsimile), each of which shall be deemed an original and all of which, together, shall constitute one agreement.

## **ARTICLE 20 DURATION**

- 20.1 Subject to Section 20.1.1 below, this Agreement shall become effective on the date approved by the Board of Port Commissioners and executed by the Council (the "Effective Date") and shall continue in full force and effect for a period of five (5) years. At the expiration of the 5-year period, the Agreement shall roll over for an additional five (5) years, subject to approval by the Board. Prior to Board approval, the JASTC shall meet to consider the potential extension of this Agreement and make a recommendation to the Board. In no event shall Board approval be contingent upon meeting of the JASTC. This Agreement shall continue to apply through the Completion of any Covered Project(s) for Construction Contracts that have already been awarded and Tenant contracts for which the Port issued a building permit prior to expiration of the MAPLA. This Agreement shall also continue to apply where the Contractor is directed by the Owner to engage in start-up, repairs (including warranty work by the Contractor but excluding any warranty work as set forth in Article 11 (Management's Rights)), or punch list modifications to work by the Contractor. The MAPLA Administrator or Owner shall give notice to the Unions of Completion of each Construction Contract for any Covered Project(s).

20.1.1 The following Articles or Sections shall apply only to Construction Contracts awarded, and Tenant contracts for which the Port issued a building permit, on or after August 1, 2016: Section 2.2.4 (Construction Trucking); Sections 8.5 through 8.15 (regarding apprentices); and Article 9 (MAPLA Small Business Enterprise Program).

20.2 Termination of Application to Any Covered Project(s).

20.2.1 All obligations under this Agreement applying to any Covered Project(s) shall terminate with respect to that Covered Project(s) upon the receipt by the Union of a notice of completion from the MAPLA Administrator or the Owner, except as explicitly set forth herein.

20.2.2 Any claim for non-payment of wages or fringe benefits shall be governed by the applicable statutes of limitation (including but not limited to the California Labor Code, ERISA, or MLA) and shall not be affected by the provisions of this Section.

20.3 Changes to MLAs.

- 20.3.1 Incorporation. MLAs incorporated as part of this Agreement shall continue in full force and effect until the successor MLA becomes effective. The Union shall provide a copy of the successor MLA or the updated provisions to the MAPLA Administrator.
- 20.3.2 Limits to Incorporation. The Parties agree to recognize and implement such changes on their effective dates, provided, however, that any provisions negotiated in said MLAs will not apply to work covered by this Agreement if such provisions are less favorable to the Contractor for work covered by this Agreement than those uniformly required of contractors for construction work normally covered by those Agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement.
- 20.3.3 Retroactivity. As part of this understanding, the Contractor agrees and consents to pay the increased contributions to the relevant jointly administered trust funds pursuant to the provisions of any MLAs negotiated by the Unions during the performance of Covered Project(s) retroactively to the expiration date of the applicable MLA, provided, however, if the provisions of any such new MLA provide that said increases shall not become effective until a later date after the date following the expiration date, then that later date shall prevail, and provided, further, that such increased contribution does not exceed the corresponding fringe benefit component of the applicable prevailing wage rate then existing or as thereafter amended. In the event that the increased contribution exceeds the then-current prevailing wage fringe benefit component and the prevailing wage is subsequently adjusted upward, the fringe benefit contribution shall also be adjusted upward by an equal level to the applicable level of the MLA or the maximum prevailing wage determination level, whichever is less, and shall be paid retroactive to the effective date of the locally negotiated increase. This Section shall be interpreted consistent with the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision).

**ARTICLE 21**  
**FINAL AND ENTIRE AGREEMENT**

- 21.1 This Agreement, all appendices hereto (which are incorporated into this Agreement), and the referenced MLAs shall constitute the final and entire agreement between the Parties and shall supersede all previous Maritime and Aviation Project Labor Agreements, letters of understanding, side letters, stipulations, judgments, or other agreements between the Parties regarding any subject covered or addressed in this Agreement, except that the May 19, 2014 arbitration decision issued by Barbara Kong-Brown (commonly referred to as the "Royal Electric" decision) will apply. Each Party acknowledges that by entering

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into this Agreement it does not rely on, and shall have no remedies with respect to, any representation or warranty (whether made innocently or negligently) that is not set forth in this Agreement.

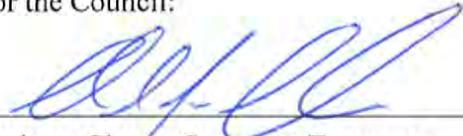
- 21.2 Notwithstanding the preceding Section, the Parties agree that past practice and past interpretations may be relevant in interpreting this Agreement.

In witness whereof, the Parties have caused this Agreement to be executed and effective as of the day and year first above written:

For the Port:

  
\_\_\_\_\_  
J. Christopher Lytle, Executive Director  
Port of Oakland

For the Council:

  
\_\_\_\_\_  
Andreas Cluyer, Secretary-Treasurer  
Building and Construction Trades Council  
of Alameda County

**THIS AGREEMENT SHALL NOT  
BE VALID OR EFFECTIVE FOR  
ANY PURPOSE UNLESS AND  
UNTIL IT IS SIGNED BY THE  
PORT ATTORNEY.**

Approved as to form and  
legality this 1st day  
of February, 2016

  
\_\_\_\_\_  
Port Attorney

Port Reso. No. 16-05

P.A.# 2016-15

**Signatory Local Unions:**

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 16

By: \_\_\_\_\_

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 549

By: \_\_\_\_\_

International Union of Bricklayers and Allied Craftworkers, Local No. 3, Northern California

By: \_\_\_\_\_

Northern California Carpenters' Regional Council (on behalf of Carpenters Local 713, Carpenters Local 2236, Lathers Local 68L, Millwrights Local 102, and Pile Drivers Local 34)

By: \_\_\_\_\_

Plasterers' and Shophands' Local Union No. 66

By: \_\_\_\_\_

Plasterers' and Cement Masons' Local Union No. 300

By: \_\_\_\_\_

International Brotherhood of Electrical Workers, Local No. 595

By: \_\_\_\_\_

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local No. 378

By: \_\_\_\_\_

Construction and General Laborers' Union Local No. 304

By: \_\_\_\_\_

Laborers' International Union of North America Local Union No. 67

By: \_\_\_\_\_

Hod Carriers Local Union No. 166

By: \_\_\_\_\_

International Union of Operating Engineers, Local Union No. 3

By: \_\_\_\_\_

District Council No. 16, International Union of Painters and Allied Trades (on behalf of Painters Local 3, Carpet & Linoleum Layers Local 12, Glass Workers Local 169, and Auto & Marine Painters, Local 1176)

By: \_\_\_\_\_

Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO

By: \_\_\_\_\_

Underground Utility and Landscape Irrigation, U.A. Local 355

By: \_\_\_\_\_

Sprinkler Fitters and Apprentices, U.A. Local 483

By: \_\_\_\_\_

Sheet Metal Workers' International Association, Local Union No. 104

By: \_\_\_\_\_

United Union of Roofers, Waterproofers & Allied Workers, Local No. 81

By: \_\_\_\_\_

Teamsters Local 853

By: \_\_\_\_\_

International Union of Elevator Constructors Local Union No. 8

By: \_\_\_\_\_

Sign Display and Allied Crafts, Local 510

By: \_\_\_\_\_

**LETTER OF ASSENT**

\_\_\_\_\_, 20\_\_\_\_

Danny Wan, Port Attorney  
530 Water Street, 4<sup>th</sup> Floor  
Oakland, CA 94607

**Subject: Port of Oakland Maritime and Aviation Project Labor Agreement – Letter of Assent**

Dear Mr. Wan:

The undersigned party confirms that it agrees to be a party to and bound by the Port of Oakland Maritime and Aviation Project Labor Agreement (the "Agreement" or "MAPLA") as entered into by and between the Port of Oakland and the Building and Construction Trades Council of Alameda County and their affiliated unions, dated February 1, 2016, as the Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. This Agreement includes the Addendum and Memorandum of Agreement governing Construction Trucking Work.

By executing this Letter of Assent, the undersigned party subscribes to, adopts, and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of this letter. The undersigned party agrees to execute a separate subscription agreement for those trust funds that so require.

<b>MAPLA Project Name:</b>  _____	<b>Authorized Person:</b>  _____	
<b>Contractor / Subcontractor Name:</b>  _____	(Print Name)  _____	
<b>California State License Number:</b>  _____	(Title)  _____	
	(Signature)  _____	
	(Telephone Number)	(Date)

cc: Jake Sloan  
Davillier-Sloan, Inc.  
1630 12<sup>th</sup> Street  
Oakland, CA 94607

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BTC: 
Port:

**APPENDIX B**

**LIST OF MASTER LABOR AGREEMENTS**  
(ON FILE WITH THE MAPLA ADMINISTRATOR)

1. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 16
2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 549
3. International Union of Bricklayers and Allied Craftworkers, Local. No. 3, Northern California
4. Carpenters Local 713
5. Carpenters Local 2236
6. Lathers Local 68L
7. Millwrights Local 102
8. Pile Drivers Local 34
9. Plasterers' and Shophands' Local Union No. 66
10. Plasterers' and Cement Masons' Local Union No. 300
11. International Brotherhood of Electrical Workers, Local No. 595
12. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local No. 378
13. Construction and General Laborers' Union Local No. 304
14. Laborers' International Union of North America Local Union No. 67
15. Hod Carriers Local Union No. 166
16. International Union of Operating Engineers, Local Union No. 3
17. Painters Local 3
18. Carpet & Linoleum Layers Local 12
19. Glass Workers Local 169
20. Auto & Marine Painters, Local 1176
21. Local Union No. 342 of the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO
22. Underground Utility and Landscape Irrigation, U.A. Local 355
23. Sprinkler Fitters and Apprentices, U.A. Local 483

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24. Sheet Metal Workers' International Association, Local Union No. 104
25. United Union of Roofers, Waterproofers & Allied Workers, Local No. 81
26. Teamsters Local 853
27. International Union of Elevator Constructors Local Union No. 8
28. Sign Display and Allied Crafts, Local 510

**SOCIAL JUSTICE  
LABOR MANAGEMENT COOPERATION TRUST FUND**

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) contains a provision (Section 6.4) that requires contractors to pay into the Social Justice Labor Management Cooperation Trust Fund. The Contractor shall implement and fulfill the requirements of Section 6.4 in the following manner:

1. In addition to paying established employee benefits funds in the amounts designated in the appropriate prevailing wage determination for fringe benefit contributions, pursuant to the MAPLA Section 6.4, contractors performing work under MAPLA shall pay thirty cents (\$0.30) per hour worked or paid into the Social Justice Labor Management Cooperation Trust Fund/EBCF (Social Justice Trust Fund) established to manage the MAPLA Social Justice Program.
2. The Contractor should include the payment referenced in Item 1 above and any administration costs associated with complying with the payment, in its bid.
3. Payment to the Social Justice Trust Fund shall be made monthly by the Prime Contractor (for its and all its subcontractors' workforce) and shall cover the hours reported on the Summary of Utilization of Construction Workforce Reports required to be submitted weekly to the Port by the last day of the month for which the payment is being made. Copies of the Summary Workforce Reports shall accompany each monthly payment.
4. The amount of the monthly payment to the Social Justice Trust Fund is the total number of workforce hours worked or paid shown on the Summary Workforce Reports submitted weekly during that month times thirty cents (\$0.30) per hour.
5. Monthly payment to the Social Justice Trust Fund shall be made within twenty (20) calendar days of the last day of the preceding month. Late payments shall be subject to interest charges of 1% per month on the unpaid balance.
6. Transmittal form must be filed monthly even if no hours have been worked or paid until a final payment statement has been sent.
7. Make checks payable to "Social Justice Labor Management Cooperation Trust Fund / EBCF". Mail check, associated Summary Workforce Reports, and transmittal letter to:

Social Justice Labor Management Cooperation Trust Fund / EBCF  
c/o East Bay Community Foundation  
DeDomenico Building  
200 Frank H. Ogawa Plaza  
Oakland, CA 94612

The transmittal letter (**Attachment A** to this Document) shall contain the following information:

- a) The name and address of the Contractor
- b) The title and contract number of the Port Project
- c) The period covered by the enclosed payment
- d) The payment amount calculation

Copies of the transmittal letter and the Summary Workforce Reports shall be sent to:

Jake Sloan  
Davillier-Sloan  
Labor Management Consultants  
1630 12<sup>th</sup> Street  
Oakland, CA 94607

Port of Oakland  
Social Responsibility Division  
530 Water Street  
Oakland, CA 94607  
Attention: Public Works Unit

The provisions herein are applicable to any change order work negotiated.

8. If payments to the Social Justice Trust Fund are not made in a timely manner as stated above, the Port shall deduct and retain the estimated amount owed plus 25% of the estimated amount owed from the progress payment or from any other moneys due or that may become due the Contractor under the Contract Documents.

**ATTACHMENT A  
SOCIAL JUSTICE TRUST FUND CONTRIBUTION  
LETTER OF TRANSMITTAL**

\_\_\_\_\_, 20\_\_

Social Justice Labor Management Cooperation Trust Fund / EBCF  
c/o East Bay Community Foundation  
DeDomenico Building  
200 Frank H. Ogawa Plaza  
Oakland, CA 94612

**Subject: Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) Social Justice Trust Fund Contribution**

Contract Title and Number: \_\_\_\_\_

Enclosed is a check in the amount of \$ \_\_\_\_\_ for payment of the MAPLA Social Justice Trust Fund contribution for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_. Copies of the Summary Workforce Reports covering the same period are also enclosed.

The payment amount is calculated as follows:

Social Justice Trust Fund Contribution	=	Total Number of Hours Worked or Paid	X	Hourly Contribution (\$0.30)
	=	_____ Hours	X	\$0.30
	=	\$ _____		(Amount Due)

Check if applicable:

No hours worked or paid this period.

This is the final payment under this contract.

I certify under penalty of perjury that the above calculation accurately reflects hours worked or paid.

Contractor: \_\_\_\_\_

Name and Signature: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Telephone Number)

Enclosures: Payment and Summary Workforce Reports  
cc (transmittal letter and Summary Workforce Reports):

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BTC:   
Port:

Jake Sloan  
Davillier-Sloan  
Labor Management Consultants  
1630 12<sup>th</sup> Street  
Oakland, CA 94607

Port of Oakland  
Social Responsibility Division  
530 Water Street  
Oakland, CA 94607  
Attention: Public Works Unit

BTC: 
Port:

**Letter of Understanding Regarding Direct Owner-Operator and Owner-Operator  
Hardship Exemptions**

February 1, 2016

Chris Lytle  
Executive Director  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

**Re: MAPLA Direct Owner-Operator and Owner-Operator Hardship Exemptions**

Dear Mr. Lytle:

This letter clarifies the understanding of the Port of Oakland ("Port") and the Building and Construction Trades Council of Alameda County ("Council") regarding the circumstances in which an owner-operator directly contracting with the Port or with the Prime Contractor, or an owner-operator with a financial hardship, may be excluded from coverage by the Maritime and Aviation Project Labor Agreement ("MAPLA") under the MAPLA Small Business Enterprise Program ("MSBE Program"). The undersigned agree to the following understandings.

1. **Definition of Owner-Operator.** "Owner-Operator" means an individual natural person who owns and is the only driver of the power unit of a heavy duty commercial truck with a Gross Motor Vehicle Weight Rating of at least 26,001 pounds. A power unit is "owned" by a person if it is titled and registered to, insured by, and has its California Motor Carrier Permit number issued to by that person. However, a person is still considered an owner even if the power unit is titled and registered to a financial institution temporarily while the person is leasing the power unit and paying that financial institution for the purpose of eventually owning the power unit.
2. **Direct Owner-Operator Exemption.**
  - a. A "Direct Owner-Operator" is defined as an Owner-Operator who directly bids with and is awarded work by the Prime Contractor or the Owner, and personally performs such work. A Direct Owner-Operator does not include a person working for or subcontracting with trucking brokers, or a person who employs, contracts, or subcontracts with any other person or entity to perform trucking work for the Port or Tenant.
  - b. Direct Owner-Operators are exempted from MAPLA coverage under the MSBE Program for their work directly bid with the Prime Contractor or the Owner unless they choose to opt in to MAPLA coverage. Direct Owner-Operators shall

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notify the Port in writing that they are Direct Owner-Operators who are indeed exempted. Exempt Direct Owner-Operators shall remain exempted for their work directly bid with the Prime Contractor or the Owner until they reach the graduation limits of the MSBE Program or until they choose to opt-in to MAPLA coverage.

3. **Owner-Operator Hardship Exemption.** Owner-Operators, including those working through brokers, for whom coverage by the MAPLA will cause financial hardship may apply to the MAPLA Administrator for exemption before commencing work for a specific project. The MAPLA Administrator will then convene a meeting between one representative from the Port and one representative from the Council, which shall expeditiously decide (upon mutual agreement) if such Owner-Operators may be exempted under the MSBE Program because of the financial hardship for the specific project and/or future projects.
4. **MSBE Program Limits.** All dollar amounts of work performed by exempted Owner-Operators under this letter shall count toward the limits of the MSBE Program (such as the Program Cap, Trucking Trade Cap, and MSBE Graduation limits) as set forth in Article 9 of the MAPLA titled "MAPLA Small Business Enterprise Program."
5. **Enforcement.** Any violation or circumvention of the terms of this letter shall be considered a violation of MAPLA and shall be referred to resolution under the terms of Article 13 (Grievances).
6. **Notification.** Within fifteen (15) business days' request by the Union, the Port will provide information to the Union on all exempted work described in this letter and shall make available a copy of an Owner-Operator's bid for work that has been exempted from the MAPLA.

Sincerely,



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Andreas Cluver, Secretary-Treasurer  
Alameda County Building and Construction Trades Council

Acknowledged and agreed to

this 15 day of January, 2016



---

J. Christopher Lytle, Executive Director  
Port of Oakland

PORT OF OAKLAND MARITIME AND AVIATION PLA

**PORT OF OAKLAND  
MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)  
UNIFORM SUBSTANCE ABUSE PREVENTION POLICY**

This Uniform Substance Abuse Prevention Policy (hereinafter referred to as "Policy"), has been adopted by the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners (hereinafter the "Port"), the Building and Construction Trades Council of Alameda County (hereinafter the "Council"), and its affiliated local Unions that become signatory to the Agreement (collectively referred to as "Unions") and is binding on the Contractors who agree to be bound by the Port of Oakland Maritime and Aviation Project Labor Agreement (the "Agreement" or "MAPLA").

The Parties agree and acknowledge that the United States Government may require differing testing and detection standards than those that are contained in this policy for certain projects that will be constructed under the MAPLA. To the degree that these federal policies differ in substance or procedure (including the use of random testing) the Parties acknowledge that the federal policies will prevail where required by law or regulation. Violation of any federal policy will result in the same consequences as a violation of this Policy.

**POLICY**

The Contractors and the Unions are committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees not be permitted to perform their duties while under the influence of drugs or alcohol.

This program supersedes any policies negotiated for any other work outside of the Project by Contractors and the Unions that might otherwise apply. Nothing in the MAPLA is intended to supersede or diminish more restrictive controlled substance or alcohol regulations imposed by federal or state agencies upon specific employee groups or categories of employees who are also covered by this Program. A summary of this Program will be provided to all dispatched employees. The full MAPLA will be made available to any Union representative or to Project employees upon request.

The intention of this Program is to comply with the Port of Oakland's Aviation and Maritime Project requirement of maintaining a drug and alcohol free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Program

have been carefully defined and intentionally restricted. The Substance Abuse Prevention Coordinator will retain oversight over the Programs and will monitor test procedures for consistency and Policy compliance.

In order to implement this Policy, the following agreements have been reached:

1. No employee may purchase, sell, transfer, furnish, possess, use or be under the influence of illegal drugs or any alcoholic beverage while working on any Project job site in connection with work performed under the MAPLA, or when using any Contractor vehicle.
2. The proper use of prescription drugs or over-the-counter medication as part of a medical treatment program and consistent with the terms of this Policy is not a violation of this Policy. The improper use of prescription drugs, over-the-counter medication or the use of designer or synthetic drugs that alters or affects an individual's motor function or mental capacity is prohibited and is a violation of this Policy. Employees who believe or have been informed that their use of any prescription drug or over-the-counter medication may present a safety risk are to report such use to the Contractor's supervision to insure the safety of themselves, other employees, and Contractor or Project property or vehicles.
3. Any employee, while employed on the Project, who tests positive for drug or alcohol abuse or who is convicted for selling illegal drugs off the Project will not be permitted to work on the Project and will be subject to discipline up to and including discharge, subject to the provisions of this Policy. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination and removed from the project and will not be eligible for rehire.
4. Any prospective or dispatched worker who fails the pre-employment testing required pursuant to this Policy will be denied employment and will not be eligible for referral to any Contractor on the Project until a period of not less than sixty (60) calendar days has passed and the applicant has provided a certification of rehabilitation and satisfactory participation in an approved counseling or rehabilitation program, which will be at the employee's expense.
5. Any prospective or dispatched worker/employee who refuses to submit to a properly administered drug or alcohol test will be treated as having tested positive on the test and will be subject to removal from the Project and will not be granted permission for a second drug or alcohol test for a period of ninety (90) days.

#### NOTICE

1. When calling the Union hiring hall for workers, the Contractor shall advise the Union dispatcher that the Contractor will require any dispatched worker to take a pre-employment drug and alcohol test, and that worker(s) will be subject to further testing in accordance with specified circumstances outlined in this Policy.

2. At the commencement of a contract, the Contractor shall also provide notice in advance of the first dispatch request either by certified mail, by facsimile transmission or by hand delivery.
3. The Contractor shall provide written notice to each employee, attached hereto as **Exhibit C**, of the major provisions of the drug and alcohol testing policy and its consequences.
4. A contractor that fails to provide notice to the dispatcher shall be liable for two hours show up pay for any dispatched worker that refuses to take a pre-employment test, and a dispatched worker's refusal to take the test may not be used in any adverse manner against that worker, except that no dispatched worker will be hired without having taken a pre-employment drug test.

### **TERMS / DEFINITIONS**

For purposes of this Policy, the following terms/conditions will apply:

1. **Illegal Drugs:**

For the purpose of this Policy, the terms "illegal drugs" or "drugs" refer to those drugs listed in **Exhibit A**, except in those circumstances where they are prescribed by a duly licensed health care provider. **Exhibit A** lists the illegal drugs and alcohol and the threshold levels for which an employee/applicant will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration ("SAMHSA") (formerly the National Institute of Drug Abuse, or "NIDA") threshold levels, or U.S. government required thresholds where required, in effect at the time of testing. **Exhibit A** will be updated periodically to reflect the SAMHSA or the U.S. Government threshold changes, subject to mutual agreement of the parties.

2. **Prescription Drug:**

A drug or medication prescribed by a duly licensed health care provider for current use by the person possessing it that is lawfully available for retail purchase only with a prescription.

3. **Reasonable Cause:**

Reasonable cause to test (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) an employee for illegal drugs or alcohol will exist when specific, reliable objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while on the jobsite. These indicators will be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, and will be indicators not reasonably explained as resulting from causes other than the use of such controlled substances (such as, but not by way of limitation,

fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.) If cause results from an observation, the observation must be confirmed by a second member of the Individual Contractor's supervision and those Contractor representatives will endeavor to consult with the Contractor's Safety Representative or a jobsite management representative, one who must be trained in detection of drug use, and whose training will be documented. The specific behavioral, performance or on-the-spot physical indicators of being under the influence of drugs or alcohol on the job will be substantiated in writing by the use of an Incident Report Form (attached as **Exhibit E**).

The following may constitute some of the reasonable causes to believe that an employee is under the influence of drugs or alcohol.

- (a) Incoherent, slurred speech;
- (b) Odor of alcohol on the breath;
- (c) Staggering gait, disorientation, or loss of balance;
- (d) Red and watery eyes, if not explained by environmental causes;
- (e) Paranoid or bizarre behavior; or
- (f) Unexplained drowsiness.

#### 4. Post-Accident Testing

A Contractor will require that an employee who is involved in an accident in the course of job duties resulting in serious damage to plant, property or equipment or injury to him/herself or others as defined below may be tested (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) for drugs or alcohol where the Contractor safety representative or designee concludes that:

- (a) the accident may have resulted from human error or could have been avoided by reasonably alert action; and
- (b) the employer's representative reasonably concluded that the employee(s) to be tested caused or contributed to the following circumstances:
  - (i) An OSHA recordable injury, i.e., medical treatment case, restricted work case or lost workday case;
  - (ii) Damage to equipment, vehicles, structures, or guarding resulting in repair costs that in the judgment of the Contractor will exceed \$2,500.00;
  - (iii) Loss of material containment resulting in an environmental spill notification; or
  - (iv) Any incident resulting in job site shutdown or involving a fatality; and
- (c) a basis exists to believe that the employee was under the influence of a drug or alcohol at the time of the accident.

## 5. Adulterated, Substituted or Dilute Specimens

This Substance Abuse Prevention Policy adheres to guidelines established in SAMHSA Public Document 035 dated September 28, 1998 for determining the validity of a specimen. This guideline is consistent with the Department of Transportation (DOT) regulations (49 CFR Part 40 and 382) that permit laboratories to conduct additional tests to determine the validity of a specimen.

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an "adulterant", "interfering substance" and/or "masking agent" or the sample is identified as a "substituted specimen" will be deemed a violation of the MAPLA and Policy and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an "adulterated", interfering substance", masking agent", or substituted" specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant shall be required to show certification of rehabilitation and satisfactory participation in a Substance Abuse Prevention Coordinator-approved rehabilitation program, not at the expense of the Contractor or Owner, as a condition of the employee's return to work at that time.

The guideline issued in PD 035, in the SAMHSA September 28, 1998 memo uses the following reporting protocols:

- (a) Adulterated Specimen: PD035 includes three definitions for Adulterated:
  - (i) if the nitrite concentration is equal to or greater than 500 mcg/mL.
  - (ii) If the pH is less than or equal to 3, or if it is greater than or equal to 11.
  - (iii) If a foreign substance is present, or if an endogenous substance (one that is normally found in urine) is present at a concentration greater than the normal physiological concentration.
- (b) Substituted Specimen: one that has a creatinine of less than or equal to 5mg/dL and a specific gravity less than or equal to 1.001 or greater than or equal to 1.020. These specimens do not exhibit the clinical signs or characteristics associated with normal urine.
- (c) Dilute Tests: Protocol covering dilute specimens will follow guidelines established by SAMSHA PD 035 in their memo dated September 28, 1998. Specimens identified by the testing laboratory as dilute will require the employee/applicant to be retested. A second test due to a dilute specimen will require the employee/applicant to submit to an observed test. Refusal to retest or noncompliance with drug testing procedures will result in the employee/applicant being prohibited from working on the Project for ninety (90) calendar days and the employee/applicant will be required to successfully complete a Substance Abuse Prevention Coordinator-approved rehabilitation program at his/her own expense as a condition of the employee's return to work at that time.

A "dilute specimen" is defined as: "one that has a creatinine reading less than 20 mg/dL, but greater than 5 mg/dL, and a specific gravity less than 1.003 but greater than 1.001.

6. Project.

The Project is defined as any construction activity that is undertaken under the terms of the Port of Oakland Maritime and Aviation Project Labor Agreement.

**IDENTIFICATION AND  
CONSENT PROCEDURES**

1. When a prospective employee or dispatched worker arrives at the job site for potential employment, he/she will be shown and sign a copy of the Pre-Employment Substance Abuse Prevention Testing Consent/Waiver Form attached as **Exhibit D** before taking a pre-employment drug or alcohol screening test. An employee who is working on the Project and has submitted to the pre-employment drug and alcohol test and has tested negative may thereafter be required to submit to drug or alcohol testing only if the Contractor has "reasonable cause" to believe that the employee is under the influence of drugs or alcohol in violation of this Policy or in connection with an accident as set out above in this Policy. The Contractor may order urine (or in the case of alcohol, breathalyzer) testing only.
2. If a management representative (preferably not in the bargaining unit) makes observations of an employee which may constitute reasonable cause for drug or alcohol testing, the supervisor shall immediately take the following actions:
  - A. Inform the employee that he/she may have a Union Representative present, if reasonably available. The employee will be shown the Substance Abuse Prevention Testing Consent/Waiver Form attached as **Exhibit B**.
  - B. Fill out the Incident Report Form, including a statement of the specific facts constituting reasonable cause to believe that the employee is under the influence of drugs or alcohol, and the names of the person(s) making the supporting observations;
  - C. Provide a completed copy of this Incident Report Form to the bargaining unit employee before he/she is required to be tested, (and one copy made available to the Union Representative, if present). After being given a copy of the Incident Report Form, the bargaining unit employee will be allowed enough time to read the entire document, to understand the reasons for the test.
  - D. Provide the employee with an opportunity to provide an explanation of his/her condition, including providing evidence (e.g., doctor's prescription or note, or prescription container) of existing medical treatment or reaction to a prescribed drug. If available, the Union Representative shall be present during such explanation; and will be entitled to confer with the employee before the explanation

is required;

- E. If the Management representative(s), after observing the employee, and hearing any explanation, concludes that there is in fact reasonable cause to believe that the employee is under the influence of drugs or alcohol, the employee may be ordered to submit to a drug and/or alcohol test and will be asked to sign the Consent/Waiver Form attached as **Exhibit B**.
3. Failure to follow any of these procedures will result in the elimination of the test results as if no test had been administered; the test results will be destroyed and no discipline shall be imposed against the bargaining unit employee. Refusal of the employee to submit to the test where these procedures have been followed will be treated as a positive test and subject the employee to discipline including removal from the Project and discharge.
4. Unless there is reason to believe that the person being tested has previously altered a sample, or unless there is agreement in writing, an individual will be allowed to provide the required specimen in the privacy of a stall or partitioned area.
5. A worker initially dispatched to a Project jobsite where this Policy is in effect will be required to submit to testing for illegal drugs or alcohol as defined in this Policy. The testing of such workers must be conducted in compliance with the "Drug Testing Procedures" described in this Policy, and be required of dispatched workers only on the first day of reporting to the initial jobsite. The urine drug and alcohol testing of these dispatched workers, is the only testing allowed under this Policy other than for "reasonable cause" or in connection with an accident as set out above in this Policy. Notwithstanding this provision, if a rehabilitation program or drug treatment program determines that periodic testing is appropriate or necessary for the employee who has tested positive under this Policy, then that employee will be subject to future urine drug testing as recommended by the rehabilitation program.

Except as set out in the Notice provision above, a worker initially dispatched to such jobsite who refuses to submit a urine sample for drug/alcohol testing will not be entitled to show-up pay for that day, and will be denied employment on the Project for a period of ninety (90) calendar days. If a worker who has refused a test returns to the same jobsite within ninety (90) calendar days, and is denied work, that worker will not be entitled to show-up pay. If a worker initially dispatched to the jobsite refuses to submit a urine sample or to take a breathalyzer test for drug/alcohol testing, and that worker is denied employment for ninety (90) calendar days, this Individual Contractor action will not be grievable under the MAPLA. If the worker tests negative for drugs and alcohol, he/she will not be drug tested again while employed by the Individual Contractor at any jobsite except for reasonable cause or post-accident as described in this Policy.

6. If the Individual Contractor has reasonable cause to believe an employee is under the influence of drugs or alcohol, or requires a post-accident drug or alcohol test, as set forth in this Policy, and the employee refuses to submit to a drug test, the refusal shall be treated as

a positive test result and the employee/applicant shall be subject to discipline, including removal from the Project and discharge.

7. The following rules control the pay for dispatched workers tested on the first day of their employment:
  - A. A dispatched worker who is put to work immediately after having passed the test shall be paid starting at the time the worker reported for the test(s).
  - B. Where a contractor requests a dispatched worker to report for purposes of a pre-hire substance abuse test, and does not intend to place the worker in an active work position on that day, the worker shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.
  - C. If the dispatched worker is not allowed to work until the results of the drug test are received, and the test results are positive, the dispatched worker is not entitled to any form of pay (including show-up pay).
  - D. If the dispatched worker is put to work, that dispatched worker is entitled to pay and benefits under the MAPLA for all hours worked, regardless of the results of the drug test.
  - E. Where a contractor fails to provide notice, pursuant to this Policy, to the Union hiring hall that the job site is a drug and alcohol testing site, a dispatched worker who refuses to take the pre-employment test will be paid two hours show up pay, except that no dispatched worker will be hired without having taken a pre-employment drug test.

#### **DRUG TESTING PROCEDURES**

1. The testing shall be done at a certified laboratory located in California. The collective bargaining parties retain the right to inspect the laboratory to determine conformity with the standards described in this Policy. The laboratory will only test for alcohol and the illegal drugs listed in the Definition Section of this Policy and **Exhibit A**. All testing will be at the Contractor's expense.

Testing procedures, including controlled substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol tests shall be by breathalyzer.

Any test revealing a blood/alcohol level equal to or greater than 0.08 or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or crane any test revealing a blood/alcohol level equal to or greater that

0.04 or the established California State standard for commercial motor vehicle operations, percent shall be positive and will be conducted under procedures consistent with California State law.

An employee/applicant presenting himself/herself at a Substance Abuse Prevention Coordinator- approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until he/she has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee/applicant being classified as “refusing to test” and being prohibited from working on the Project for a minimum of ninety (90) calendar days from the date of the scheduled test.

At the time the urine specimens are collected, two (2) separate samples shall be placed in separate sealed containers. One (1) of the samples collected in a separate container shall be kept refrigerated at the site where the sample is given. Upon request, this second sample shall be made available to the employee for testing by a certified laboratory selected by the employee at the employee's expense.

2. The specific required procedure is as follows:
  - A. Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee's option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.
  - B. Immediately after the specimen is collected, it will be divided into two (2) urine bottles which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
  - C. A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
3. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3)

ions. In order to be considered "positive" for reporting by the laboratory to the employer, both samples must be tested separately in separate batches and must also show positive results on the GC /MS confirmatory test.

4. All positive drug, alcohol or adulterant test results must be reported to a Medical Review Officer (MRO) appointed by the designated testing laboratory. The MRO shall review the test results and any disclosure made by the employee/prospective or dispatched worker and shall attempt to interview the employee/ prospective or dispatched worker to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the employee/applicant, but failing to make contact within two (2) working days, may deem the employee/applicant's result a "lab positive." After the issuance of a "lab positive", the employee/applicant will be barred from the Project until the employee/applicant makes contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of a negative result.
5. If the testing procedures confirm a positive result, as described above, the employee/dispatched worker and the Substance Abuse Prevention Coordinator will be notified of the results in writing by the MRO, including the specific quantities. If requested by the employee or the Union, (with the written consent of the member), the laboratory will provide copies of all laboratory reports, forensic opinions, laboratory work sheets, procedure sheets, acceptance criteria and laboratory procedures.
6. In the event of a positive drug or alcohol test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the request of the employee at his/her expense. Re-tests may be conducted by the same or any other approved laboratory. The laboratory shall endeavor to notify the MRO of positive drug, alcohol or adulterant tests results within five (5) working days after receipt of the specimen. The employee may request a re-test within five (5) working days from notice of a positive test result by the MRO. Costs of re- tests will be paid in advance by the requesting party.
7. The Substance Abuse Prevention Coordinator shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
8. All information from an employee's or dispatched worker's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.
9. Every effort will be made to insure that all employee substance abuse problems will be

discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in any disciplinary procedure, and those persons will be identified in writing at the time of the procedure.

No laboratory or medical test results will appear in the employee's Personnel File. Information of this nature will be kept in a separate, confidential file.

All necessary measures shall be taken to keep the fact and the results of the test confidential.

**CONSEQUENCES FOR VIOLATING  
THE RULES AND PROVISIONS  
OF THIS POLICY**

1. Prospective or dispatched workers: Dispatched workers who test positive to the pre-employment drug and alcohol test conducted pursuant to this Policy will be denied employment by the Individual Contractor until their test is confirmed to the dispatched worker in writing. Dispatched workers will be informed in writing if they are rejected on the basis of a confirmed positive drug test result. A dispatched worker may utilize the MAPLA grievance procedure to challenge the validity of a positive test result.
2. Employees: If the initial results of a drug or alcohol test administered by the Individual Contractor show that the employee was under the influence of drugs or alcohol while on duty, the employee will be removed from the Project until the test results have been confirmed by the procedures contained in this Policy.
  - (a) If the final test is negative, the employee will be reinstated with full back pay for lost time.
  - (b) If the initial positive test result is confirmed, the employee will be barred from the Project effective the date and time of the collection of the test specimen. The employee is subject to termination, subject to the provisions of this section below.
  - (c) Discipline imposed for a first positive test for an employee subjected to reasonable-cause testing, or subject to post-accident testing when in fact drugs or alcohol played no role in the accident, and any grievance filed in response thereto, will be held in abeyance pending voluntary participation by the employee in a Substance Abuse Prevention Coordinator-approved treatment program during an unpaid leave of absence.
  - (d) The employee may return to work if work is available after a certificate of either rehabilitation or satisfactory participation in the program. If the program determines that periodic testing is appropriate or necessary, the employee will be subject to future urine drug or alcohol testing, even on a random basis.
  - (e) If the employee successfully completes or participates in such a program or is not

disciplined for substance use, possession or being under the influence of drugs or alcohol for twenty-four (24) months following the initial confirmed positive test, the discipline shall be revoked.

- (f) A second positive test will result in the imposition of discipline, including termination and removal from the Project and the lifting of any suspension regarding discipline imposed for a first test less than twenty-four months preceding the date of the second positive test.

### **NOTICE AND CONSENT/WAIVER FORMS**

Employees must execute a written consent and waiver to submit to the drug and alcohol tests and for the testing laboratory to release the report of test results to the Contractor. The individual to be tested will sign the form attached as **Exhibit D** at the time of submitting to a pre-employment test and the form attached as **Exhibit B** for any subsequent test. Signing the Consent/Waiver Form will not waive any individual rights available to the employee under federal or state law. The employee must also sign at the time of employment the Notice Form, attached as **Exhibit C**, describing the employee's obligations under this Uniform Substance Abuse Prevention Policy.

### **SUBSTANCE ABUSE PREVENTION COORDINATOR**

The Port will designate a Substance Abuse Prevention Coordinator from candidates nominated by the parties to the MAPLA to monitor compliance with this Policy and to provide assistance to Project employees with questions concerning drug or alcohol test procedures, availability of approved counseling or rehabilitation or any other drug or alcohol matters. All inquiries to the Coordinator will be confidential. The parties are eager to help employees with drug and alcohol abuse problems. The Coordinator will be prepared to assist employees in discussing insurance coverage and locating available counseling, rehabilitation and community resources.

### **SUPERVISOR TRAINING**

The Contractor shall develop and implement a program of training to assist Management representatives and stewards in identifying factors which constitute reasonable cause for drug testing, as well as a detailed explanation and emphasis on the terms and conditions of the drug policy.

### **EMPLOYEE VOLUNTARY SELF-HELP PROGRAM**

An employee who engages in drug/alcohol abuse is encouraged to participate in an Employee Voluntary Self-Help Program. Employees who seek voluntary assistance for alcohol and/or substance abuse not arising out of or in connection with the occurrence of any testing incident or related disciplinary action may not be disciplined for seeking such assistance. Request by employees for such assistance shall remain confidential and shall not be revealed to other

employees or management personnel without the employee's consent. Such Voluntary Self-Help Program will not be at the expense of the Owner or Contractor. An Employee Voluntary Self-Help Program Counselor shall not disclose information on drug/alcohol use received from an employee for any purpose or under any circumstances, unless specifically authorized in writing by the employee.

The Contractor shall offer an employee affected by alcohol or drug dependency an unpaid medical Leave of Absence, for the purpose of enrolling and participating in a drug or alcohol rehabilitation program. Any employee who voluntarily submits to such Voluntary Self-Help Program may return to employment on the project upon successful completion of such a program, or upon a certification of rehabilitation and satisfactory participation in such a program, and provided that the employee passes a drug and alcohol test upon return to the project and agrees for a period of one (1) year thereafter, to submit to periodic drug and alcohol testing which shall be conducted in addition to any reasonable cause or post-accident testing otherwise conducted, if considered appropriate or necessary by the rehabilitation program.

The Substance Abuse Prevention Coordinator will work with the signatory Unions to develop an "approved" list of counseling and rehabilitation programs to be used by employees/applicants who test positive for illegal drugs, alcohol, adulterants or misuse of prescription drugs. The cost of counseling and rehabilitation will not be the responsibility of the Contractor or Owner.

#### **GRIEVANCE PROCEDURE**

All disputes concerning the interpretation or application of this Policy shall be subject to the Grievance procedure established by Article 13 of the MAPLA. Such disputes may be initiated at Step 2 of the Grievance procedure. Nothing in the grievance procedure may void this Uniform Substance Abuse Policy on the Port of Oakland Maritime and Aviation Project from continued utilization on Project work.

#### **SAVINGS CLAUSE**

The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule or regulation. Should any part of this Policy be determined contrary to law, such invalidation of that part or portion of this Policy will not invalidate the remaining portions. In the event of such determination, the parties to the MAPLA agree meet promptly to commence negotiations concerning the provision affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties hereto.

#### **TERM OF AGREEMENT**

This Policy constitutes the only agreement in effect between the parties to the MAPLA concerning drug abuse, prevention and drug testing. No revisions or amendments will be made to this Policy except with the written approval of the parties hereto. This Policy shall become effective for all work covered by the MAPLA upon the effective date of the MAPLA and shall

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remain in effect for the duration of the MAPLA unless terminated or amended by the mutual consent of the parties hereto.

The parties to the MAPLA agree to meet on an annual basis to review this Policy, to bring it into compliance with the law, if necessary, and to review other considerations which may arise during the course of the MAPLA. Changes in this Policy may be made only if mandated by law or agreed upon by the collective bargaining parties.

**EXHIBIT A  
SUBSTANCE ABUSE PREVENTION AND DETECTION  
THRESHOLD LEVELS**

<b>CONTROLLED SUBSTANCE*</b>	<b>SCREENING METHOD</b>	<b>SCREENING LEVEL**</b>	<b>CONFIRMATION METHOD</b>	<b>CONFIRMATION LEVEL</b>
Amphetamines	EMIT	1000 ng/ml**	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	GC/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml**
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
Alcohol	EMIT	0.08 or 0.04 % as required	GC/MS	0.08 or 0.04 % as required

\* All controlled substances including their metabolite components

\*\* SAMHSA specified threshold

\*\*\* A sample reported positive contains the indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level. Testing levels may be changed to meet revised industry standards subject to mutual agreement.

EMIT – Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

**EXHIBIT B  
EMPLOYEE DRUG TEST  
CONSENT/WAIVER FORM**

**TO:** (Name of Contractor/Employer) \_\_\_\_\_

**FOR:** (Project Name) \_\_\_\_\_

**Name of Dispatched Worker/Employee:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip code:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_

**Other phone numbers: Pager** \_\_\_\_\_ **Mobile** \_\_\_\_\_

**Consent for Testing**

I (write your name) \_\_\_\_\_ understand that my Employer has determined that there is probable cause to believe that I have been working at the job site under the influence of alcohol or drugs. In response to this, my Employer requires that I provide a urine (or breathalyzer) sample as is allowed under the Project drug testing policy.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be subject to discipline including discharge from employment.

I hereby consent and agree to give specimens of my urine or to take the breathalyzer test. **My refusal to provide such a specimen or take such a test will lead to termination of my employment.**

All charges for these tests will be paid for by the Employer and not by me.

**Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.**

**I have read, understand and agree to the above:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Employee Signature

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT D  
PORT OF OAKLAND PROJECT  
PRE-EMPLOYMENT DRUG TEST  
CONSENT/WAIVER FORM**

**TO:** (Name of Contractor/Employer) \_\_\_\_\_

**FOR:** (Project Name) \_\_\_\_\_

**Name of Dispatched Worker/Employee:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip code:** \_\_\_\_\_

**Home Telephone:** \_\_\_\_\_

**Other phone numbers: Pager** \_\_\_\_\_ **Mobile** \_\_\_\_\_

**Consent for Testing**

I (write your name) \_\_\_\_\_ understand that the Port of Oakland Project to which I have been dispatched, or for which I am seeking employment, requires pre-employment drug and alcohol testing. The company to which I have been dispatched requires that I take and pass this test prior to commencing employment.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be ineligible for employment on the Project and will not be able to take a new drug or alcohol test for ninety (90) days.

I hereby consent and agree to give specimens of my urine. **My refusal to provide such a specimen will prevent me from gaining employment on the Project for ninety (90) days.**

All charges for these tests will be paid for by the Employer and not by me.

**Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.**

**I have read, understand and agree to the above:**

\_\_\_\_\_  
Witness Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Prospective/Dispatched Worker

Date: \_\_\_\_\_

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BTC: 
Port:

**EXHIBIT E  
INCIDENT REPORT FORM**

Employer \_\_\_\_\_

Employee Involved \_\_\_\_\_

Date of Incident \_\_\_\_\_ Time of Incident \_\_\_\_\_

Location of Incident \_\_\_\_\_

Employee's Job Assignment/Position \_\_\_\_\_

Has employee been notified of  
his/her right to Union representation? \_\_\_\_\_

Date/Time Notified \_\_\_\_\_  
DATE TIME

Employee's Initials \_\_\_\_\_

Witness to Incident \_\_\_\_\_

OBSERVATIONS \_\_\_\_\_

\_\_\_\_\_

EMPLOYEE'S EXPLANATION \_\_\_\_\_

\_\_\_\_\_

Action Recommended: \_\_\_\_\_

\_\_\_\_\_

Action Taken \_\_\_\_\_

\_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_

Signature Signature  
Employer Representative Union Representative (if present)  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date/Time/Action Taken: \_\_\_\_\_

BTC: <i>[Signature]</i>
Port: _____

APPENDIX F

**Addendum and Memorandum of Agreement between  
International Brotherhood of Teamsters Local 853  
and  
The Port of Oakland  
Regarding Construction Trucking Work under the  
Maritime and Aviation Project Labor Agreement (MAPLA)**

**1. Preamble and Purpose**

This Addendum is by and between the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, and International Brotherhood of Teamsters Local 853, a labor organization (respectively, "Port" and "Teamsters", together the "Parties"). This Addendum is in addition to the Maritime and Aviation Project Labor Agreement ("MAPLA") negotiated between the Building and Construction Trades Council of Alameda County and the Port. Specifically, this Addendum is intended to ensure that work covered by MAPLA ("Covered Project(s)") will be performed efficiently and without interruption. This Addendum is entered into by the Port for the proprietary purposes set forth in MAPLA. In addition, the Port has entered into this Addendum as a result of the particular concerns associated with the utilization of heavy trucking in a densely-populated urban environment, which requires particular attention to matters of safety, financial and environmental responsibility on the part of trucking contractors, adherence to prevailing wage, licensing and other laws that have been enacted for the protection of the public. Therefore, the Parties agree as follows.

**2. Scope of Addendum**

This Addendum shall govern the award of bids for, the contracting work for, and the performance of Construction Trucking Work (i.e., the delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble). The MAPLA, and not this Addendum, shall apply to all other work covered by MAPLA within the Teamsters' jurisdiction that is not Construction Trucking Work.

The MAPLA shall not apply to any Construction Trucking Work performed by drivers who are *bona fide* independent contractors, and any such excluded work shall not be subject to the limits of the MAPLA Small Business Enterprise Program set forth in Article 9 of the MAPLA. All drivers shall perform work as initially classified notwithstanding any pending disputes about the classification of such drivers, unless the Port determines that the drivers are improperly classified.

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Trucking brokers (including drivers who are *bona fide* independent contractors that subcontract with or employ other drivers to perform work for Covered Project(s)) shall be required to execute a Letter of Assent to the MAPLA prior to performing any work on Covered Project(s). The MAPLA Letter of Assent shall refer to and bind Contractors to the terms of this Addendum and attachments.

The Teamsters recognize and agree that the terms of Article 12 of the MAPLA (Work Stoppages and Lockouts) apply to this Addendum and that, among other things, the Teamsters may not engage in strikes, sympathy strikes, picketing, work stoppages, slowdowns, or other disruptive activity at the site(s) of the Covered Project(s) or because of a dispute concerning Covered Project(s).

### **3. Bidding of Work**

The Port shall incorporate the material terms of the MAPLA Trucking Requirements, attached hereto as **Exhibit A**, into all future bidding documents for Covered Project(s) and shall include this Addendum with any bidding documents that involve or entail Construction Trucking Work.

### **4. Enforcement**

The parties recognize that misclassification is a serious concern in the transportation industry. Misclassification and the failure to pay wages owed have the effect of undermining sources of public revenue, prevailing wage requirements, licensing and contracting laws, financial and environmental responsibility, and may contribute to the eruption of labor disputes and work stoppages. Accordingly, the provisions respecting enforcement of these requirements is intended to ensure the safety of the public and of drivers, accomplish the Port's environmental goals, and facilitate the timely and efficient completion of Covered Project(s).

In order to ensure the Parties and contractors are in compliance with MAPLA, state laws and regulations respecting government contracts, and this Addendum, the Port shall require all drivers engaged to perform work on Covered Project(s) to complete a questionnaire that incorporates the material terms of the MAPLA Driver Questionnaire, attached as **Exhibit B**, hereto. The purpose of the questionnaire is to ensure compliance with the Trucking Requirements and ensure that drivers are properly classified as independent contractors or employees. Responses to all questionnaires will be signed under penalty of perjury and will be public records, except for those portions marked confidential.

Disputes regarding whether a driver is a *bona fide* independent contractor and any related claim for nonpayment of wages and benefits because of misclassification shall be resolved through the MAPLA grievance procedure in Article 13, during which all applicable State law

standards and burdens shall apply. Notwithstanding the provisions of Section 13.2, Step 4(b) of the MAPLA regarding equally sharing costs of arbitration, an arbitration award regarding claims about the misclassification of drivers and/or claims for nonpayment of wages and benefits because of misclassification, may include an award of reasonable attorneys' fees and costs (but not penalties) to the prevailing party, subject to the discretion of the arbitrator and only to the extent authorized by State law. For all disputes under this Addendum other than misclassification – including, without limitation, disputes regarding nonpayment of wages for employee drivers – the MAPLA grievance procedure in Article 13 shall be the exclusive dispute resolution mechanism.

### 5. Savings and Supercession

The terms contained in this Addendum and its exhibits are valid and enforceable as if they were set forth directly in MAPLA, and shall supersede any inconsistent terms contained in MAPLA. In the event that any provisions set forth in this Addendum are found by a court of law to be void, all other provisions shall continue to remain in effect and the Parties shall meet and confer in good faith to address any such ruling.

The Parties agree that the timely, efficient, and economical completion of Covered Project(s) is of utmost importance. The Parties shall, in good faith, endeavor to resolve any operational issues that arise because of the implementation of this Addendum, the MAPLA Trucking Requirements, or the MAPLA Driver Questionnaire, and may make mutually agreed upon changes.

Accepted and Agreed to this 30 day of January, 2016

**City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners**

By:

  
J. Christopher Lytle  
Executive Director

**International Brotherhood of Teamsters, Local 853**

By:

  
Rome Aloise  
Secretary-Treasurer

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## EXHIBIT A

### MAPLA Material Haul Trucking Services Requirements

*The material terms of the following requirements will be incorporated in bid specifications and/or the MAPLA Operating Procedures governing trucking services.*

The following requirements apply to the delivery of ready-mix, asphalt, aggregate, sand, or other fill material that are directly incorporated into the construction process of the Covered Project(s), as well as the off-hauling of debris, excess fill, material, mud, dirt, ground asphalt, or concrete rubble ("Construction Trucking Work" or "Work"). The word "Equipment" refers to both the truck and trailer used for hauling. These requirements are intended to ensure the Work is performed in accordance with professional standards of workmanship, safety and the health of not only the drivers performing the Work, but also of those around them, including other workers and the public, while minimizing the environmental impact on the high-density urban environment in which the Work will be performed. These requirements impose standards and procedures with which the contractor and any subcontractors performing the Work must comply. The requirements contained herein may apply to the individuals performing the Work and/or Contractors awarded the Work, respectively referred to as "drivers" and "Contractors" herein. The term "driver" is used without regard to whether the individual performing the work has been classified as an employee or as an independent contractor. These requirements are in addition to those set forth under MAPLA. The term "Union" means the International Brotherhood of Teamsters, Local 853.

#### **Equipment**

1. The Contractor is responsible for ensuring that the equipment utilized in the performance of the Work complies with the requirements set forth herein. The Contractor is responsible for ensuring all subcontractors adhere to these requirements. All equipment shall be maintained in good working condition, as determined by standards set forth by the State of California Highway Patrol. At any time, the Trucking Coordinator (as described below) may require inspection or servicing of any equipment that does not comply with the requirements set forth herein. The Trucking Coordinator shall immediately notify the Contractor and any subcontractors in writing of any equipment requiring inspection or servicing. The Trucking Coordinator's written notification shall identify: (i) the equipment requiring inspection or servicing; and (ii) the violation and/or deficiency. Failure to comply with the Trucking Coordinator's demand shall be grounds for removal of the driver and/or equipment from the job, subject to the discretion of the General Contractor.

2. The Contractor will ensure that each driver, prior to commencing Work, shall submit a completed questionnaire attached as **Exhibit B** to the Addendum. The questionnaires shall be signed under penalty of perjury. The Trucking Coordinator and/or Port will provide questionnaires to all drivers, who must complete and return them directly to the Trucking Coordinator or Trucking Coordinator's designee no later than five (5) business days after the driver first performs Work. Drivers who fail to return completed questionnaires within this five

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business day timeframe will not be permitted to perform Work unless they execute a Letter of Assent. Drivers who are so prohibited may be permitted to perform Work at the discretion of the Trucking Coordinator only after completing the questionnaire or executing a Letter of Assent. The Contractor, its subcontractors, the Port, and/or Teamsters shall not attempt to influence the driver to answer the questionnaire in any manner.

3. Equipment utilized in the performance of the Work must meet the CARB regulations in effect for On-Road Heavy-Duty Diesel Vehicles (13 C.C.R. § 2025).

4. To the extent consistent with the Port of Oakland Standard Contract Provisions for Public Works Projects, as amended, all equipment used for performing the Work shall be road worthy and shall be fully insured with minimum Commercial Automobile Liability insurance limits of \$1,000,000 combined single limit, each accident for bodily injury and property damage, from a fully bonded or reinsured insurance company licensed to do business in California. An active policy or policies for such insurance shall be maintained throughout the performance of the Work.

5. All Equipment used to perform the Work shall comply with the California Highway Patrol's requirements regarding Biennial Inspection of Terminals ("BIT") inspections both prior to and during the Project. The Contractor and any subcontractor shall not be permitted to use any equipment at the Project that is not maintained in accordance with the BIT Inspection regulations. Proof of compliance shall be provided to the Trucking Coordinator and furnished upon request to the Union.

6. The Contractor, any subcontractor, or driver shall not tamper with emission control equipment or the engine calibration software controlling engine performance on any equipment.

#### **Driver**

7. All drivers of heavy duty commercial trucks with a Gross Motor Vehicle Weight Rating of 26,001 pounds or more performing Work will be subject to the MAPLA's Substance Abuse Testing Policy. All such drivers will comply with the Trucking Coordinator's oversight or monitoring of the Substance Abuse Testing Policy. Failure to comply with such substance abuse testing shall be grounds for immediate removal from the Project.

8. All drivers performing the Work shall be required to possess, maintain and have in their possession the proper operator's license and medical examiner's certificate at all times, and shall present such licenses and certificates to the Trucking Coordinator upon demand.

9. To the extent required by law, all drivers must be covered by a workers compensation insurance policy. To the extent the Contractor or any subcontractor is self-insured, it must demonstrate compliance with the California Labor Code, including a copy of a current certificate of consent to self-insure issued by the Director of the California Department of Industrial Relations under Labor Code Section 3700(b), to the extent this is consistent with the Port of

Oakland Standard Contract Provisions for Public Works Projects, as amended. No driver may be permitted to perform Work unless proof of such a policy is provided.

10. All drivers performing Work must register with the Trucking Coordinator and provide proof of liability insurance and workers compensation coverage or exemption therefrom. The Trucking Coordinator shall ensure union security provisions are enforced and complied with to the same extent and degree as elsewhere on the Project. Contractors shall not be required to contribute to the Union's Health & Welfare and Pension Trusts on behalf of drivers who are *bona fide* independent contractors. Independent Contractors may elect to participate in the Union's Health and Welfare or Pension Trusts at their own expense. Drivers who are *bona fide* independent contractors shall not be required to be referred through the Union's hiring hall. In soliciting independent contractor drivers, no Contractor or subcontractor shall discriminate against a driver based on his or her referral from the Union hiring hall or participation in benefit plans.

11. The Union shall have standing to initiate and prosecute grievances under MAPLA Article 13 (Grievances) and the Construction Trucking Addendum (attached as Appendix F to the MAPLA) for the purpose of challenging the employment classification of drivers and remedying the non-payment of wages under the MAPLA on behalf of drivers.

#### **Prevailing Wage**

12. All drivers performing Work shall be paid applicable California State prevailing wage rates and shall be compensated in accordance with California law.

13. All drivers performing Work shall be monitored on-site by an employee of the Contractor.

14. The Port shall monitor Prevailing Wage and MAPLA compliance on work performed on Covered Project(s) and shall inform the Union of any discovered violations.

#### **Health, Safety and Financial Responsibility**

15. All drivers performing Work shall participate in the Contractor's safety training program, which shall include: (i) driving safety; (ii) hazmat training; and (iii) jobsite awareness and reporting of safety issues and suspicious or threatening activities.

16. The Contractor shall indicate whether it is currently the debtor in a bankruptcy case and whether it has filed a bankruptcy petition in the last seven (7) years.

17. Upon request by the Union, the Trucking Coordinator shall collect from the principal(s) of the Contractor the names of all prior trucking companies, proprietorships, or other entities in which they have held an ownership interest in the past three years. As used in this section, "principal(s) of the Contractor" means any person or entity holding at least a 25% ownership interest in the Contractor.

18. The Contractor shall indicate whether it, in the last five (5) years, had any civil claim filed in court, arbitration, administrative agency or other dispute resolution proceeding alleging violations of The Federal Hours of Service Rules; California Labor Code; California Public Contract Code; or alleged violation of any other rule or regulation promulgated by the Federal Motor Carrier Safety Administration, including rules regarding the proper transportation of hazardous materials.

19. The Contractor shall be subject to retention of progress payments to ensure performance of the Work. This retention may also be used, solely or in combination with progress payments due to the Contractor, for the purpose of securing payment of prevailing wage to all drivers employed, engaged or contracted by the Contractor or any subcontractor to perform the Work.

20. The Contractor shall be subject to audits of its books and records, including payroll, by the Port, which includes the Trucking Coordinator, for the purpose of monitoring and enforcing financial responsibility provisions and payment of prevailing wage to all drivers engaged or employed by the Contractor performing the Work whether employed or subcontracted by the Contractor.

21. In accordance with the Public Contracts Law, the Contractor must designate all subcontractors it anticipates utilizing, which shall hold valid contractors licenses issued by the State of California, as applicable.

#### **Trucking Coordinator**

22. The Trucking Coordinator shall be provided by the Port. Subject to all rules governing Port employment (including, without limitation, the City of Oakland Charter, the City of Oakland Municipal Code, and the Port's Personnel Rules), the Port shall select the Trucking Coordinator following consideration of qualified applicants, including those referred by the Union, and following consultation with the Union regarding the minimum qualifications required of the Trucking Coordinator and the requirements of the position. The same Trucking Coordinator may oversee more than one project covered by MAPLA. Subject to all rules governing Port employment, the Trucking Coordinator shall prioritize fulfilling his/her duties required hereunder.

23. The Trucking Coordinator shall not have the power to hire or fire on behalf of the Contractor or any subcontractors, but may recommend removal of drivers from the job upon notice to the Contractor and documentation of noncompliance by such driver or subcontractor with respect to these specifications, MAPLA or State prevailing wage law.

24. Subject to the terms of these specifications, the Trucking Coordinator shall independently exercise his/her discretion. The Contractor shall not improperly influence or attempt to improperly influence the Trucking Contractor in any manner. The Trucking Coordinator's duties shall include ensuring that these specifications, MAPLA and State prevailing wage law are enforced. The Trucking Coordinator may interact directly with drivers to ensure compliance with the duties identified above, so long as the Trucking Coordinator's actions do not unduly

disrupt the Work and comply with the Contractor's needs and practices. Upon findings of non-compliance with these specifications, the Trucking Coordinator shall inform the Contractor in order to allow the Contractor sufficient time to correct the noncompliance. If the Contractor is not able to resolve the noncompliance, the Trucking Coordinator or the Union may refer the issue to the Joint Administrative and Social Justice Trust Committee (as described in MAPLA Article 6) for resolution.

25. The Trucking Coordinator shall exercise his/her best efforts to maintain communication with the Union and to provide notice to the Union of any discovered non-compliance with these requirements.

**EXHIBIT B**  
**MAPLA Driver Questionnaire**

*[The Port reserves the right to streamline, reorganize, and make other non-substantive edits before publishing this questionnaire. Items marked "[CONFIDENTIAL]" below shall be segregated onto a separate page so that the questionnaire can be easily redacted before disclosure in response to a Public Records Act or similar request.]*

**I. GENERAL INFORMATION**

1. Please list the following information for all driver(s) who operate the vehicle:
  - a. Name(s);
  - b. [CONFIDENTIAL] California Driver's License number(s);
  - c. Years of driving experience; and
  - d. Driver's License endorsements (if any).
  
2. Please provide the following information for your power unit ("Tractor"):
  - a. Tractor's Vehicle Identification Number.
  - b. The manufacturer and license plate number of the Tractor, as well as the year of manufacture for the chassis and engine.
  - c. Name and [CONFIDENTIAL] address of the legal owner of the Tractor that you will be driving, as listed on DMV documentation.
  
3. Please provide the following information for your trailer or material container(s) (dump box) of the load carrying equipment ("Trailer"):
  - a. Name and [CONFIDENTIAL] address of the legal owner of the Trailer listed on DMV documentation that will be used to perform work on the Port of Oakland project(s).
  - b. The manufacturer and license plate number of the Trailer(s), as well as the year of manufacture for the chassis

**II. SAFETY INFORMATION**

4. Please provide the following safety information for your Tractor:
  - a. Does your Tractor's engine meet the necessary California Air Resources Board ("CARB") requirements in effect for On-Road Heavy-Duty Diesel Vehicles (13 C.C.R. § 2025) to perform work on the Port of Oakland project(s)?

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- b. Has your Tractor's engine had an exhaust filter installed on it?
  - c. Do you have a procedure, policy or controls you have in place to ensure that scheduled runs do not require the driver to exceed speed limits or exceed maximum hours of service (as required by Vehicle Code Section 34501.3)?
    - i. State all individuals who administer the above-described procedure, policy, or controls and their relationship to you.
5. Please provide the following BIT Program Information
- a. For each terminal designated as the location where your vehicle will be inspected under the Biennial Inspection of Terminals ("BIT") program administered by the CHP, list the terminal's [CONFIDENTIAL] address and owner, and the vehicle(s) designated for each terminal.
  - b. Have any of the prior terminal inspections been performed through administrative review? If yes, indicate the designated terminal representative who signed the request for administrative review, and his/her relationship to you.
6. Have you ever had your license revoked for driving under the influence?
7. Have you been involved in any vehicular accidents within the past 2 years?
- a. If so, was there any injury to any party involved?
  - b. If so, were you cited by law enforcement for the accident(s)?
8. In the last 5 years, have you ever been placed "Out of Service" by the California Department of Motor Vehicles ("DMV") or the California Highway Patrol ("CHP") due to the following reasons?
- a. Excessive Hours?
  - b. Logbook Violations?
  - c. Equipment Violations?
9. **Are you paid under a W-2? If yes, please skip the rest of this questionnaire (Sections III through V) and sign at the end.**

### III. FINANCING INFORMATION

#### *Tractor*

10. Do you lease the Tractor from another person for a term of more than 4 months?
11. If you are financing the Tractor, please provide:
- The name and [CONFIDENTIAL] address of the person or financial institution carrying the loan; and
  - A list of all guarantors of the loan, if any, on the Tractor and their relationship to you.
12. Do you operate the Tractor exclusively for another person or entity? If yes, what is the name of the person or entity?

#### *Trailer*

13. If you are financing the Trailer(s), please provide:
- The name and [CONFIDENTIAL] address of the person or financial institution carrying the loan;
  - A list of all guarantors of the loan, if any, on the Trailer(s) and their relationship to you.
14. Can you use the Trailer(s) for anything and/or at any time that you wish to?

### IV. COMPENSATION INFORMATION

#### *Work Through Brokers*

15. Did you obtain work on the Port of Oakland project(s) through a Broker? If no, skip this Section IV.
- If yes, what is the name of the Broker?
  - How long (in years and months) have you been obtaining work through the Broker?
  - How many other brokers have you worked for in the past 2 years?
16. Do you have a written contract with the Broker?
- [CONFIDENTIAL] If yes, please attach a copy of the contract.
17. Do you pay a referral fee to the Broker? If yes:
- How much is the referral fee? (0% – 4%; 5% – 9%; 10% – 14%; 15% – 19%; 20% or more)

18. Does the Broker provide you any training? Does the Broker maintain your Tractor and/or Trailer to ensure you are up to date with BIT and CARB inspections?

***Pay Practices***

19. Please indicate how you are paid (e.g., by the hour, by tonnage rates, by the load).

20. If you are paid by a Broker:

- a. Are you paid weekly?
- b. Are you paid monthly?
- c. Do you have to wait for more than 30 days for payment for work performed?
- d. Do you receive any benefits from the Broker (e.g., health insurance, vacation pay, pension)?
- e. Does the Broker reimburse you for any expenses in addition to what you are paid? If so, what expenses? Do you receive reimbursement for labor and equipment in separate checks?

21. Do you receive standby pay or pay for time-worked when waiting for loads?

***Job Performance***

22. In the course of work, are you directed on any of the following:

- a. What specific time to arrive at the job?
- b. What specific time the load is to be delivered by?
- c. What routes to take to and/or from the job or location of the delivery?
- d. Any directions relating to transporting hazardous materials?

23. Who gives the directions described above?

**V. INSURANCE AND BUSINESS INFORMATION**

24. State the insurer and [CONFIDENTIAL] policy number of any insurance covering your Tractor, your Trailer(s), or your operations, and the name of the insured.

25. Do you have Workers' Compensation insurance?

26. What is your CHP Carrier Identification Number ("CA Number")?

- a. How long have you had this CA Number?
- b. How many vehicles do you have under this CA Number?

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c. If you are self-insured for workers' compensation, please provide the certification submitted to the Board for purposes of self-insurance.

27. Do you have a Business License Number? If so, what is it and in which locality was it issued?

28. Do you haul anything other than construction materials (including construction fill) with your Tractor(s) and/or Trailer(s)?

a. If yes, please describe the other materials that you haul.

29. Do you advertise for your services?

a. If yes, where and how do you advertise for your services?

**I certify under penalty of perjury that the information provided above is true and correct.**

**Date:**

**Signature:**

**Printed Name:**

**[CONFIDENTIAL] Address:**

**[CONFIDENTIAL] Telephone:**

**[CONFIDENTIAL] Email:**

**Attachment B**

**OPERATIONS JOBS POLICY**

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Oakland Army Base Project – Port of Oakland

Seaport Logistics Complex

Port – Centerpoint Oakland Global Logistics Center LLC Ground Lease

- I. Purpose.** This Operations Jobs Policy sets forth certain requirements regarding hiring and employment for jobs related to operation of the development on the Project Site associated with the Seaport Logistics Complex depicted in the attached Schedule 1 consisting of approximately 27 acres located at the Port of Oakland. Employers in the Project Site agree to comply with terms of this Operations Jobs Policy as a condition of entry into any agreement to which this Operations Jobs Policy is attached, as more particularly set forth herein. This Operations Jobs Policy does not cover construction hiring or construction employment, or any work covered under the Port’s Maritime and Aviation Project Labor Agreement (MAPLA).
- II. Definitions.** As used herein, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“Background Exceptions” shall mean: (i) law, regulation or policy of any applicable governmental or quasi-governmental body (including, but not limited to, those established under the Transportation Worker Identification Credential program and the Customs Trade Partnership Against Terrorism); (ii) the Employer’s good faith determination that the position is of such sensitivity that individuals with Directly-Related Convictions are ineligible (“Directly-Related Conviction” meaning a conviction for which the associated illegal acts in question have a direct and specific relationship on that person’s ability to perform the duties or responsibilities necessarily related to the employment position); or (iii) the Employer’s hiring policies that are uniformly applied on a national basis with respect to prospective workers’ history of involvement with the criminal justice system.

“City” shall mean the City of Oakland, California.

“Developer” shall mean: (i) Centerpoint Oakland Global Logistics Center LLC and its approved successors, assigns and transferees, as set forth in the Initial Ground Lease.

“Disadvantaged Worker” shall mean a Resident that (i) is a custodial single parent; (ii) has been emancipated from the foster care system within the previous five (5) years; or (iii) meets the below eligibility criteria of a “qualified full-time employee” under California’s New Employment Credit at the time of hire. As set forth in Cal. Rev. & Tax Code Sec.

23626(b)(10), a “qualified full-time employee” at the time of hire means an individual who meets the following criteria:

(i) Upon commencement of employment with the qualified taxpayer, the individual:

(I) Was unemployed for the six months immediately preceding employment with the qualified taxpayer. In the case of an individual who completed a program of study at a college, university, or other postsecondary educational institution, received a baccalaureate, postgraduate, or professional degree, and was unemployed for the six months immediately preceding employment with the qualified taxpayer, that individual must have completed that program of study at least 12 months prior to the individual’s commencement of employment with the qualified taxpayer; or

(II) Is a veteran who separated from service in the Armed Forces of the United States within the 12 months preceding commencement of employment with the qualified taxpayer; or

(III) Was a recipient of the credit allowed under Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal purposes, for the previous taxable year; or

(IV) Is an ex-offender previously convicted of a felony; or

(V) Is a recipient of either CalWORKs, in accordance with Article 2 (commencing with Section 11250) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or general assistance, in accordance with Section 17000.5 of the Welfare and Institutions Code.

“Employer” shall mean any entity employing at least two full time equivalent individuals to perform On-Site Jobs. For example, this threshold would be satisfied by employment of either two full-time workers or four half-time workers to perform On-Site Jobs.

“Initial Ground Lease” shall mean the Ground Lease by and between the Port and the Developer dated \_\_\_\_\_, 2017 for approximately 27 acres within the Project Site.

“Jobs Center” shall mean the West Oakland Job Resource Center or other jobs center to be designated by the Port as such for purposes of implementation of this Policy.

“Large Employer” shall mean any entity having a total job count of twenty (20) or more, and either leasing space within the Project Site or performing services within the Project Site pursuant to one or more service or labor supply contracts, and, for purposes of the application of this Operations Jobs Policy only, such entity’s service contractors, subcontractors, and labor suppliers that employ workers to perform services for such entity. For purposes of this definition, “total job count” shall mean the number of individuals working in On-Site Jobs and employed directly by the entity in question, working under a service contract or labor supply

contract with the entity in question, or working under any related subcontract or agreement with the entity in question.

“LIA” shall mean the California cities of Oakland, Alameda, Emeryville and San Leandro.

“On-Site Job” shall mean any job for which at least fifty percent (50%) of the work hours during any calendar year are performed on the Project Site.

“Policy” shall mean this Operations Jobs Policy for the Seaport Logistics Complex.

“Port” shall mean the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners.

“Project” shall mean the redevelopment activities occurring at the Project Site.

“Project Site” shall mean the parcels of land within the Seaport Logistics Complex depicted in the attached Schedule 1 consisting of approximately 27 acres at the Port of Oakland. If the Developer and the Port successfully negotiate the terms of a lease on all or a portion of the Expansion Area as defined in the Initial Ground Lease, then this definition shall be expanded to include the development, leasing and operation of the leased expansion area.

“Resident” shall mean an individual domiciled in the LIA for at least six (6) months prior to the date that such individual is hired or assigned to perform the applicable work, with “domiciled” as defined by Section 349(b) of the California Election Code, as in effect on the Effective Date of the lease, and as attached hereto as Schedule 2.

“Tenant” shall mean any entity leasing space from a Developer in the Project Site.

### **III. Local Hiring.**

#### **A. Hiring Process.**

1. Long-Range Planning. As soon as the information is available following a Large Employer’s execution of a contract under which it will operate at the Project Site and within thirty (30) days of each January 1 thereafter, the Large Employer shall provide to the Port and the Jobs Center information regarding such Large Employer’s good faith projection of the number and type of On-Site Jobs that such Large Employer reasonably believes it will need to fill during the applicable calendar year, the basic qualifications anticipated to be necessary for such On-Site Jobs, and which, if any, of the Background Exceptions the Large Employer expects will apply to any of such On-Site Jobs based on the Large Employer’s knowledge at the time such information is provided.

#### **2. Initial Hiring Process.**

a. Notification of Job Opportunities. At least four (4) weeks prior to the date that a Large Employer is anticipated to commence operations in the Project Site, or, if such Large Employer executes a contract under which it will operate at the Project Site less than four (4) weeks prior to such anticipated date, within two (2) business days following execution of such contract and prior to commencing operations, such Large Employer shall notify the Jobs Center of openings for non-management On-Site Jobs and provide a clear and complete description of job responsibilities and qualifications therefor, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.*, language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. The Large Employer shall use normal hiring practices, including interviews, to exclusively consider for all On-Site Jobs all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request for a four (4)-week period following notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make best efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the four (4)-week period the Large Employer has been unable to fill all openings for On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Large Employer shall continue to make best efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

c. Pre-opening Transfer.

i. When a Large Employer is closing a facility and is transferring the majority of its staff from the previous facility to a new facility within the Project Site, the provisions of the Initial Hiring Process (as set forth in Section III.A.2 above) will not apply to the positions filled by workers transferred from the closing facility. However, with regard to those positions not filled by staff transferred from the previous facility, such Large Employer will be subject to the initial hiring process (as set forth in Section III.A.2 above). Upon commencing operation in the new facility, such Large Employer will be subject to the ongoing local hiring requirements (as set forth in Section III.A.3 below), regardless as to whether the staff that the Large Employer is transferring already satisfy the safe harbor provisions (as set forth in Sections III.B.2 below), including any notice and exclusive hiring requirements.

ii. When a Large Employer hires for positions in facilities located outside of the Port with the intention of transferring such hires to a new facility at the Project Site, such Large Employer will be subject to the initial hiring process (as set forth in Section III.A.2 above) for those positions, including the notice provisions.

d. Jobs Center Feedback. Following the completion of the initial hiring process set forth in this Section III.A.2, at the request of the Port a Large Employer shall meet and confer with the Port Executive Director or his designee and the Jobs Center

to provide feedback on the initial hiring process so as to ensure that the Jobs Center may meet the future employment needs of the Large Employer and any future Employer, as relevant, and ensure the maximum hiring of Residents and Disadvantaged Workers feasible given the opportunities to be created by the Project.

3. Ongoing Hiring Process.

a. Notification of Job Opportunities. After a Large Employer has commenced operations at the Project Site, it shall continue to use the Jobs Center in accordance with this Section III.A.3 as a resource to fill openings for On-Site Jobs. When a Large Employer has an opening for an On-Site Job available, the Large Employer shall notify the Jobs Center of such job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. The Large Employer shall then use normal hiring practices, including interviews, to exclusively consider for all On-Site Jobs all Residents and Disadvantaged Workers referred by the Jobs Center and meeting the qualifications described in the referral request during a five (5)-day period after initial notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Large Employer shall make good faith efforts to fill all available On-Site Jobs with Residents and Disadvantaged Workers referred through the Jobs Center. If at the conclusion of the five (5)-day period the Large Employer has been unable to fill all openings for On-Site Jobs with Residents and Disadvantaged Workers referred by the Jobs Center, the Large Employer may use other recruitment methods, although the Large Employer shall continue to make good faith efforts to hire Residents and Disadvantaged Workers later referred by the Jobs Center for non-management On-Site Jobs.

4. Priorities for Initial and Ongoing Hiring. In engaging the Jobs Center to perform the services described in this Policy, the Port shall require the Jobs Center to apply the following priorities in referral of applicants to Large Employers:

i. First Priority: Residents and Disadvantaged Workers residing in the following zip codes: 94608, 94609, 94607, 94612, 94606, 94601, 94621, and 94603;

ii. Second Priority: Residents of the LIA.

5. Nondiscrimination. Employers shall not discriminate against Residents or Disadvantaged Workers on the basis of their status as a Resident, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

6. Worker Qualifications. Unless a criminal background check is required by any of the Background Exceptions, an Employer shall neither request from prospective workers, nor independently research prospective workers' history of involvement with the criminal justice system. Where a criminal background check is required by any Background Exception, unless the requirements of a law, regulation, or governmental policy require otherwise, the Employer shall: (a) include the following statement in the position description: "This position is subject to a background check for any convictions related to its responsibilities and requirements. Only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts will be considered and will not automatically disqualify a finalist candidate."; (b) undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question); (c) consider only criminal histories (i) related to job requirements and responsibilities or (ii) related to violent acts; and (d) take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. Unless a credit history is required by any of the Background Exceptions or Employers' good faith determination that the position is of such sensitivity that individuals with particular types of credit histories are ineligible, an Employer shall neither request, nor independently research, prospective workers' credit histories. When conducting background checks, an Employer must comply with all applicable federal and state laws, which may include provisions requiring Employers to provide the candidate an opportunity to obtain a copy of the background check, and/or inform the candidate in writing if an Employer determines a candidate is unqualified for a position based on information discovered in the background check. To the extent that this Section III.A.6 conflicts with any requirements of this Policy related to Disadvantaged Workers, this Section III.A.6 shall control.

B. Monitoring and Enforcement.

1. Safe Harbor Provision. Any Large Employer for whom at least fifty percent (50%) of workers hired for On-Site Jobs during a particular year were Residents, and for whom at least twenty-five percent (25%) of workers hired for On-Site Jobs during a particular year were Disadvantaged Workers, shall be deemed to be in compliance with Sections III.A.2, and III.A.3 of this Policy, for all hiring during that year. For the avoidance of doubt, for purposes of determining the percentages of workers hired for On-Site Jobs during a particular year that were Residents and Disadvantaged Workers, a Disadvantaged Worker shall be counted as both a Resident and a Disadvantaged Worker.

2. Credit for Hiring at Other Locations. Large Employers shall receive credit toward achievement of the safe harbor percentages set forth in Section III.B.1 for any hires of Residents and/or Disadvantaged Workers to perform jobs at other locations, so long as such Residents and/or Disadvantaged Workers are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 et seq.) (e.g., if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and such Large Employer also hires one Resident to perform a job at another location with such compensation, then, for purposes of Section III.B.1, seven (7) of such ten (10) workers will be deemed

to be Residents). Notwithstanding the foregoing, the total credits determined under this Section III.B.2. that may be applied under the safe harbor provisions of Section III.B.1. shall not exceed fifty percent (50%) of the total safe harbor requirements of Section III.B.1.

3. Retention Incentive. For every two thousand (2,000) hours that any one Resident and/or Disadvantaged Worker who performs an On-Site Job works for a Large Employer, that Large Employer shall be entitled to a “bonus” hiring credit of one individual/position for the applicable category towards achievement of the safe harbor percentages set forth in Section III.B.1. For example, if a Large Employer hires ten (10) workers for On-Site Jobs in a year, and six (6) are Residents, and a Resident works his or her two thousandth (2,000<sup>th</sup>) hour for such Large Employer, then, for purposes of Section seven (7) of such ten (10) workers will be deemed to be Residents. For any employee that does not work on an hourly basis, hours shall be counted towards this threshold on the basis of forty (40) hours per week of full time employment, so long as that employee actually works or is otherwise paid for at least forty (40) hours in all weeks in question.

4. Liquidated Damages. Each Large Employer agrees that, if during a particular year it has not either complied with the hiring process requirements of Sections III.A.2 and III.A.3, above or satisfied the safe harbor percentage set forth in Section \_\_\_\_ above, then as the sole and exclusive remedy therefor, it shall pay to the Port liquidated damages in the amount of five thousand dollars (\$5,000) per On-Site Job short of the safe harbor percentage set forth in Section III.B.1. For example, if a Large Employer hires ten workers for On-Site Jobs in a year, and four are Residents and two are Disadvantaged Workers, then the liquidated damages shall total seven thousand five hundred dollars (\$7,500). Of this amount, five thousand dollars (\$5,000) is based on failure to meet the fifty percent (50%) safe harbor percentage for hiring of Residents, with safe harbor in this case requiring five Residents to be hired, and actual performance having been four hires. The remaining two thousand five hundred dollars (\$2,500) is based on failure to meet the twenty-five percent (25%) safe harbor percentage for Disadvantaged Workers, with safe harbor amount in this case requiring at least two and one half (2.5) Disadvantaged Workers to be hired, and actual performance having been two hires; as shortfall in this case would be one-half of a single hire, liquidated damages would be half of one On-Site Job, or two thousand five hundred dollars (\$2,500). Any liquidated damages collected by the Port shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.

5. Compliance Records. Each Employer shall make available to the Port on a quarterly basis (as of January 1, April 1, July 1, and October 1 of each year), or upon request, records sufficient to determine compliance with this Policy. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.

6. Additional Enforcement Mechanisms. Except as set forth in Section III.B.4 above, the Port shall be entitled to all remedies at law or in equity for any failure

to comply with this Policy. Further, Employers who repeatedly violate this Policy may be debarred from future Port contracts.

#### **IV. Temporary Employment Agencies.**

A. Large Employers may enter into a contract or other arrangement to supply workers for temporary employment in On-Site Jobs, provided that before engaging a referral source as the employer of record for temporary workers, the employer provides notice to the Jobs Center, and exclusively considers any workers referred by the Jobs Center (for employment through the Jobs Center as employer of record) for a period of 48 hours. Furthermore, without the approval of the Port Executive Director in his or her reasonable discretion (i) temporary employment of any individual worker will last one hundred twenty (120) days or less per calendar year and (ii) no more than forty percent (40%) of the total number of days worked by all individuals performing On-Site Jobs on behalf of such Large Employer shall be performed by temporary workers. The Port Executive Director shall reasonably consider any request for such approval by the applicable Large Employer if such Large Employer reasonably demonstrates that compliance with this Section IV.A may reasonably be expected to create significant economic or operational hardship for the Large Employer.

#### **V. Living Wages.**

A. Compliance with Ordinance. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*).

#### **VI. Miscellaneous.**

A. Contact Person. Within thirty (30) days of having entered into any contract (including any assignment of all or any portion of a lease) related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the Port.

B. Determination of Residency or Priority Status. A Large Employer's determination of (i) whether any individual is a Resident or (ii) any individual's status within the priorities set forth in Section III.A.4 shall be binding in determining whether the requirements of this Policy have been satisfied, including the requirements of Sections III.A and III.B, provided that such Large Employer obtains reasonable written documentation demonstrating such individual's status at the time that such individual is assigned or hired and such Large Employer retains such documentation and makes it available to Port for inspection at reasonable times.

C. Determination of Disadvantaged Status. The Jobs Center shall make determinations of Disadvantaged Worker status. The Jobs Center shall make such determinations promptly upon request from an Employer, a worker, or the Port.

D. Assignments, Subleases and Contracts. Each Developer or Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in a lease of any portion of the Project Site. If Developer complies with this Section IV.D with regard to an assignment or sublease, then Developer shall not be liable for any breach of this Policy where that breach is (i) related to the interest so assigned or subleased and (ii) first arises after the date of such assignment or sublease. Each Employer shall include compliance with this Policy as a material term of any contract or other agreement under which any On-Site Jobs may be performed. Each Tenant leasing space from the Developer shall be responsible for compliance with this Policy by subtenants, contractors and subcontractors, temporary employment agencies, and any other entities with responsibilities under this Policy and operating on property leased by that Tenant. Such Tenants shall take all reasonable steps to ensure compliance by such entities, and shall be responsible to the Port (as an intended third party beneficiary) for liability based upon violations of this Policy on the property in question. If Developer does not lease a portion of the Project Site to any Tenant, then with regard to that portion of the Project Site, Developer shall have responsibilities as described for Tenants leasing space from Developer. If a Developer, Employer or Tenant enters into a contract in violation of this Section VI.D, then upon request from the Port it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

E. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into such a contract, then upon request from the Port it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

F. Funding Restrictions. For any portion of operations on the Project Site for which, based on use of federal or state funds, a federal or state agency prohibits application of the requirements of this Policy, the Port will, after consultation with Developer, work collaboratively with the funding agency to adapt the requirements of this Policy to the restrictions imposed by the funding agency, advancing the goals of this Policy to the greatest extent permitted by the funding agency. In such cases, Developer and the Port shall meet and confer with regard to the adapted requirements agreed to by the Port and the funding agency, and such requirements shall be applied to such portions of operations on the Project Site for the period required by such agency, and shall automatically become terms of this Policy with respect to such operations.

G. Third Party Beneficiaries. The Port is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The Port shall not delegate any of its responsibilities to any other third party, require the consent of any third party or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

H. Retaliation Prohibited. An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the Port or participating in any proceedings related to enforcement of this Policy against the Employer.

I. Material Term. This Policy is a material term of any contract into which it is incorporated.

J. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six (6)-month requirement for qualification as a Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code, as in effect on the LDDA Execution Date, attached hereto as Schedule 2.

K. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws. Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

L. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor of that entity.

M. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding; has had the opportunity to consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

N. Emergency. Developer or Large Employers may apply to the Port Executive Director for a waiver of Section III.A.2 or III.A.3 of this Policy on a temporary basis with regard to a particular portion of the requesting party's work on grounds of a major emergency or risk of serious damage to property, such as natural disaster or fire. The Port Executive Director may grant such waiver only for a period of time necessary to respond to the emergency or serious property damage and only where the requesting party demonstrates (i) specific evidence of a major emergency or risk of serious property damage, the response to which requires rapid hiring of a significant number of temporary workers, (ii) that application of Section III.A.2 or III.A.3 of this Policy would necessarily lead to an inability to address the emergency within the necessary timeframe or without substantial risk to safety of workers or serious damage to property, and (iii) that such inability or such risk cannot be avoided through changes to staffing, supervision, or operations in conjunction with application of Section III.A.2 or III.A.3 of this Policy. If the requesting party reasonably and in good faith believes that such a major emergency or risk of serious damage to property requires, and Developer or Large Employer undertakes, immediate action prior to obtaining any such waiver, then the Port shall reasonably consider granting any requested waiver on a retroactive basis with respect to such actions.

O. Hiring Discretion. Nothing in this Policy shall require that any Employer hire any particular individual; each Employer shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.

P. Collective Bargaining Agreements. To the extent that this Policy conflicts with any collective bargaining agreement(s) to which an Employer is party, and such agreement is applicable to Employer's operations on the Project Site and is in effect as of the date that the Employer executes a lease or contract under which it will operate at the Project Site, the terms of such collective bargaining agreement(s) shall take precedence, and this Policy shall not apply to the extent of any such conflict. Where a collective bargaining agreement takes precedence over this Policy as described above, Developer and Port shall make a good faith effort to encourage a meeting to occur promptly following such lease or contract execution date among the Employer, the applicable union(s) and the Port to discuss whether and how to reduce or eliminate conflict between this Policy and future collective bargaining agreements.

## **Schedule 1**

Project Site Plat and Legal Description

**Schedule 2**

Section 349(b) of California Election Code as of the Effective Date of the Lease

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<p><b>1. Parties &amp; Intent</b></p>	<p>This non-binding term sheet (“<b>Term Sheet</b>”) sets forth the terms upon which the Athletics Investment Group LLC d/b/a The Oakland Athletics, a California limited liability company (or an affiliate thereof) (the “<b>Oakland A’s</b>” or “<b>Developer</b>”) and the City of Oakland (the “<b>City</b>”) would negotiate and draft a Development Agreement for a mixed-use ballpark development project, as described herein, to be presented to the City Council for consideration after environmental review of the project in accordance with the requirements of the California Environmental Quality Act (“<b>CEQA</b>”).</p> <p>Developer is proposing to acquire the rights to develop a site known as the Charles P. Howard Terminal (“<b>Howard Terminal</b>”) on the Oakland waterfront from the Port of Oakland (“<b>Port</b>”), acquire certain adjacent properties from private owners, and construct a new Major League Baseball ballpark, as well as residential, entertainment, office, hotel, and retail (mixed use) development, creating a new Oakland Waterfront Ballpark District (the “<b>Project</b>”). The proposed Project would be constructed in phases as described below.</p> <p>The site proposed for development of the Project includes the Howard Terminal and certain adjacent properties totaling approximately 55 acres (collectively, the “<b>Project Site</b>”). The Project Site is located on the Oakland waterfront, north of and across the Oakland-Alameda Estuary from the City of Alameda. A location map and aerial photographs of the Project Site and the surrounding vicinity are provided on <b>Exhibit A</b> attached hereto.</p> <p>The City and Developer desire to enter into a Development Agreement to secure benefits for the City of Oakland and its residents, which are not achievable through the regulatory process, as well as to vest in Developer and its successors and assigns certain entitlement rights with respect to the Project Site. This Term Sheet summarizes the key terms and conditions that will form the basis for the negotiation and completion of the final Development Agreement.</p>
<p><b>2. Term and Early Termination</b></p>	<p>The “<b>Term</b>” of the Development Agreement shall commence upon the latest to occur of the following: 1) full execution and delivery of the Development Agreement; 2) the last effective date of the ordinances establishing a shared regulatory framework for the Project, as shall be adopted by the City Council and Board of Port Commissioners, respectively; and 3) full execution and delivery of the Option Agreement for Howard Terminal between the Port and</p>

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	<p>Developer (such date being the “<b>Commencement Date</b>”), and shall expire on the date that is 35 years from the Commencement Date. The term of the Development Agreement shall not be subject to extension for Force Majeure or for any other reason.</p> <p>Notwithstanding the foregoing, upon delivery of a written notice from the City Administrator of the occurrence of an Early Termination event, the City may terminate the Development Agreement, notwithstanding any other requirement or process set forth in the Development Agreement or law.</p> <p>An “<b>Early Termination Event</b>” shall exist if:</p> <ul style="list-style-type: none"><li>(i) the Option Agreement with the Port expires or terminates before Developer and Port enter into the Disposition and Development Agreement (“<b>DDA</b>”);</li><li>(ii) the DDA terminates before Developer enters into the Ballpark Lease with the Port; or</li><li>(iii) Developer fails to Commence Construction of the Ballpark by that date (such date being the “<b>Ballpark Deadline</b>”) which is the later of: (a) May 13, 2025 or (b) four (4) years from the final adjudication of all third party legal challenges to the initial Project approvals that prevent the Commencement of Construction of the Ballpark, but, consistent with the Exclusive Negotiation Term Sheet for Howard Terminal between Developer and the Port, in no event later than May 13, 2028. The Ballpark Deadline shall be subject to extension as a result of one or more events of Force Majeure pursuant to Section 19, or, if the final Option Agreement approved by the Port effectively extends the date for Commencement of Construction of the Ballpark beyond the date contemplated in the Exclusive Negotiation Term Sheet, by the same amount of time as the Port-approved extension set forth in the final Option Agreement.</li></ul> <p>“<b>Commence Construction of the Ballpark</b>” means the start of substantial physical construction of the building foundation as part of a sustained and continuous construction plan. Related terms such as “<b>Commencement</b>”, “<b>Commenced</b>” and “<b>Commences</b>” Construction of the Ballpark shall have the same meaning.</p>
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<p><b>3. Termination</b></p>	<p>Under the proposed transaction documents with the Port (the “<b>Port Agreements</b>”), the Port has reserved recapture and reacquisition rights to portions of the Project Site for expansion or reconfiguration of the Inner Harbor Turning Basin of the Oakland Estuary (the portion of the Project Site subject to such recapture and reacquisition rights, the “<b>Termination Lands</b>”); however, Developer retains the right to re-annex such Termination Lands into the Project Site if the Port fails to meet the conditions set forth in the Master Lease (such occurrence giving rise to “<b>Re-Annexation Rights</b>”).</p> <p>If the Port exercises its recapture and reacquisition rights to any of the Termination Lands, the Development Agreement will remain in effect with respect to such Termination Lands so long as Developer still has Re-Annexation Rights under the Master Lease, and, if applicable, as to any Termination Lands for which the A’s has exercised its Re-Annexation Rights; provided, however, in no event shall the Term of the Development Agreement be extended as a result of Developer’s exercise of its Re-Annexation Rights.</p>
<p><b>4. Amendments</b></p>	<p>The Development Agreement may only be amended in whole or in part, by mutual consent of the parties or their successors in interest. Amendments constituting a Material Change will require consideration by the Planning Commission and the approval of the City Council by ordinance. All other proposed amendments may be approved, on behalf of the City, by the City Administrator.</p> <p>A proposed amendment shall constitute a Material Change if it seeks to or causes: (i) an extension of the Term or the Ballpark Deadline as set forth in the Development Agreement; (ii) a material increase in the monetary or non-monetary obligations or liabilities of the City or a material decrease in the monetary or non-monetary benefits (including Community Benefits) to the City; (iii) an acceleration of other vertical development prior to substantial completion of the Ballpark; (iv) a delay in the delivery of the Project’s parks and open space elements relative to the Ballpark or other vertical development; or (v) an amendment to the General Plan or Zoning Ordinance that would introduce new land uses or change the quantities of permitted land uses beyond the parameters set forth in the Development Program included with the Development Agreement.</p> <p>The granting of any subsequent project approvals or amendments to the initial project approvals or subsequent project approvals will</p>

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	not require an amendment to the Development Agreement, except as set forth above.
<b>5. Development Program</b>	The Project consists of the development of a new Major League baseball park for the Oakland Athletics with a capacity of up to 35,000 attendees (the “ <b>Ballpark</b> ”); surrounding mixed-use development including up to 3,000 residential units; up to 1.5 million square feet of commercial uses; up to approximately 270,000 square feet of retail uses; an indoor performance center with capacity of up to 3,500 persons; hotel space with up to 400-rooms; a network of up to approximately 18 acres of publicly-accessible open spaces (less if the Port exercises its recapture and reacquisition rights for the Termination Lands); and pedestrian and bicycle access on the Project Site.
<b>6. Phasing of Open Space and Horizontal Infrastructure</b>	<p><u>General</u></p> <p>For reference, the Master Phasing Diagram, attached hereto as <b>Exhibit B</b> (the “<b>Master Phasing Diagram</b>”), generally identifies the phases, vertical development parcels and key open space and infrastructure elements in the Project.</p> <p>The Development Agreement will include a final phasing plan and procedures designed to ensure that infrastructure and capital improvements are constructed in a manner that is appropriate and proportional to the level of development proposed in each phase (“<b>Phasing Plan</b>”). The Phasing Plan will be attached as an exhibit to the Development Agreement and will describe in detail how each required infrastructure or open space element will be linked to vertical development parcels or other triggers consistent with the requirements below.</p> <p><u>Vertical Development</u></p> <p>The Ballpark must be included in the first phase of Project development. No other vertical development may proceed until Commencement of Construction of the Ballpark has occurred, nor shall any other vertical development receive an occupancy permit prior to substantial completion of the Ballpark.</p> <p>Development south of Street A and west of Market Street (Phase 2B), excepting interim improvements, may not proceed as to any</p>

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	<p>portion until the Port's right to the Termination Lands has expired for the applicable portion, as set forth in the Section 3, above.</p> <p>Except as set forth in this Section 6 and in the Port Agreements, the Developer will retain the right to develop the vertical development in such order and time as it determines in the exercise of its business judgment.</p> <p><u>Infrastructure</u></p> <p>Phasing of infrastructure will be consistent with the final Phasing Plan and administered through the City's subdivision and permitting processes. The City will review each application for a Final Development Plan ("FDP"), phased final map and associated improvement plans, and building permits for consistency with the Phasing Plan and approved Tentative Tract Map ("TTM") and PDP to ensure that the infrastructure provided with each phase of development, including on- and off-site public streets, utilities and open space, will be delivered at an appropriate level to the proposed vertical development, as more specifically provided below.</p> <p><i>On-Site Streets, Sidewalks, and Utilities</i></p> <p>The Master Phasing Diagram shows all street segments to be included in the Project, which shall be described in greater detail in the TTM to be approved as part of initial Project approvals.</p> <p>All public streets, sidewalks and utilities contained within Phase 1 shall be completed before issuance of an occupancy permit for the Ballpark.</p> <p>For the remainder of the Project, in general, each street segment, including associated sidewalks, landscaping and utilities shall be constructed with a particular vertical development parcel, or in some cases, the first to be developed of a group of vertical development parcels. Developer shall complete the street segment as a condition precedent to issuance of an occupancy permit for that vertical development parcel, as may be further described in the Phasing Plan and approved in in each FDP.</p> <p><i>Off-Site Transportation Improvements</i></p> <p>All offsite transportation improvements required of the Project, including streets, sidewalks, bicycle lanes, at-grade and grade-separated rail safety improvements, and transit facilities, shall be</p>
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completed consistent with the requirements of the Project approvals. The Oakland A's proposal for funding these items are set forth in their Financial Plan described in Section 13 below.

*Parks and Open Space*

The Open Space Phasing Diagram attached hereto as **Exhibit C** shows the location of each park or open space element to be included in the Project.

Design standards and guidelines for the parks and open space elements will be included within the PDP and Design Standards and Guidelines to be approved as part of the initial Project approvals.

Athletics Way, MLK Plaza, Rooftop Park and Waterfront Park A, as well as an interim or permanent connection of the Bay Trail to Market Street, shall be completed before issuance of an occupancy permit for the Ballpark. Stomper Plaza shall be completed before issuance of an occupancy permit for Block 5.

Subject to the foregoing timing requirements for specific open spaces, individual Waterfront Parks and Open Space areas must be constructed proportional to the amount of gross square feet of development for which the City issues building permits on Blocks 1 through 17, as illustrated by the table below. The column in the table below labelled "Additional Gross SF Allowed" is based on the maximum GSF of 6.6 million gsf of development that may be permitted within the Project based on the EIR project description. For purposes of tracking proportionality of open space to development, the Baseline Allowable Gross Square Feet Table attached to the Development Agreement will assign an assumed amount of gross square feet to each development parcel that will be revised upon the completion of each development project, to reflect the actual gross square footage developed, so that parks are delivered in the same proportion as with the baseline project. The revised Allowable Gross Square Feet Table shall be utilized as the basis for issuances of future building and/or occupancy permits until such time as another Waterfront Park or Open Space is completed. Should the Port exercise the Maritime Reservation Option, the Additional Gross SF Areas shall be adjusted to reflect the revised proportion between the Waterfront Park areas and the total development areas and a revised Allowable Gross Square Feet

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Table shall be utilized as the basis for issuances of future building and/or occupancy permits.		
<b>Baseline Allowable Gross Square Feet Table</b>		
Open Space Area <sup>1</sup>	Additional Gross SF Allowed	Cumulative Gross SF <sup>2</sup>
Waterfront Park A, Rooftop Park, MLK Park, A's Way	3,451,457 <sup>3</sup>	3,451,457
Waterfront Park B	579,486	4,030,943
Stomper Plaza	96,581	4,127,524
Waterfront Park C	154,530	4,282,054
Waterfront Park D	927,178	5,209,232
Waterfront Park E	618,119	5,827,351
Waterfront Park F	772,649	6,600,000
<b>Total</b>	<b>6,600,000</b>	
<p>Developer shall be allowed to pull building permits and received occupancy permits for the Cumulative Gross SF noted above. Developer shall be allowed to pull additional building permits in excess of the Cumulative Gross SF so long as a permit for an additional Waterfront Park or Open Space is approved by the City prior to approval of the additional building permits and the resulting total development area is less than the resulting Cumulative Gross SF Area inclusive of the new Waterfront Park or Open Space. The additional Waterfront Park or Open Space shall be completed prior to the approval of the Certificate of Occupancy</p>		

<sup>1</sup> Parks and open spaces may be delivered in any order except as otherwise expressly provided for Athletics Way, MLK Plaza, Rooftop Park, Waterfront Park A, Waterfront Park C and Stomper Plaza, and further subject to the termination of the Port's right to the Maritime Reservation Areas.

<sup>2</sup> Cumulative Gross SF illustrative based on the Open Space Areas being developed in the order shown. Actual Cumulative Gross SF may differ based on actual order of Open Space Area development.

<sup>3</sup> Waterfront Park A, Rooftop Park, MLK Park and A's Way must all be completed as a condition to the issuance of an occupancy permit for the ballpark (estimated at 1,200,000 of ballpark and 15,000 of retail). The remaining 2,236,457 gsf (as may be adjusted) is permitted based on the completion of those parks.

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	<p>of the additional development project(s). The Developer shall be allowed to seek a Temporary Certificate of Occupancy prior to the completion of the additional Waterfront Park or Open Space if the Waterfront Park or Open Space is substantially complete and work is progressing to complete the Waterfront Park or Open Space within ninety (90) days of issuance of the Temporary Certificate of Occupancy.</p> <p><i>Fire Station No. 2</i></p> <p>Fire Station No. 2, located at 47 Clay Street, lies within the alignment of Athletics Way on the Project Site. Improvements to Station No. 2 to maintain sufficient access to the apparatus bay and fireboat, as well as onsite parking and yard space, shall be completed prior to issuance of an occupancy permit for the Ballpark. Additional improvements to add functionality to and expand the capacity of Fire Station No. 2 shall be completed prior to the completion of all buildings within Phase 1.</p>
<p><b>7. Vested Rights / Applicable Laws, Codes and Standards</b></p>	<p>Developer shall obtain approval of a PDP and a TTM for the Project Site in addition to the Development Agreement. Development, construction, occupation and implementation of the Project will be subject to additional review and approval in accordance with the requirements of these initial project approvals.</p> <p>Developer shall have vested rights for the development of the Project as set forth in the Development Agreement, Project approvals, and all Applicable Laws (defined below), which shall control the overall design, development and construction of the Project and all improvements and appurtenances in connection therewith, including, without limitation, the following: the locations and numbers of buildings proposed, the required infrastructure, land uses and parcelization, height and bulk limits, including the maximum density, intensity and gross square footages, permitted uses, provisions for open space, affordable housing, vehicular access and parking, which collectively shall be referred to as the “<b>Vested Elements</b>”. The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Project approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent Project approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each later Project approval, once granted, shall be deemed a Project approval subject to the protections of the Development Agreement.</p>

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	<p>The City shall process, consider, and review all later Project approvals in accordance with (i) CEQA, utilizing the certified Final Environmental Impact Report for the Project to the fullest extent permitted by law, (ii) the Project approvals received to date, including compliance with all applicable mitigation measures from the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program approved therewith (the “<b>SCA-MMRP</b>”), (iii) any conditions of approval that are imposed by the City or other governmental agencies with jurisdiction over the Project as part of the Project approvals, (iv) the City’s Charter, Municipal Code (including the Planning and Subdivision Codes) and General Plan, as each of the foregoing is in effect on the Commencement Date (“<b>Existing Standards</b>”) and may be amended or updated in accordance with permitted New Laws as set forth below, (vi) California and federal law, as applicable, and (vii) the Development Agreement (collectively, “<b>Applicable Laws</b>”).</p> <p>(1) All new or amended laws and standards (collectively, “<b>New Laws</b>”) shall apply to the Project except to the extent they conflict with this Development Agreement. For the avoidance of doubt, the New Laws shall be deemed to conflict, subject to (2) below, with this Development Agreement if they:</p> <ul style="list-style-type: none"><li>(a) reduce the maximum allowable height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual buildings from that permitted under the Project approvals;</li><li>(b) reduce or change the allowable parking and loading ratios, except as provided in the Transportation Demand Management Plans, or materially change the location of vehicular access, parking or loading from those permitted under the Project approvals;</li><li>(c) limit, reduce or change permitted land uses for the Project from those permitted under the Project approvals;</li><li>(d) control or delay the rate, timing, phasing or sequencing of the development or construction of all or any part of the Project except as expressly set forth in the Development Agreement and Project approvals;</li></ul>
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	<ul style="list-style-type: none"><li>(e) require Developer to assume responsibility for construction or maintenance of additional infrastructure or open space beyond that contemplated by the Development Agreement;</li><li>(f) impose requirements for historic preservation or rehabilitation other than those contained in the Project approvals (including the SCA-MMRP);</li><li>(g) impose requirements for City-adopted environmental measures other than those contained in the Project approvals (including the SCA-MMRP);</li><li>(h) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for (i) permits or approvals required on a City-wide basis that do not prevent or materially interfere with the construction or operation of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by the Development Agreement, and (ii) permits that replace (but do not expand the scope or purpose of) existing permits;</li><li>(i) limit the availability of public utilities to the Project, including but not limited to sewer capacity and connections, or the Project's rights thereto, in a manner that materially interferes with or prevents construction of the Project, or any part thereof, as and when intended by the Development Agreement;</li><li>(j) delay or prevent the procurement of subsequent Project approvals that are consistent with the Development Agreement and Project approvals;</li><li>(k) increase the percentage of residential units required to be income-restricted, change the percentage of units required to be offered at any AMI threshold level or any eligibility requirements, change or impose requirements regarding unit size, finishes, amenities, or unit type, or any other change to the approved affordable housing plan beyond that contemplated by the Development Agreement; or</li><li>(l) preclude or materially increase the cost of performance of, or compliance with, any provisions of the Development Agreement or Project approvals</li></ul>
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	<p>(collectively, “<b>Conflicting Laws</b>”). In the event of express conflict, as determined by the City, the terms of the Development Agreement shall prevail.</p> <p>(2) Notwithstanding the foregoing, nothing in the Development Agreement shall prevent the City from:</p> <ul style="list-style-type: none"> <li>(a) taking any action that is necessary to protect the health and safety of the public or to comply with applicable changes in Federal or State Law, including subjecting the Project to a New Law that is applicable on a City-Wide basis to the same or similarly situated uses (if any) and applied in an equitable and non-discriminatory manner, so long as such New Law is (i) limited solely to addressing specific and identifiable issues required to protect the physical health and safety of the public; or (ii) reasonably calculated and narrowly drawn to comply with a Federal or State Law;</li> <li>(b) applying to the Project any provisions, requirements, rules, or regulations that are contained in the California Building Standards and Fire Codes, as adopted and amended by the City in accordance with the California Health and Safety Code, including requirements of the Oakland Building and Construction Code or other uniform construction codes, as the same may be amended; or</li> <li>(c) applying then-current City standards applicable to infrastructure permits for each later Project approval if the following conditions are met: (i) the standards are compatible with, and would not require a material modification to previously approved permit drawings for the work; and (ii) the standards are compatible with, and would not require any retrofit, removal, supplementation, reconstruction or redesign of what was previously built as part of the Project. If Developer claims that these conditions have not been met, it will submit to the City reasonable documentation to substantiate its claim. The Parties agree to meet and confer for a period of not less than thirty (30) days to resolve any dispute regarding application of this Section.</li> </ul>
<p><b>8. Administrative Fees</b></p>	<p>For the Term of the Development Agreement, the Administrative Fees imposed on the Project shall be the rates in effect as of the date of the relevant application. “<b>Administrative Fee</b>” shall mean</p>

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	any fee imposed City-wide in effect at the time and payable upon the submission of an application for any permit or approval or thereafter, generally as set forth in the City's Master Fee Schedule, as it may be amended or modified to cover the estimated actual costs to City of processing that application and/or inspecting work undertaken pursuant to that application. The term "Administrative Fee" shall not include any impact fees, exactions or City Costs.
<b>9. Community Benefits and Affordable Housing</b>	The Development Agreement will secure benefits for the City of Oakland and its residents, consistent, at a minimum, with the guidelines set forth in Assembly Bill 734 (2018) and the "Key Principles of the Howard Terminal Community Benefits Agreement, attached hereto as <b>Exhibit D</b> . Community benefits, including affordable housing, will be established through a collaborative, multi-stakeholder, equity-centered community engagement process. The Oakland A's will provide funding for the community benefits package (including affordable housing) in accordance with the Oakland A's proposed Financial Plan described in Section 13 below.
<b>10. Workforce Development</b>	Developer shall abide by all applicable City contracting and employment laws unless a Project-specific jobs program is approved by Council concurrently with the Development Agreement.
<b>11. [Reserved]</b>	
<b>12. Arts Master Plan / Process</b>	The Development Agreement will establish the process pursuant to which an Arts Master Plan may be developed, approved and implemented for the Project, consistent with <b>Exhibit E</b> hereof.
<b>13. Financing and BIDs</b>	The City and Developer shall pursue formation of a Community Facilities District (CFD) and an Infrastructure Financing Districts (IFD) to finance eligible capital improvement and maintenance costs associated with the Project, subject to the terms of a Financing Plan to be negotiated by the parties and included as an attachment to the Development Agreement. If requested by Developer, the City will also agree to cooperate with the establishment of a Business Improvement District and in submitting and processing grant or funding applications. The Oakland A's proposed Financial Plan is attached hereto as <b>Exhibit F</b> .

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<p><b>14. Review of Permits / Development Applications</b></p>	<p>The Development Agreement will incorporate a set of best practices for the submittal, review and processing of subsequent applications for approvals and permits required for development of the Project. These best practices are intended to facilitate the expeditious processing of subsequent project approvals and permits; to address challenges, issues, and concerns during development of the Project; and to promote accessibility, predictability, and consistency across City agencies and departments. As approved by the City, best practices may include:</p> <ul style="list-style-type: none"> <li>• Timelines for City review and Developer resubmittal of plan sets for B- and P-Job permits (for construction of buildings and infrastructure, respectively)</li> <li>• Procedure for processing of “foundation only” permits</li> <li>• Provision of dedicated plan checkers and inspectors for the Project</li> <li>• Procedure for utilizing third party plan checkers and inspectors</li> <li>• Procedure for utilizing video inspections</li> <li>• Pre-approval of extended working hours, as set forth in the Project’s Environmental Impact Report</li> <li>• Installation of Ballpark furniture, fixtures and equipment prior to issuance of a Temporary Certificate of Occupancy (“TCO”) for the Ballpark</li> <li>• Procedure for issuance of phased TCO’s on non-Ballpark development</li> <li>• Provision of a priority project manager, within the City Administrator’s office, to effectuate all of the above and act as a facilitator for all subsequent Project permits and approvals</li> </ul> <p>All of the above shall be at Developer’s sole cost and expense, as set forth in Section 20, “City Costs”, below.</p>
<p><b>15. Defaults</b></p>	<p>1. <b>City Event of Default.</b> A breach of any material obligation by the City shall be cured within the times required after</p>

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	<p>written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “<b>City Event of Default</b>”.</p> <p>2. <b>Developer Event of Default.</b> The occurrence of any of the following breaches shall be cured within the times required after written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “<b>Developer Event of Default</b>”:</p> <ul style="list-style-type: none"><li>a. Developer’s failure to have a legal or equitable interest in the Property;</li><li>b. Developer’s failure to Commence Construction of the Ballpark when required by the Agreement, or, after Commencement of Construction, to proceed with construction in a sustained and continuous manner; Developer’s failure to pay any monetary amount when due;</li><li>c. Developer’s failure to perform or fulfill any other material term, provision, obligation, or covenant of the Development Agreement;</li><li>d. A voluntary or involuntary attempt by Developer to undertake a transfer in violation of the Agreement; or</li><li>e. A filing of bankruptcy, dissolution, or reorganization by Developer or any general partner, managing member, or parent entity of the Developer.</li></ul> <p>3. <b>Notice and Cure:</b> If breaches under paragraphs 1 or 2 arise, then either the City or the Developer, as the case may be, shall notify the other Party in writing of its purported breach or failure, giving such defaulting Party forty-five (45) calendar days for monetary defaults and sixty (60) calendar days for all other defaults, to cure such breach or failure, or, if such breach is of the type that cannot reasonably be cured within the 60-day period, then such defaulting Party shall have such reasonable time to cure such breach so long as the defaulting Party commences such cure within the initial 60-day period and diligently pursues such cure to completion.</p>
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	<p>4. <b>Developer Remedies for City Event of Default:</b> If a City Event of Default occurs after Developer provides the City notice and cure rights pursuant to Section 3 above, the Developer may pursue any of the following remedies:</p> <ul style="list-style-type: none"><li>a. Terminating the Agreement;</li><li>b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages);</li><li>c. Seeking equitable relief from a court of competent jurisdiction, including, but not limited to, specific performance; or</li><li>d. Pursuing any other remedy at law or in equity, subject to the limitations of Section 4.b and except to the extent the Development Agreement contemplates a different remedy for such City Event of Default.</li></ul> <p>5. <b>City's Remedies for Developer Event of Default:</b> If a Developer Event of Default occurs, the City shall provide the Developer notice and cure rights pursuant to Section 3 above. If the Developer does not cure or begin to cure the breach within the time period specified, the City may pursue any of the following remedies:</p> <ul style="list-style-type: none"><li>a. Terminating the Agreement subject to the revocation procedures set forth in OMC § 17.152.060 through 17.152.230;</li><li>b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages);</li><li>c. Seeking equitable relief, including injunctive relief and specific performance;</li><li>d. Pursuing any remedies available to the City at law or in equity, subject to the limitations of subsections 5.a and 5.b, and except to the extent the Development Agreement contemplates a different remedy for such Developer Event of Default (such as, for example, specific remedies included in the</li></ul>
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	<p>separate workforce program, community benefits program or non-relocation agreement);</p> <p>e. For a Developer Event of Default related to Developer's failure to construct requisite parks and infrastructure, as and when required by the Phasing Plan, or any subdivision or public improvement agreements, in addition to any remedies the City may otherwise have under such improvement agreements, the City's sole remedy shall be to seek specific performance and to withhold building permits or Certificates of Occupancy, as relevant, for any element of the Project that is tied to the applicable park or infrastructure.</p> <p>5. Limited Cross-Defaults. If Developer conveys or transfers some but not all of the Project or a party takes title to foreclosed property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under the Development Agreement, there shall be no cross-default between the separate parties that assumed Developer obligations, with the limited exceptions of (i) the City's rights to early termination as set forth in Section 2, and (ii) the City's right to enforce Developer's Phasing Plan obligations against a transferred development parcel (<i>i.e.</i>, the right to withhold building permits or occupancy permits to the extent permitted under Section 6 above).</p>
<p><b>16. Lender Protections</b></p>	<p>Development Agreement to include customary protections for mortgage and mezzanine lenders, including (i) City obligation to deliver to any Developer's lenders a copy of any notice of default or determination of noncompliance given to such Developer; (ii) Lenders shall have the right, but not the obligation, to cure within a specified period upon receipt of the notice, including such additional time to obtain possession of the Property, provided that Lender provides proper notice to the City and takes requisite steps to diligently obtain possession; (iii) the Development Agreement shall be assignable to the Lender or any other person who acquires title to all or any portion of the Property through foreclosure or deed-in-lieu of foreclosure, provided such party agrees in writing to assume all of the obligations of the Development Agreement, including any uncured defaults; provided however, that, should the</p>

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	<p>Lender acquire title, then the City shall agree to toll any deadlines for performance of any construction obligations for a period equal to the time required to obtain title plus six months; and (iv) City obligation to deliver estoppels to current and prospective lenders acknowledging that there is not actual default, the Development Agreement is still in effect, there have been no amendments to the Development Agreement, and such other factual matters as reasonably requested by such lender (the form of the Estoppel Certificate shall be attached as an Exhibit).</p>
<p><b>17. Assignment</b></p>	<p>Developer's rights to transfer its rights and obligations under the Development Agreement shall be as follows:</p> <ol style="list-style-type: none"> <li>1) Developer may not transfer its interest in the Development Agreement, in whole or in part, prior to Commencement of Construction of the Ballpark except to (a) an affiliate or (b) an entity acquiring the Oakland Athletics team and its real estate holdings, in either instance for the purpose of development of the Ballpark.</li> <li>2) After Commencement of Construction of the Ballpark, Developer has the right to transfer all or any portion of its rights under the Development Agreement to the same extent that it validly transfers, under the Port transaction documents, all or any portion of its real property interest in the Project Site.</li> <li>3) Prior to any transfer of the Development Agreement hereunder, the City shall review and approve the proposed Assignment and Assumption Agreement to ensure the inclusion of the requisite rights and obligations associated with the proposed real property transfer. A form of Assignment and Assumption Agreement for a full transfer of Developer's interest will be attached to the Development Agreement. The parties shall endeavor to substantially use such form for any transfer of partial interest.</li> </ol>
<p><b>18. Periodic Review</b></p>	<p>The Development Agreement shall be subject to Periodic Review procedures to be set forth in the Development Agreement.</p>
<p><b>19. Force Majeure</b></p>	<p><b>"Force Majeure"</b> shall mean event(s) that cause material delays in the Developer's performance of its obligation to Commence Construction of the Ballpark by the Ballpark Deadline, due to domestic or international events disrupting civil activities, such as</p>

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	<p>war, acts of terrorism, insurrection, acts of the public enemy, and riots; acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; inability to secure necessary labor, materials, or tools due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Project Site.</p> <p>The Ballpark Deadline may be extended by a period of time equal to the duration of a Force Majeure event; provided, however, within thirty (30) days after Developer first reasonably determines that the Force Majeure event will result in a delay in performance, Developer shall have first notified the City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period that such cause or causes will delay Developer's ability to Commence Construction and the City shall have agreed in writing to such extension, which agreement shall not be unreasonably withheld or delayed.</p> <p>Notwithstanding the foregoing, under no circumstances shall the aggregate Force Majeure extensions exceed four (4) years.</p>
<p><b>20. City Costs</b></p>	<p>Developer shall reimburse all actual and reasonable costs incurred by the City in connection with (1) monitoring, administration and enforcement of the Development Agreement and other Project approvals, (2) processing of all current and future Project approvals, and (3) defense of all Project approvals; but excluding costs covered by Administrative Fees (the foregoing, collectively, "<b>City Costs</b>") The process for such payment shall require the City to submit supporting documentation and provide Developer with audit rights.</p> <p>In addition, the A's shall pay (based on a payment process to be set forth in the Development Agreement) the City for its costs incurred to provide City services to the Ballpark and surrounding neighborhoods in connection with baseball games and other events at the Ballpark, which may include (but are not limited to):</p> <ul style="list-style-type: none"> <li>• Parking and traffic engineering and control services;</li> <li>• Police and other emergency services;</li> </ul>

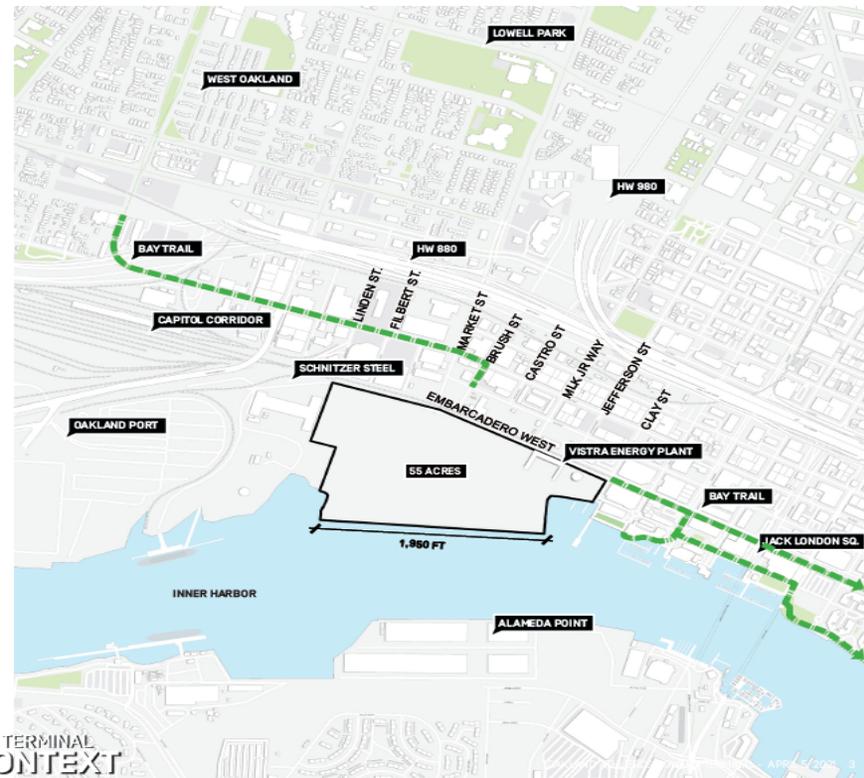
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	<ul style="list-style-type: none"> <li>• Litter pickup/street and sidewalk cleanup.</li> </ul>
<b>21. Non-Relocation</b>	<p>As material inducement for the City to enter into the Development Agreement and for the City's financial (including tax, permit or other fee) waivers, concessions and contributions committed to in the Development Agreement, Developer shall enter into a non-relocation agreement in a form of agreement to be agreed upon by the parties and Major League Baseball.</p>
<b>22. CEQA Compliance</b>	<p>The City will not approve a Development Agreement or other binding Project approvals or take any other discretionary actions that will have the effect of committing the City to the development of the Project until the final environmental analysis for the Project is completed and approved in accordance with CEQA. If the Project is found to cause significant adverse impacts that cannot be mitigated, or otherwise based on information disclosed during the environmental review process, the City retains absolute discretion to: (a) modify the Project to mitigate significant adverse environmental impacts; (b) select feasible alternatives to avoid significant adverse impacts of the proposed Project; (c) require the implementation of specific mitigation measures to address adverse environmental impacts of the Project identified in the CEQA approval documents; (d) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; or (e) approve the proposed Project upon a finding that the economic, social, or other benefits of the Project outweigh unavoidable significant adverse impacts of the Project.</p>
<b>23. Exhibits</b>	<p>The following Exhibits are attached to this Term Sheet and incorporated herein by this reference:</p> <p><b>Exhibit A:</b> Site Map  <b>Exhibit B:</b> Master Phasing Diagram  <b>Exhibit C:</b> Open Space Phasing Diagram  <b>Exhibit D:</b> Key Principles of the Howard Terminal Community Benefits Agreement  <b>Exhibit E:</b> Arts Plan  <b>Exhibit F:</b> Oakland A's Financial Plan</p>

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Exhibit A

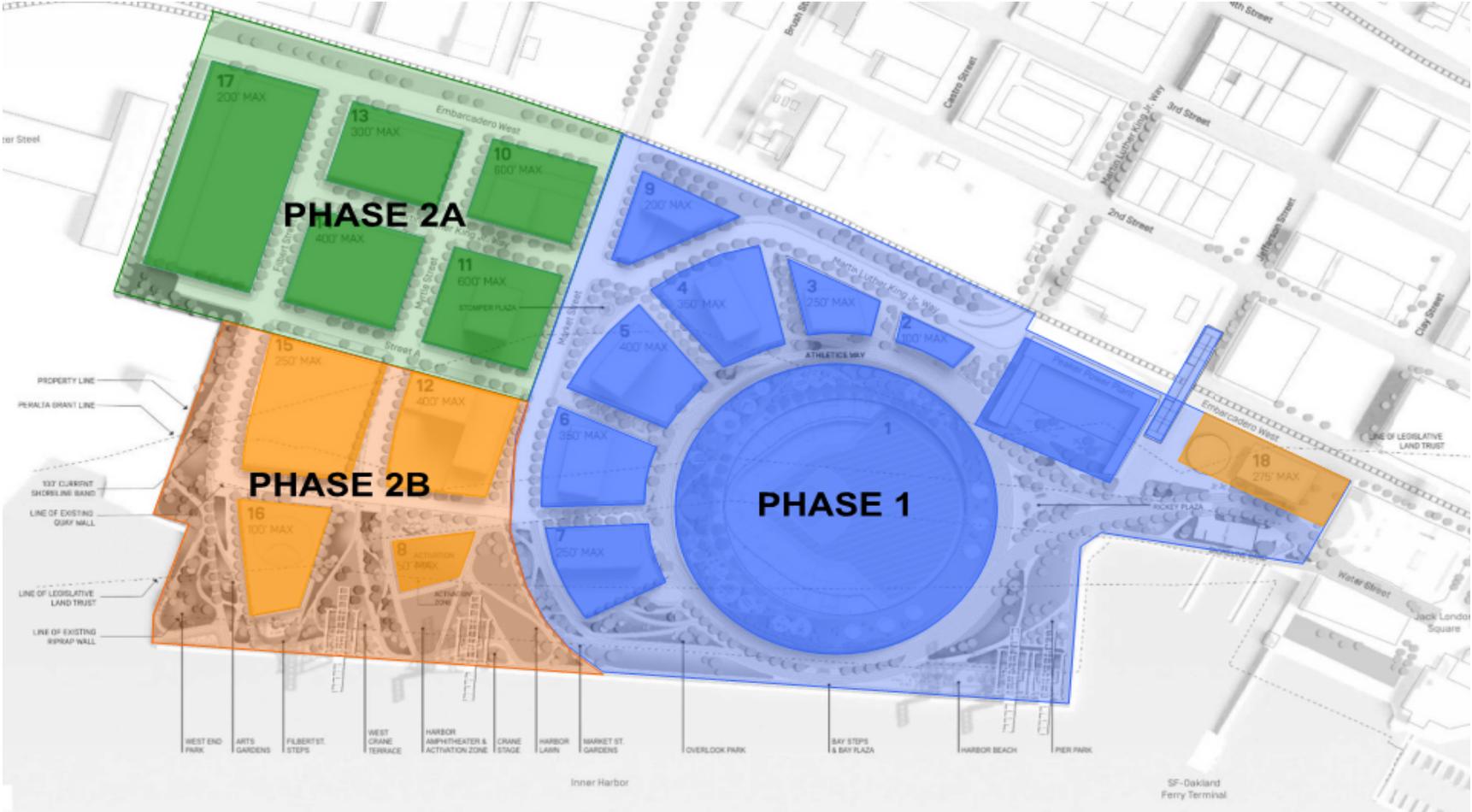
Site Location



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**Exhibit B**

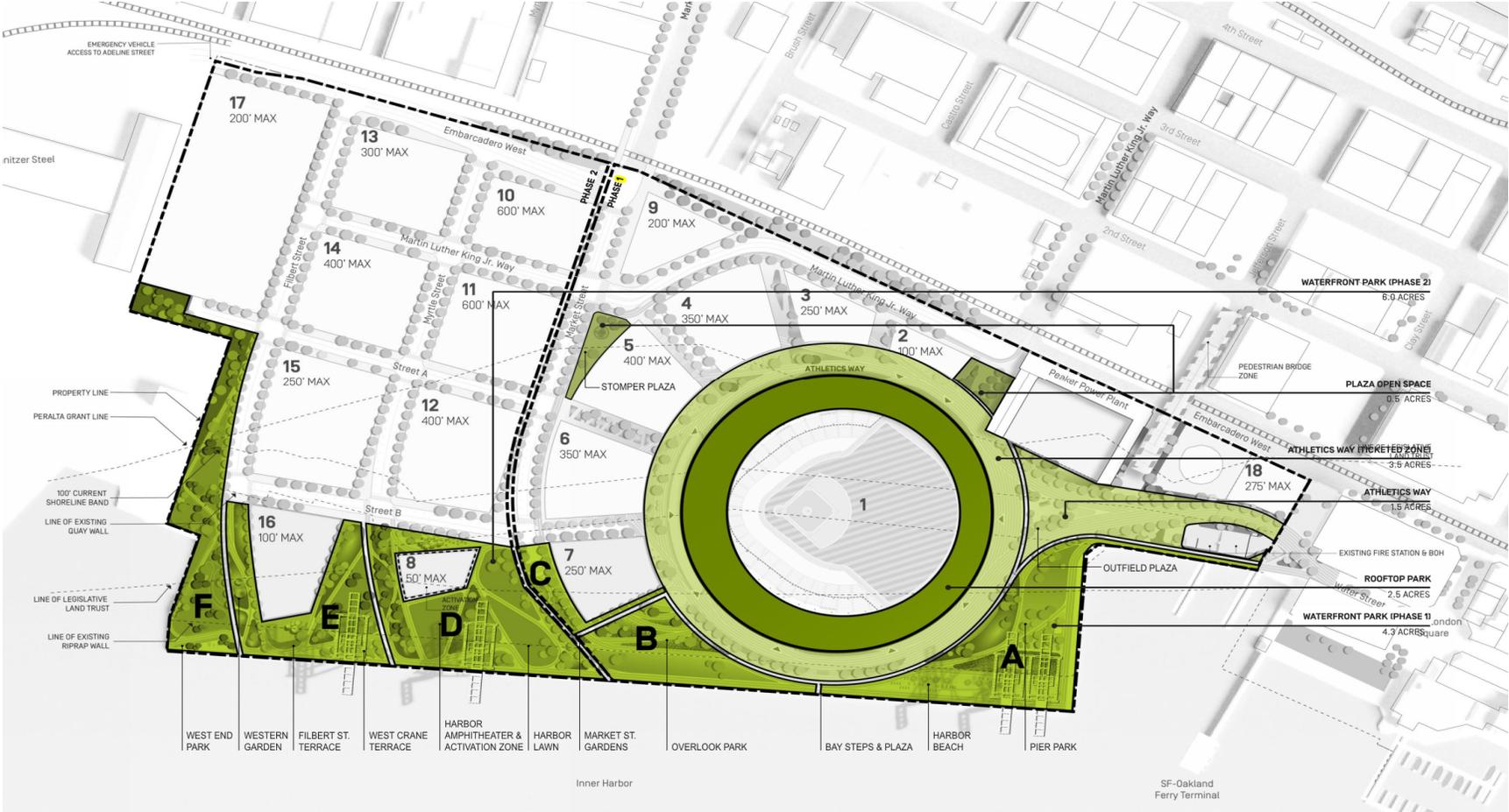
**Master Phasing Diagram: Project Phasing**



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**Exhibit C**

**Master Phasing Diagram: Open Spaces**



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**Exhibit D**

**Key Principles of the Howard Terminal  
Community Benefits Agreement**

This is a summary of the key principles underlying the Howard Terminal Community Benefits Agreement (CBA) to ensure that the development of the Howard Terminal property provides equity-based, structural, long-term benefits to the surrounding communities.

**Statements of Intent**

1. The relocation of the Oakland A's to the Howard Terminal will result in the redistribution of commercial activity and changes in land use with potential impacts that disproportionately affect Oakland's disadvantaged residents.
2. The Howard Terminal Community Benefits Agreement (CBA) is intended to help remedy inequities experienced by the most vulnerable or historically underserved populations, particularly those in areas most directly affected by the Oakland A's Howard Terminal Project -- West Oakland, Chinatown, Old Oakland, and Jack London Square.
3. The provisions of the CBA should extend to all development within the Howard Terminal Property, as defined by Assembly Bill (AB) 1191.
4. The CBA should be sustainable and long lasting for at least the term of the Oakland A's lease and all later leases of the Howard Terminal Property, regardless of whether any given parcel is ultimately developed by the A's or another developer.
5. Ideally, combined benefits will create synergistic outcomes that offer cumulative mitigation.
6. The obligations to be set forth in the CBA will be identified and prioritized by community members to carry out this intent.

**Operating Principles**

1. The CBA applies to all development, development rights, use and occupancy of the Oakland Sports and Mixed-Use Project, also known as the "Howard Terminal Project" for the life of the Howard Terminal Project. The CBA applies to all developers of the Howard Terminal projects and all employers, commercial tenants, subcontractors, etc. that operate on the project site. The CBA applies regardless of whether any given parcel of the Howard Terminal Property is leased or developed by the Oakland A's or some other entity. It shall be effective from development through operation, for at least 66 years.
2. The terms of the CBA will exceed any minimum requirement of local, state, or federal law for projects such as the Howard Terminal Project.
3. High priority is given to terms that serve the needs of historically underserved, vulnerable and at-risk populations, as identified in the City's Equity Indicators Report, as well as other

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relevant resources, which may include data from local, regional, state, and federal governments, as well that from private foundations and academia.

4. Each CBA obligation shall include a quantifiable goal or other objective means of determining whether that obligation has been met and meaningful remedies available in the event of non-compliance.
5. The CBA will include a permanent mechanism for ongoing community monitoring and enforcement to ensure that the CBA meets its objectives and has sufficient transparency and community accountability.
6. Community oversight and enforcement will include, at a minimum, those individuals or organizations represented on the Steering Committee that execute the CBA and their successors and assigns, including representatives of the four impacted neighborhoods of West Oakland, Chinatown, Old Oakland, and Jack London Square.
7. The following “best practices”, and any others developed by the Steering Committee, will be used to develop the CBA:
  - a. Historical inequity, as described by the “Baseline Indicators Report,” Oakland Municipal Code Section 2.29.170.1, and other identified sources, is to be addressed by the CBA, and the mitigation of identified historical inequity may constitute a rational basis for a CBA term,
  - b. To the extent possible, each CBA obligation will include the assessment of equity factors to determine whether the obligation has been met,
  - c. The collaborative process should create win-win situations which result in measurable long-term outcomes,
  - d. The CBA terms shall not reinforce or increase current and/or historical inequities faced by vulnerable populations in the four nearby or other communities, and
  - e. Discussions must be transparent and sufficient information must be provided on a timely basis for parties to evaluate the feasibility and viability of proposals.
8. To create a long-lasting and self-sustaining mechanism to fund Community Benefits, project specific revenue will be earmarked to fund Community Benefits as set forth in the Financial Plan attached to this Term Sheet as Exhibit F.

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**Exhibit E**

**Howard Terminal Arts Plan Process**

This exhibit to the Term Sheet for the Howard Terminal Development Agreement outlines the process through which an Arts Master Plan (“**Arts Plan**”) may be developed, approved and implemented for the Project. If an Arts Plan is developed, approved and implemented pursuant to the guidelines below, all development within the Project Site shall be exempt from the City of Oakland (the “**City**”) public art ordinance (OMC Chapter 15.78 - PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT, the “**Public Art Ordinance**”), as the intent of that ordinance will be met or exceeded by the Arts Plan that is approved for the site.

The Developer and City shall use good faith efforts to collaboratively develop and adopt an Arts Plan pursuant to the guidelines below. If such efforts fail to result in an approved Arts Plan, the Developer shall instead comply with the Public Art Ordinance, and the Arts Plan shall not apply.

***Arts Master Plan Goals and Outcomes***

The Arts Plan shall be developed to meet the following goals:

Create an Artistic Hub at Howard Terminal that celebrates the City’s creativity, energy and diversity

- o Reflect the community’s diverse population and culture
- o Feature both established and emerging artists and organizations, who reflect Oakland’s diverse population
- o Feature local artists and organizations, while also expanding the reach of the program to embrace work from other geographies
- o Celebrate the area’s cultural and maritime history

Public Engagement

- o Site physical art intentionally throughout the Project Site, resulting in a cohesive, freely accessible (as defined by OMC Chapter 15.78.030) public art experience
- o Explore offsite art opportunities within the four adjacent neighborhoods (Jack London District, Chinatown, Old Oakland and West Oakland) to better integrate the Project Site with the neighboring community

Define “Art” Broadly

- o Consider both performing and visual arts in creation of the Arts Plan
- o Consider opportunities for art spaces (e.g. studio space, gallery space, performing arts etc.) in addition to static physical art installations
- o Consider opportunities for temporary and rotating exhibits, as well as multidisciplinary arts festivals and ongoing programming within the Project Site and the four impacted neighborhoods

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- o Consider opportunities to include art to be incorporated into the architecture/landscape architecture on site. For the purposes of this section, “artists” shall not include members of the architectural, engineering, design, or landscaping firms retained for the design and construction of the Project
- o Consider opportunities for contribution of non-commissioned art that adds depth and breadth to the public art experience, in addition to new commissions and projects
- o Ensure that permanent work is appropriately durable to withstand the test of time and interaction with the public

Build on Precedent Efforts in the City

- o Incorporate the community’s priorities related to Culture Keeping and History, as reflected in the Community Benefits Agreement for the Project
- o Reflect the Goals and Priorities of the City’s Cultural Plan

***Arts Master Plan Elements***

The Arts Plan must include the following elements:

Value

The total value of the arts installations, facilities and programming to be provided pursuant to the Arts Plan shall equal or exceed the contribution that would otherwise be required of the Project under the Public Art Ordinance, generally as follows:

- Residential Development: One-half of one percent (0.5%) of building development costs, excluding the cost of any affordable housing development; plus
- Non-Residential Development: One percent (1.0%) of building development costs.

The Arts Plan shall also set forth a process for valuing Developer contributions of existing art, so as not to dis-incentivize procuring or commissioning art from local and emerging artists.

Balance in the Arts Plan

The Arts Plan will address the general apportionment of value between:

- Newly created art
- Existing art
- Permanent installations
- Temporary installations and/or programming
- Arts spaces and facilities

Identification of Priority Opportunities for Art

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The Arts Plan shall include a description of the priority opportunities for art and arts spaces (if proposed), across the Project Site and within any of the four neighborhoods adjacent to the site: West Oakland, Old Oakland, Jack London District and Chinatown. The Arts Plan should be expansive, identifying more opportunities than ultimately may be executed, with identification of the most essential opportunities that will be prioritized for implementation. Potential categories of art include, but are not limited to:

- New or previously created art to be installed within the Project Site in freely-accessible spaces (e.g. new/existing sculpture placed in/near the Ballpark or elsewhere on Project Site, art integrated into new on site construction, art installations/performative art/illumination relating to the existing shipping container cranes on site)
- New or previously created art to be located off site in freely-accessible spaces (e.g. art installations in I-880 underpasses, art related to the West Oakland Walk concept)
- Support for temporary exhibits on or off site in freely-accessible spaces (e.g. creating a rotating art gallery or performance space on site)
- Support for ongoing Arts and Cultural programming on site or off site
- Identification of opportunities for arts spaces, such as artist studios, performance space, and/or galleries, on site or off site
- A maritime-focused interpretive program designed to meet the requirements of AB1191

Phasing

The Arts Plan will include a description of how art installation, programming and/or spaces are to be phased relative to vertical and horizontal development on the Project Site. Generally, the Arts Plan will be implemented proportionately as vertical development occurs on the Project Site; provided, however, that the Developer may elect to implement public art, facilities or programs at a rate that exceeds the pace of development on site.

Maintenance

The Arts Plan will include a section on maintenance and ongoing operations, demonstrating sustainable sources of operational funding for arts programming and the maintenance and security of physical art and arts space identified in the plan, as necessary.

CBA Elements

The Arts Plan will describe how the community's priorities related to Culture Keeping and History, as reflected in the Community Benefits Agreement for the Project, are addressed in the Arts Plan.

***Arts Master Plan Development and Approval***

Plan Development

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The Developer will prepare a draft Arts Plan, pursuant to these guidelines, for City review and approval. Preparation of the plan will include consultation with the City's Public Art Advisory Committee (PAAC), the City's Cultural Affairs Unit and Planning Department, the Port of Oakland ("**Port**"), and the Bay Conservation & Development Commission ("**BCDC**"). The Developer may elect to convene an Arts Advisory Group consisting of interested community members, City, Port and/or BCDC staff, and/or experts in public art and culture, to provide input on development and implementation of the Arts Plan. The Developer shall submit the draft prior to or together with its application for a Final Map for the Project site.

Plan Approval

The City Administrator or his or her designee will be authorized to approve the Arts Plan, after considering PAAC and public input, no later than submittal of the Developer's application for the first building permit for the Ballpark.

Amendments

Minor Amendments to the Arts Plan that do not materially affect the phasing, quantity or quality of art or arts spaces provided in the Arts Plan may be approved by the City Administrator or his or her designee.

Major Amendments to the Arts Plan that materially affect the phasing, quantity or quality of art or arts spaces provided in the Plan, must be presented to the PAAC for review and comment prior to approval by the City Administrator or his or her designee.

***Arts Master Plan Implementation***

Selection of Public Art

All art to be installed on the Project Site will be selected by the Developer in conformance with the approved Arts Plan. The PAAC and Cultural Affairs Division will be consulted by the Developer for certain major works in key areas, such as new parks and open space or public rights-of-way, as identified in the Arts Plan.

All art to be installed off site in public spaces will be recommended by the Developer and approved by the City.

If established as identified above, an Arts Advisory Group will provide input on implementation, as set forth in the Arts Plan.

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**Exhibit F**

**Oakland A's Financial Plan**

The Oakland A's financial proposal to the City of Oakland includes a privately funded \$1B+ state of the art ballpark that will serve as the permanent home of the Oakland Athletics of Major League Baseball. Key terms of the financial proposal are as follows:

- The Oakland A's will privately fund an architecturally significant, LEED Gold, state of the art ballpark of more than \$1 billion.
- The Oakland A's will privately fund or contribute public art valued at \$15 million.
- The Oakland A's and the City of Oakland will enter into a non-relocation agreement, ensuring long-term, sustainable revenue in the City of Oakland.
- The Oakland A's will fully fund all on-site project costs through private financing and project-generated revenues, including public parks, protection against sea level rise, and environmental remediation.
- The City will establish two infrastructure financing districts, the Howard Terminal Infrastructure Financing District and Jack London Infrastructure Financing District, which will be a source of project-generated revenues for the Ballpark Project and the City of Oakland. The proposed footprint of those IFDs is set forth on the map below.
- Project-generated revenues from the Jack London Infrastructure Financing District are estimated at \$1.4 billion.
  - \$360 million to be used to fund off-site infrastructure (*e.g.*, pedestrian grade separation, vehicular grade separation, bike lanes, railroad safety improvements, sidewalk improvements and intersection improvements).
  - \$1.04 billion in City and community benefits, specifically
    - \$280 million to community benefits, such as affordable housing and off-site infrastructure; and
    - \$760 to the City of Oakland's General Fund.
- Project-generated revenues from the Howard Terminal Infrastructure Financing District are estimated at \$860 million.
  - \$495 million to be used to fund all on-site infrastructure development costs (*e.g.*, environmental remediation, seismic improvements, backbone utilities, sea level rise improvements, sidewalks/streets, over 18 acres of parks and open space, and a Bay Trail connection).
  - \$365 million in City and community benefits, specifically
    - \$170 million to community benefits, such as affordable housing and off-site infrastructure; and
    - \$195 million to the City of Oakland's General Fund.

**The full project development investment is estimated at \$12 billion, including \$450 million in community benefits and \$955 million in General Fund Revenues.** The Howard Terminal buildout will create more than 35,000 new jobs and \$7 billion of new revenue for the City of Oakland over the useful life of the stadium.

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## Proposed IFD Map

