

**FOR BOARD OF PORT COMMISSIONER CONSIDERATION
SPECIAL MEETING OF MAY 13, 2019
FILED WITH BOARD SECRETARY FOR PUBLICATION MAY 3, 2019**

**EXCLUSIVE NEGOTIATION TERM SHEET
FOR
HOWARD TERMINAL**

This Exclusive Negotiation Term Sheet for Howard Terminal (this “Agreement”), dated May 13, 2019, is entered into by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (“Port”) and ATHLETICS INVESTMENT GROUP LLC D/B/A THE OAKLAND ATHLETICS, a California limited liability company (“Oakland A’s”) (Port and Oakland A’s collectively referred to as the “Parties”).

PREAMBLE

- A. The Port is a department of the City of Oakland (“City”) established in 1927 by amendment to the City Charter of the City of Oakland. The Charter amendment vested exclusive control and management of the Port in the Board of Port Commissioners (“Board”). The Port’s purpose is to promote and ensure the comprehensive and adequate development of the Port Area through continuity of control, management, and operation, including those lands held by the City under state legislative grants within the Port Area.
- B. The Port seaport area operations comprise of approximately 1,300 acres of seaport operations, including container ship terminals, wharfage, warehousing and ancillary services, rail, and security facilities, including the Howard Terminal.
- C. The Howard Terminal Property is approximately 50 land acres owned by the Port and includes two deep-water berths adjacent to the Inner Harbor Channel. It is approximately bounded by the Inner Harbor to the south, Schnitzer Steel to the west, Embarcadero West to the north, and Clay Street to the east.
- D. The State conveyed portions of the Howard Terminal Property to the City by the legislative grants to hold and manage in trust for the benefit of the statewide public. Other portions of Howard Terminal were acquired by the City and the Port and held as state lands trust assets. All granted trust lands and trust assets are held by the Port in trust, the uses of which are subject to oversight by the California State Lands Commission (“State Lands Commission”).
- E. Because of its small size (approximately 50 acres) and shallow water depth relative to other modern container terminals, older container gantry cranes, and limited room for expansion (e.g., it is separated from the next nearest marine terminal by private land holdings), Howard Terminal is not desirable for loading and unloading of the larger container ships that call the Port. Marine terminal operations at the Howard Terminal Property ended in 2014 when SSA Terminals relocated the operations of the former APL/EMS Terminal.
- F. Therefore, without changes to one or more of these current physical limitations, Howard Terminal is better suited to uses such as container operations for smaller vessel services that currently call other terminals; bulk operations; break-bulk operations; and roll-on / roll-off operations. Since 2013, the Port identified and engaged with interested parties for potential long-

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term tenancies associated with these types of vessel loading/unloading operations, but these discussions did not materialize into leasing arrangements for a variety of reasons.

- G. Howard Terminal is currently being used for deep water vessel layup berthing, truck and container parking/depot operations, trucking companies, training of longshore workers by the Pacific Maritime Association, and similar ancillary logistics services that support Port operations.
- H. Use and development of this site for both maritime and non-maritime activities, including for the development and operation of a baseball stadium proposal, has been discussed previously, and a summary timeline of some key events that have occurred affecting the property since 2013 is provided below:
1. **July 2013:** The Port approves early termination of the container terminal lease with SSA Terminals, LLC (SSAT) for Howard Terminal.
 2. **October 2013:** The Port issues a Request for Proposals (“RFP”) to solicit maritime use proposals for Howard Terminal.
 3. **January 2014:** SSAT vacates the Howard Terminal site and relocates their operations to other Port owned property within the seaport, and Port staff begin executing short-term tenancy agreements for maritime support uses on the site while concurrently marketing the property for longer term maritime uses (both containerized and non-containerized).
 4. **February 2014:** The Port receives three maritime use proposals for Howard Terminal in response to the Howard Terminal RFP, and rejects all three proposals for various reasons.
 5. **March 2014:** The Port approves and authorizes execution of an Exclusive Negotiating Agreement with Oakland Waterfront Ballpark, LLC to negotiate terms of a potential baseball stadium development on the site.
 6. **November 2014:** Oakland Waterfront Ballpark, LLC requests early termination of the Exclusive Negotiating Agreement with the Port.
 7. **November 2014 - April 2018:** The Port engages in discussions with various potential marine-oriented users of Howard Terminal but these discussions do not result in the approval of any long-term tenancy agreements for the site.
 8. **July 2017:** Oakland A’s announce that they are investigating 3 sites for a potential new baseball stadium development in Oakland (Laney College site, Howard Terminal site, Coliseum site).
 9. **January 2018:** Oakland A’s contact the Port to discuss an Exclusive Negotiating Agreement (“ENA”) to study a potential baseball stadium development at Howard Terminal.
 10. **April 26, 2018:** The Port approves a one-year ENA with the Oakland A’s for the Howard Terminal site.

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- I. The City wishes to retain the Oakland Athletics professional baseball franchise in the City, and has identified the Howard Terminal Property as a potential site for a new, state-of-the-art Major League Baseball park. The Oakland Athletics have also identified the Howard Terminal Property as their preferred location.
- J. The Howard Terminal Property is located near bus, rail, and water transit facilities and is proposed to be designed to maximize opportunities for non-automobile modes of travel, pursuant to the policies and regional vision included in the Sustainable Communities Strategy Plan Bay Area 2040 that the Metropolitan Transportation Commission and the Association of Bay Area Governments adopted in 2017 pursuant to Government Code section 65080.
- K. Chapter 959 of the Statutes of 2018 established special procedures and expedited review under the California Environmental Quality Act (“CEQA”) for the Stadium Mixed Use Project, provided that the Project meets certain conditions, as detailed in that act. The Board may consider the approval of the Stadium Mixed Use Project only after the consideration, certification, and adoption, if any, of the EIR. The City is the CEQA lead agency.
- L. Additionally, any change in use from the current industrial seaport use to uses under the Stadium Mixed Use Project may be approved only if the City amends the City’s General Plan to allow such uses.
- M. Under the ENA, the Port has been negotiating with the Oakland A’s on terms and principles under which the Parties would proceed with further negotiations and consideration of property rights and other considerations for the development of the Stadium Mixed Use Project.
- N. The ENA has expired. The Parties now wish to agree to memorialize preliminary terms by this Agreement and to continue to negotiate exclusively toward consideration of later binding agreements only after the City’s amendment of the General Plan and the Board’s consideration of a final EIR, and subject further to legislative, State Lands Commission, and regulatory approvals and permits for the proposed uses.

PURPOSE & OVERVIEW

- A. **Preliminary Terms.** This Agreement is intended to memorialize the preliminary terms negotiated between the Parties and to inform the public regarding the goals and principles that will guide the proposal to develop a new baseball stadium mixed-use development project on Howard Terminal (“Project” or “Stadium Mixed Use Project”), as further described herein. As further described below, the Project shall not proceed unless and until the Parties have negotiated, the Board has considered based upon information produced from the environmental review process under the CEQA and on other public review and hearing processes, and, if approved, the Parties have executed and delivered mutually acceptable agreements subject to all applicable governmental and regulatory approvals.
- B. **Project Overview.** The Oakland A’s propose that the Project would redevelop Howard Terminal for the following uses: (i) a new open-air waterfront multi-purpose Major League Baseball ballpark with a capacity of up to 35,000-persons that will serve as the new home to the A’s, including a ‘green roof’ that would provide public access on non-game days with

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unparalleled views to the Bay; (ii) up to 3,000 residential units, 1.5 million square feet of office, and up to 270,000 square feet of mixed retail, cultural and civic uses that would be developed in blocks throughout the Project site west of the ballpark; (iii) an approximately 3,500 seat performance center; (iv) an approximately 280,000 square-foot 400-room hotel; and (v) a network of public open spaces located throughout the site that would connect the pedestrian and bicycle network along the Oakland waterfront to the site, and would provide two large-scale open spaces. The large-scale open spaces consist of an approximately 6-acre area referred to as “Athletics Way”, which would extend Water Street from Jack London Square into the site, encircling the ballpark, and a large Waterfront Park that would extend along the Estuary from Water Street and Jack London Square on the east to the western edge of the existing wharf on the Project site.

- C. **Premises.** The premises for the Project consist of the approximately 50 acres of Howard Terminal, as reflected in the project illustrations in **Attachment A**, attached hereto and incorporated herein, but do not include any existing open water areas or submerged lands (“Premises”).
- D. **Tidelands Trust.** The Port’s title to Howard Terminal derives in part from legislative grants and in part from acquisitions from private parties. Due to its complex title history, there is legal uncertainty surrounding the title, boundaries, and status of the public trust at Howard Terminal. In addition, whether or not a particular use, such as the baseball park and related commercial recreation uses, are consistent with the Public Trust, is a question of fact that depends on many factors. In connection with its pursuit of Entitlements (described in Section E below), the Oakland A’s are pursuing state legislation that would (i) authorize the State Lands Commission and the Port to settle title and boundary uncertainties and enter into a trust exchange agreement that would rationalize the configuration of the public trust on the site, subject to the State Lands Commission making certain findings, and (ii) allow the development of trust-consistent uses on the trust portions of the site, including public waterfront access and a baseball park that meets certain criteria, as approved by the State Lands Commission. The bill does not remove the State Lands Commission’s or the Board’s authority to review and approve the proposed exchange and the trust-consistency of proposed uses on trust lands.
- E. **Entitlements and Due Diligence.** During the term of this Agreement, the Oakland A’s shall, at its sole cost and expense, pursue any and all land use entitlements from all local, regional, state, and federal agencies that are required for the development of the Project (collectively, the “Entitlements”), including (without limitation) the following:
- a. Environmental review under CEQA;
 - b. Approval by the City of Oakland of a General Plan amendment, residential use within the Port Area, a Development Agreement, zoning amendments, and design review;
 - c. Approval by the California State Lands Commission of a trust exchange agreement and public trust consistency findings for the ballpark and other uses on trust lands;
 - d. Approval by the Bay Conservation and Development Commission of a Seaport Plan and Bay Plan amendments and a major permit;

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- e. Approvals by all applicable resources agencies having jurisdiction over development of the Project, including approval of a remediation plan by the Department of Toxic Substances Control; and
- f. Approval by the Port of a Port Building Permit under Section 708 of the City Charter.

The Oakland A's may also conduct due diligence and investigation on the Premises, including testing and investigation of on-site soil and groundwater (subject to Port approval and compliance with all applicable laws and regulations) and review of Port property reports and information.

- F. **Negotiation of Business Terms.** During the term of this Agreement, the Parties intend to negotiate an Option Agreement (as defined below), which will attach mutually agreeable forms of all relevant transactional documents – such as the Master Lease, Ballpark Vertical Development Parcel Lease, Vertical Development Parcel Lease, and Purchase and Sale Agreement – all of which shall, subject to the sole and independent discretion of the Board based on and to the fullest extent permitted by the CEQA environmental review process and all applicable laws (including the City Charter), materially conform to the applicable “Key Business Terms and Principles” attached as **Attachment B**, attached hereto and incorporated herein (“Term Sheet”).
- G. **Community Benefits.** The Parties shall also negotiate various community benefits of the Project, a preliminary list of which is attached as **Attachment C** and incorporated herein, to be reflected in the Option Agreement and other transactional documents.

AGREEMENT

1. Effect of Agreement.

- 1.1. **No Binding Agreement To Proceed with Project.** This Agreement is intended to provide a general framework, terms, and principles for the subsequent negotiation of definitive agreements regarding the development and operation of the Project and is not intended to create any binding contractual obligations on any Party or to commit any Party to a particular course of action to approve or proceed with the Project. A transaction of this type for the Project involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the Parties that, to effectuate the Project, binding agreements will have to be negotiated, agreed to by the Parties, and ultimately submitted to the Board for approval.
- 1.2. **Board's Sole and Independent Discretion Preserved.** The approval and execution of this Agreement does not in any way commit the Port to any definite course of action regarding the proposed Stadium Mixed Use Project, including any future decision by the Port on whether to approve an option agreement, lease agreement, or other real property transaction for the proposed Stadium Mixed Use Project to proceed. The Port, as a Responsible Agency under CEQA for the proposed Stadium Mixed Use Project, reserves all of its rights, responsibilities, obligations, powers, and sole discretion to: (i) evaluate the environmental impacts of the proposed Stadium Mixed Use Project; (ii) deny and disapprove the proposed Stadium Mixed Use Project; (iii) modify the Stadium Mixed Use Project as it may, in its sole discretion, be necessary to include or adopt feasible

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mitigation measures and/or an alternative to the proposed Stadium Mixed Use Project to avoid or lessen significant environmental impacts, including the “no project” alternative; or (iv) balance the benefits of the Project against any significant impact of the proposed Stadium Mixed Use Project prior to taking final action, if such impacts cannot be avoided. If and only if, and in such event at such time as, the Board approves the Project after consideration of a certified Final Environmental Impact Report and directs applicable Port staff to enter into the Option Agreement, the Port shall be bound by the obligations set forth in the Option Agreement with respect to the Project, as the same may have been modified pursuant to clause (iii) above.

2. Term.

- 2.1. **Commencement Date.** This Agreement shall commence on May 13, 2019 (“Commencement Date”), provided it has been approved by the Board, executed by all Parties, and approved as to form and legality by the Port Attorney.
- 2.2. **Termination Date.** This Agreement shall terminate upon the earlier to occur of:
- (a) the date that is four (4) years from the Commencement Date; or
 - (b) the date of full execution of the Option Agreement (as defined below) (“Termination Date”).

If the Option Agreement has not been executed within four (4) years from the Commencement Date, all rights to lease or purchase all or any portion of the Premises shall expire.

3. Payments. During the entire term of this Agreement, and in consideration of the terms of this Agreement, the Oakland A’s shall make each and every one of the following non-refundable payments to the Port without setoff, deduction, or previous notice or demand:

- 3.1. \$100,000 within ten (10) days of the Commencement Date.
- 3.2. \$150,000 within one (1) year of the Commencement Date.
- 3.3. \$200,000 within two (2) years of the Commencement Date.
- 3.4. \$250,000 within three (3) years of the Commencement Date.

4. Option Agreement.

- 4.1. **Negotiation of Option Agreement.** During the term of this Agreement, the Parties shall, diligently and in good faith, negotiate the terms of a mutually agreeable Option Agreement between the Parties for the lease and/or sale of all or a portion of the Premises for the Project (“Option Agreement”). The Option Agreement shall attach mutually acceptable forms of necessary transactional documents that shall be subject to Section 1.2 (Board’s Sole and Independent Discretion Preserved) and shall materially conform to the Term Sheet.
- 4.2. **Conditions Precedent to Option Agreement.** The Parties may enter into the Option Agreement only upon satisfaction of all of the following conditions precedent:
- (a) certification of a Final Environmental Impact Report for the Project by the City, as lead agency; (b) adoption of CEQA findings by the Board, as a responsible agency; and

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(c) approval of an Option Agreement by the Board. If an Option Agreement is not approved, or fully executed under the terms of this Agreement, the Oakland A's shall have no other rights to the Premises.

- 5. Port Building Permit.** The Parties anticipate that, concurrent with the Port's review and consideration of the Option Agreement and forms of transaction documents attached thereto and, provided that all necessary information is available to the Port and that the Port has approved an Option Agreement, the Port will review and consider approval of a Port Building Permit under Section 708 of the City Charter for the overall Project as described in the preliminary development plan approved by the City ("Project-Wide Port Building Permit").

For the purpose of considering and issuing the Project-Wide Port Building Permit, the Port will consider and review the permit application for compliance with or adoption of (a) the Board's CEQA findings for the Project, (b) the City's General Plan and Project-specific land use regulations adopted by the City, (c) the Port's general regulations, and (d) measures or designs to ensure that the application does not impact or interfere with Port's use or operations outside of or prior to the construction of the Project, 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; or (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. As part of the permit application, the A's shall submit a comprehensive transportation and circulation plan that is within the scope of and consistent with provisions of the adopted Final EIR and to be implemented to minimize vehicular congestion from the Project and avoid conflict between vehicular and pedestrian traffic generated by the Project with Port seaport operations, including cargo truck routes and traffic.

The Parties further anticipate that the Oakland A's will submit subsequent Port Building Permits as the Project development progresses for material amendments to the Project, and for specific buildings that are not covered within the scope of the Project-Wide Building Port Building Permit.

6. Exclusive Negotiation.

- 6.1. **No Property Rights.** Except as otherwise specifically provided for in this Agreement, the Oakland A's shall have no property rights, including any right to occupy, control, or possess the Premises under this Agreement.
- 6.2. **Exclusive Right of Negotiation for Lease.** In order for the Parties to negotiate an Option Agreement for the Project, the Port agrees to negotiate exclusively with the Oakland A's for any sale or lease agreements for the Premises; provided that, during the term of this Agreement, the Port shall have the right to enter into any of the following agreements for all or part of the Premises ("Short Term Agreements"):
- (a) Tenancy agreements for a term that expires on or before November 30, 2020;

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- (b) Tenancy agreements for a term that expires after November 30, 2020 so long as such agreement is terminable without cause or penalty on no more than six (6) months' notice;
- (c) Easements or right of entry agreements for the purpose of maintenance, repairs, utilities, or security necessary for the operation and maintenance of Port operations or of any lessee or licensee of any part or all of the Premises provided, however, that the Port shall not enter into any non-terminable easements without obtaining the prior written approval of the Oakland A's, which consent shall not be unreasonably withheld so long as the easement is necessary for the operation and maintenance of Port operations and can be relocated without material cost or adverse impact to the Project;
- (d) Notwithstanding subsection (c) above, any contemplated easement(s) under the Real Property Transfer Agreement between the Port and Pacific Gas and Electric Company ("PG&E") dated January 26, 2015, previously disclosed to the Oakland A's, as part of the PG&E Gas Load Center transaction between the Port and PG&E; and
- (e) Agreements consented to in writing by the Oakland A's.

Nothing in this Agreement shall be construed to prevent the Port from soliciting or receiving proposals for any Short-Term Agreements.

7. Reservation of Port Land for Maritime Purposes.

7.1. Definitions.

- (a) "Maritime Purposes" means uses necessary to prepare for, construct, and operate an expansion or reconfiguration of the Inner Harbor Turning Basin of the Oakland Estuary ("Turning Basin").
- (b) "Maritime Reservation Lands" means an approximately six-acre portion of the Premises located generally within the southwestern corner of the site, adjacent to the Oakland Estuary, and bounded by the quay wall on the upland side, as more particularly depicted in **Attachment A**.
- (c) "Maritime Reacquisition Lands" means an approximately one-acre portion of the Premises generally shaped in a band with a depth of approximately one-half-block adjacent to the Maritime Reservation Lands, as more particularly depicted in **Attachment A**.
- (d) "Reservation Period" means the period of ten (10) years after the Commencement Date.
- (e) "Variant Lands" means a portion of the Premises located generally adjacent to the Maritime Reservation Lands and Maritime Reacquisition Lands, as more particularly depicted in **Attachment A**.
- (f) "Variant Period" means the period of five (5) years after the Commencement Date.

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- 7.2. **Maritime Reservation Lands.** During the Reservation Period, the Port may elect in writing to use any and all portions of the Maritime Reservation Lands for Maritime Purposes, in which event: (a) any rights of the Oakland A's to negotiate for, acquire, lease, and/or develop the portion of the Maritime Reservation Lands the Port has so elected shall be extinguished, and (b) the Oakland A's shall waive any claims to payments or compensation from the Port for the Port's election except the total amount of fixed base rent payable under the Master Lease and Ballpark Vertical Development Parcel Lease (as defined in the Term Sheet) (but not any form of participation rent) shall be reduced pro rata based upon the acreage the Port has elected to use relative to the acreage of the Premises; and further provided that 100% of the reduction shall be applied against the Master Lease. For example, if the Premises is 50 acres, the fixed base rent under the Master Lease is \$2.3 million, the fixed base rent under the Ballpark Vertical Development Parcel Lease is \$1.5 million, and the acreage of Maritime Reservation Lands elected by the Port is 5 acres, then the rent reduction shall be equal to \$380,000 (i.e., $\$3.8\text{M}/50 = 76,000$ per acre $\times 5 = \$380,000$), all of which will be applied to reduce the Master Lease rent to \$1,920,000.
- 7.3. **Maritime Reacquisition Lands.** During the Reservation Period, and only if the Port had elected to use any portion of the Maritime Reservation Lands, the Port shall have the additional right to elect to reacquire any or all portions of the Maritime Reacquisition Lands for Maritime Purposes, in which event: (a) any rights of the Oakland A's to negotiate for, acquire, lease, and/or develop the portion of the Maritime Reacquisition Lands the Port has so elected shall be extinguished; (b) the Port shall reimburse the Oakland A's only for costs expended after the execution of a Master Lease for horizontal infrastructure improvements (but not for any costs for vertical improvements) constructed on the portion of the Maritime Reacquisition Lands the Port has so elected; and (c) the Oakland A's shall waive any claims to other payments or compensation from the Port for the Port's election except that any fixed base rent payable under the Master Lease (but not any form of participation rent) shall be reduced using the same formula set forth in Section 7.2.
- 7.4. **Variant Lands.** During the Variant Period, the Port shall have the right to elect to use any and all portions of the Variant Lands for Maritime Purposes, as described further below.
- (a) Effect of Election of Variant Lands. If the Port elects to use any or all portions of the Variant Lands for Maritime Purposes: (1) any rights of the Oakland A's to negotiate for, acquire, lease, and/or develop the portion of the Variant Lands the Port has so elected shall be extinguished; (2) the Port shall reimburse the Oakland A's only for costs expended after the execution of a Master Lease for horizontal infrastructure improvements (but not for any costs for vertical improvements) constructed on the portion of the Variant Lands the Port has so elected; and (3) the Oakland A's shall waive any claims to other payments or compensation from the Port for the Port's election except that any fixed base rent payable under the Master Lease (but not any form of participation rent) shall be reduced using the same formula set forth in Section 7.2.

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(b) Expiration of Variant Period. After the expiration of the Variant Period, the Oakland A's shall have the right to develop any portion of the Variant Lands on which the Port has not yet elected to use or reacquire under this Section 7 (Reservation of Port Land for Maritime Purposes), subject to the terms of the Option Agreement, Master Lease, and/or other applicable transactional agreement.

- 7.5. **Election.** Any election by the Port with respect to the Maritime Reservation Lands, the Reacquisition Lands, and/or the Variant Lands shall be reasonably exercised based on findings of a feasibility and scoping study or any such similar study by the United States Army Corps of Engineers, or any agency with approval or funding authority over the Turning Basin, and a financial plan to fund the Turning Basin. The Parties agree and acknowledge that the Port is currently undertaking further studies of the need for and feasibility of expansion of the Turning Basin and that the Port will request a feasibility and scoping study by the United States Army Corps of Engineers, which study is anticipated to take approximately three to five years to complete after commencement.
- 7.6. **Berthing.** During the Reservation Period, the Port may berth tugboats and similar watercraft (but not cargo vessels) in the water area outside of and adjacent to the Maritime Reservation Lands.
- 7.7. **Expiration of Reservation Period.** After the expiration of the Reservation Period, the Oakland A's shall have the right to develop any portion of the Maritime Reservation Lands, Maritime Reacquisition Lands, or Variant Lands on which the Port has not yet elected to use or reacquire under this Section 7 (Reservation of Port Land for Maritime Purposes), subject to the terms of the Option Agreement, Master Lease, and/or other applicable transactional agreement.
- 7.8. **Transactional Agreements.** To the extent applicable, the provisions of this Section 7 (Reservation of Port Land for Maritime Purposes) shall be included in the Option Agreement, Master Lease, and/or other applicable transactional agreements. The Oakland A's shall have the right to program and perform infrastructure work as provided for under the Master Lease within the Maritime Reservation Lands, the Reacquisition Lands, and the Variant Lands with interim uses and improvements that may provide public access, site activation, and water-viewing opportunities within the Premises, and, after any election, the Port shall not use such respective lands for interim uses (other than Maritime Purposes) unless approved by the A's in their reasonable discretion.

8. Costs and Fees.

- 8.1. **No Port Financial Contribution to Costs of Development.** Except as otherwise specifically provided in the Term Sheet with respect to the right of the Oakland A's to obtain reimbursement or credit for qualified Project costs from pre-paid ground lease and sale proceeds, in no event shall the Port be obligated to spend, credit, or offset against any Port funds or any amount payable to or received by the Port (including, without limitation, minimum guaranteed rent or participation rent) pursuant to this Agreement, the Option Agreement, the Master Lease, the Ballpark Vertical

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Development Parcel Lease, or the Vertical Development Parcel Lease on any aspect of site preparation, improvements of any kind (horizontal or vertical), obtaining Entitlements, or complying with regulatory requirements (including mitigations and regulatory conditions) for the Project.

- 8.2. **Attorneys' Fees.** In the event of a default under this Agreement or in the event a dispute arises in a judicial or quasi-judicial proceeding concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be and as determined by the court or its equivalent as the party responsible for rulings as to matters of law, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its or their rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable in-house and outside attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of the Port Attorney's Office shall be based on the fees the Port Attorney pays its outside private attorneys who work on any such dispute or a reasonable hourly rate (comparable to a rate charged by a qualified outside counsel) for work completed by attorneys in the Port Attorney's Office. The provisions under this Section shall survive the term of this Agreement.
- 8.3. **Real Estate Commissions.** The Oakland A's and the Port each represents to the other that it has not engaged a broker, agent, or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent, or finder makes a claim, the party through whom such claim is made agrees to indemnify and defend the other party from any losses, damages, or liability arising out of such claim. The provisions under this Section shall survive the term of this Agreement.
- 8.4. **Transaction Costs.** Other than to devote appropriate internal Port staff resources to negotiate, prepare, and review CEQA and land use entitlements and mitigation monitoring for the Project, Port shall not be obligated to spend any Port funds on any land use or regulatory entitlements for the Project or on mitigations or regulatory conditions for the Stadium Mixed Use Project. Should the Port in its reasonable discretion determine that outside consultants are necessary to provide technical expertise relating to the CEQA study or land use entitlements process, the Oakland A's shall pay a deposit for the payment of such reasonable consultant costs and reimburse the Port for any reasonable outstanding amounts for such consultant costs.
9. **Indemnification of Port.** To the fullest extent permitted by law, the Oakland A's shall indemnify, defend, and hold harmless the Port and Port officers, employees, and agents from and against any claims, liability, actions, judgments, damages, and costs (including attorneys' fees and court costs) of any kind arising from third-party claims, challenges, or litigation related to, caused by, or arising from the Port's action on the Project, including but not limited to the review, determination, approval under CEQA, or execution of this Agreement, a Port Building Permit, any transactional agreement related to the Project (including, without limitation, the Option Agreement, Master Lease, Ballpark Vertical Development Parcel

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Lease, Vertical Development Parcel Lease, and Purchase and Sale Agreement), or from the obtaining of any regulatory approval necessary for the Project.

- 10. Notices.** Unless otherwise expressly provided herein, any notice given under this Agreement shall be effective upon receipt only if in writing and given by delivering the notice in person or by sending it certified mail with a return receipt requested or by a nationally recognized courier service with proof of delivery, return receipt requested, with postage prepaid, as follows. The Parties shall also endeavor to send electronic courtesy copies of all notices.

<i>If to the Port:</i> Christopher Lytle Executive Director Port of Oakland 530 Water Street Oakland, CA 94607 <i>with copies to:</i> Pamela Kershaw Director of Commercial Real Estate Port of Oakland 530 Water Street Oakland, CA 94607 Danny Wan Port Attorney Port of Oakland 530 Water Street Oakland, CA 94607	<i>If to the Oakland A's:</i> Dave Kaval President Oakland Athletics 7000 Coliseum Way Oakland, CA 94621 <i>with copies to:</i> D'Lonra Ellis Assistant General Counsel Oakland Athletics 7000 Coliseum Way Oakland, CA 94621 Neil Sekhri Gibson, Dunn & Crutcher LLP 555 Mission Street, Suite 3000 San Francisco, CA 94105
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11. Mutual Confidentiality.

- 11.1. **Confidentiality.** To the fullest extent permitted by applicable law, the Parties shall maintain all information concerning, or documents produced for the purpose of, negotiations between the Parties conducted pursuant to this Agreement as confidential, disclosing information only to those individuals and representatives as designated by the other party, provided that such individuals and representatives acknowledge and agree in writing to maintain the confidentiality of such information.
- 11.2. **Proprietary Information.** The Parties enter into this Agreement with the understanding that in the course of the negotiations, the Port may require or request that the Oakland A's provide certain information that may be proprietary. Such information may be necessary for the Port to verify financial, operational, or trade secret information that is relevant to the negotiations under this Agreement and that will serve the public interest in assisting the Port to negotiate effectively. To the extent that Oakland A's agrees to provide and designates such information as confidential or proprietary by clearly marking and labeling such information in writing as "CONFIDENTIAL" ("Proprietary Information"), the Port shall not disclose such

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information publicly without the Oakland A's consent, except to the extent that the Port is required to make such a disclosure under applicable law, including the California Public Records Act, as determined in the Port's reasonable discretion. This Section 11.2 shall not constrain the Port's disclosure of Proprietary Information pursuant to any discovery or court order during any proceeding to enforce its rights under this Agreement or to defend any claim brought against the Port under this Agreement.

11.3. Public Disclosures. The Port agrees to notify the Oakland A's of any public records request that involves the Proprietary Information. The Oakland A's agrees to bear all costs of any litigation that is filed to determine the applicability of public records law to the Proprietary Information. The Oakland A's acknowledges that the Port's disclosure of Proprietary Information (or any portion thereof) to the Port's third-party consultants retained to assist the Port in its negotiations with the Oakland A's or to otherwise advise the Port with regard to the Port's finances shall not be considered a public disclosure under this Section, provided that such consultants acknowledge and agree in writing to maintain the confidentiality of such information. The Oakland A's acknowledges and agrees that the Port is required to comply with requests for disclosure to the extent required under the California Public Records Act (Cal. Gov. Code § 6250 et seq.). The provisions under this Section shall survive the term of this Agreement.

12. No Assignment. The Parties acknowledge and agree that the Port is entering into this Agreement based on the particular experience, financial capacity, skills and capabilities of the Oakland A's. This Agreement is personal to the Oakland A's and may not be transferred or assigned to any other party without the prior written consent of the Port as evidenced by a resolution of its Board.

13. Other Provisions.

13.1. Cooperation. The Oakland A's and the Port shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement.

13.2. Waiver of Damages. Except as related to the remedy of specific performance and as specifically provided for in this Agreement, each party hereby waives any claims for money damages (including, without limitation, any general, specific or consequential damages) relating to or arising from such party's breach of the obligation to negotiate exclusively and in good faith pursuant to this Agreement.

13.3. Relationship of the Parties. The Oakland A's is and shall at all times be and remain independent from the Port and shall not be an agent of the Port. Nothing in this Agreement shall be construed to place the Parties in the relationship of partners, joint venturers, optioner/optionee, landlord/tenant, or buyer/seller. Neither party shall have any right or power to obligate or bind any other party in any manner whatsoever except as expressly authorized in this Agreement. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. No party is a fiduciary to any other party under this

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Agreement and no party has any special responsibilities to any other party to this Agreement beyond any obligations expressly set forth herein.

- 13.4. **Governing Law.** This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.
- 13.5. **No Presumption Against Drafter.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, without limitation, California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. This Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.
- 13.6. **Entire Agreement.** This Agreement contains all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement. This Agreement may be amended or modified only by a written instrument executed by the Parties.
- 13.7. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

[Signatures on next page]

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IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Commencement Date.

OAKLAND A'S

**ATHLETICS INVESTMENT GROUP
LLC D/B/A THE OAKLAND
ATHLETICS**, a California limited liability
company

Dated: _____, 2019

By: _____
Dave Kaval
President

PORT OF OAKLAND

CITY OF OAKLAND, a municipal
corporation, acting by and through its Board
of Port Commissioners,

Dated: _____, 2019

By: _____
J. Christopher Lytle
Executive Director

**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 _____ day
of _____ 2019.

Port Attorney

Port Resolution No. _____

P.A. #: _____

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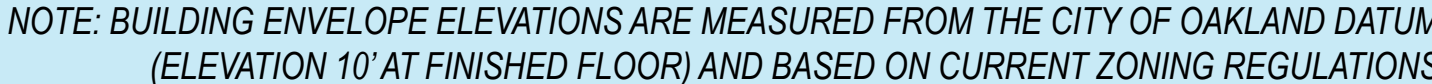
Attachment A

Project Illustration

(see attached maps)

Exhibit A - Illustrative Site Map





DATE: 04/30/2019

Attachment B

Key Business Terms and Principles (“Term Sheet”)

Under the Charter of the City of Oakland, no officer or employee of the Port has authority to commit the Port to the Project (including any leasing or sale of any of the Premises) until the Board of Port Commissioners has approved and authorized the execution of such transactions by ordinance. Except as set forth in this Agreement, no legal obligation will exist with respect to the transactions described in this Term Sheet, unless and until the parties have negotiated, executed, and delivered mutually acceptable agreements based upon information produced from the CEQA process and other public review and hearing processes, and subject to all applicable governmental approvals.

Before entering into final Transaction Documents, the Port and the City retain the absolute discretion to: (i) evaluate the environmental impacts of the proposed Stadium Mixed Use Project; (ii) deny and disapprove the proposed Stadium Mixed Use Project; (iii) modify the Stadium Mixed Use Project as it may, in its sole discretion, be necessary to include or adopt feasible mitigation measures and/or an alternative to the proposed Stadium Mixed Use Project to avoid or lessen significant environmental impacts, including the “no project” alternative; or (iv) balance the benefits of the Project against any significant impact of the proposed Stadium Mixed Use Project prior to taking final action, if such impacts cannot be avoided.

This Agreement is intended to provide a general framework, terms, and principles for the subsequent negotiation of definitive agreements regarding the development and operation of the Project and is not intended to create any binding contractual obligations on any Party or to commit any Party to a particular course of action to approve or proceed with the Project. Except as specifically provided for in this Agreement, reliance by either Party on the wording or provisions of this Term Sheet resulting in expense or actions shall be at the Party’s risk and shall not constitute evidence of or give rise to liability in contract, tort, promissory estoppel, or otherwise.

Principles:

All agreements referred to or contemplated in the Term Sheet shall be negotiated, drafted and interpreted to effectuate the following Port policy and development principles for the Howard Terminal.

1. The construction and continued operation of the baseball park as the home of the Oakland A’s Major League Baseball shall be consideration for the Port’s entering into the contemplated transactions for the Stadium Mixed Use Project and the main catalyst for expected revenues and other economic benefits to the Port and the City. The A’s shall construct and begin operation of the ballpark expeditiously and no other vertical phase leases or sales shall be effectuated until the ballpark construction has substantially commenced.
2. The A’s shall develop horizontal infrastructure and all vertical phase developments with due deliberate speed. The Phasing Plan will govern the timing and implementation of Horizontal infrastructure and environmental remediation. It is the intent of the Parties that the Phasing Plan will provide for an initial site-wide level of Horizontal Infrastructure (such

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as environmental remediation, grading and the raising of the site to address sea level rise, and backbone infrastructure (major streets and utilities to allow site access)) ("Site-Wide Horizontal Infrastructure", with subsequent Horizontal Infrastructure supporting any given vertical and building development to occur before or concurrent with such vertical and building development consistent with the Phasing Plan. The Port desires the productive use of all its properties and the expeditious economic development of the Howard Terminal site. Recognizing that the Port has the capacity to use Howard Terminal for other industrial and commercial developments and operations, the agreements contemplated under this Term Sheet contemplate timely development of infrastructure for all phases of the Stadium Mixed Use Project, or the reversion to the Port.

3. All phases of the Stadium Mixed Use Project shall be compatible with Port maritime and marine operations. To this end, the potential need for a turning basin expansion is approximately provided for while the Port continues to study the feasibility and scope of the turning basin expansion. The future users, owners, lessees, and residents at the Stadium Mixed Use Project shall be notified of potential impacts of Port maritime and marine operations on their use and waive rights to claims arising therefrom. The Project shall minimize vehicular congestion from the Project and avoid conflict between vehicular and pedestrian traffic generated by the Project with Port seaport operations, including cargo truck routes and traffic.
4. The Term Sheet contains terms that would effectuate a lease or sale of Howard Terminal properties at fair market value and the Port, as trustee of State tidelands assets and public funds of the City of Oakland, shall not "subsidize" the Stadium Mixed Use Project.

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A. Option Agreement:

1. Premises: Master Premises.
2. Conditions Precedent to Option Agreement: At the election of the A's, the Port and the A's shall enter into an Option Agreement provided that the following conditions precedent have been met: (a) certification of an environmental impact report with respect to the Stadium Mixed Use Project (the "EIR") by the City of Oakland, as lead agency, (b) adoption of CEQA findings by the Board, as a responsible agency, and (c) approval of the forms of Transaction Documents by the Board. The A's shall have no rights to the Master Premises if the Option Agreement is not approved or has not been executed prior to the expiration of the Exclusive Negotiation Term Sheet.
3. Term: The term of the Option Agreement shall commence upon the date of its execution and shall terminate the earlier of execution of a Master Lease or the date that is 6 years after the Commencement Date of the Exclusive Negotiation Term Sheet, subject to Force Majeure extension; provided however under no circumstances shall the Option Agreement be extended for longer than three (3) years.
4. Parties: Port and A's or an "affiliate" thereof (such term to be defined in the Option Agreement).
5. Payments to Port: From commencement of the Option Agreement through execution of the Master Lease, payments to the Port shall be made annually for the entire term of the Option Agreement (with the first payment due upon commencement of the Option Agreement) in the equivalent amounts to the last payment made under the Exclusive Negotiation Term Sheet plus \$50,000.00, and thereafter increasing by \$50,000.00 each year until termination of the Option Agreement. Upon execution of the Master Lease, payments to the Port shall be as set forth in the Master Lease.
6. Purpose of Option Agreement: During the term of the Option Agreement:
 - a. A's shall pursue any and all Entitlements at A's sole cost and expense, including, without limitation, satisfaction of any condition precedent described in Section 7 (Conditions Precedent to Transaction Documents) below;
 - b. A's shall complete a comprehensive feasibility analysis of the Master Premises to confirm, in the A's sole discretion, the suitability of the Master Premises for the Stadium Mixed Use Project; and
 - c. A's shall pursue financing for all or any portion of the Stadium Mixed Use Project.
7. Conditions Precedent to Master Lease: At any time during the term of the Option Agreement or such shorter period of time described below, A's shall have the right to enter into the Master Lease for the Master Premises upon satisfaction of the specified conditions precedent:
 - a. The Master Lease must be executed within 6 years of the Commencement Date of the Exclusive Negotiation Term Sheet.
 - b. The State Trust Exchange Agreement shall have been executed by the State Lands Commission and the exchange shall have been implemented.

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- c. BCDC shall have adopted Seaport Plan/Bay Plan Amendment removing the Master Premises from seaport priority use designation and shall have issued a major permit for the development and operation of the Stadium Mixed Use Project
 - d. DTSC shall have approved the remedial action plan for the Master Premises.
 - e. The Port bonds encumbering the Master Premises shall have been defeased with funds provided by A's (see Master Lease Section 4 (Bond Defeasance) below).
 - f. A's shall have given not less than 6 months' prior written notice to the Port of the intention to execute the Master Lease, and if execution of the Master Lease by the A's does not occur within 6 months of providing such notice to the Port, all rights to Master Lease the Master Premises shall terminate or the A's shall pay the Port the equivalent rent that the Port had received from tenant agreements on the Master Premises that were terminated as a result of this existed at the time such notice was provided to the Port on an ongoing basis until such Master Lease is executed, as liquidated damages.
 - g. A mutually agreeable Phasing Plan for the Stadium Mixed Use Project shall have been developed with the Port and be consistent with the City land use approvals for the Project, which identifies the approximate timeline to complete the Project, gross acreage, location, and intended uses/improvements to be constructed within each Vertical Development Parcel Lease Phase and Purchase and Sale Agreement Phase portion of the premises, with the Ballpark being included in the first Vertical Development Parcel Lease Phase to commence construction of vertical improvements on the Master Premises.
8. Site Control: Except as otherwise provided for this Agreement, during the term of the Option Agreement, the Oakland A's shall have no property rights, including any right to occupy, control or possess the Premises.
9. Expiration of Option Rights: The parties agree all rights to lease any portion of the Master Premises shall expire if the Master Lease is not executed within 6 years of the Commencement Date of the Exclusive Negotiation Term Sheet, subject to Force Majeure extension; provided however under no circumstances shall any such extension be longer than three (3) years.

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B. Master Lease Agreement:

1. Premises: Master Premises.
2. Term: The term of the Master Lease shall commence upon execution and shall expire on the date that is 20 years from execution of the Master Lease, or earlier termination under any one of the following conditions: (a) the Phase 1 Ballpark Vertical Development Parcel Lease has not been executed within 2 years after the effective date of the Master Lease; (b) the Phase 1 Ballpark Vertical Development Parcel Lease has not commenced vertical construction of the stadium improvements thereon within one (1) year of the effective date of the Ballpark Vertical Development Parcel Lease; or (c) no subsequent Vertical Development Parcel Lease has commenced vertical construction as of June 1, 2039 (all of which shall be considered default under the Master Lease), subject to Force Majeure extension; provided however under no circumstances shall any extension be longer than three (3) years.
3. Parties: Parties to the Master Lease shall be the Port and A's or "affiliate" thereof ("Master Lessee"). The parties to both the Master Lease and the Phase 1 Ballpark Vertical Development Parcel Lease shall be the same entities, subject to the terms of Master Lease Section 10 (Assignment of Vertical Development Rights).
4. Bond Defeasance: The Oakland A's shall pay the Port to defease bond applicable to entire Master Premises prior to or concurrently with the execution of the Master Lease (estimated to be approximately \$7.5 million by late 2020). The amount defeased will be credited toward the payment of initial fixed rent installments under the Master Lease.
5. Rent Payments to Port: The Oakland A's shall pay the Port a minimum guaranteed rent under the Master Lease for the entire term of the Master Lease as follows: (a) before the effective date of the Ballpark Vertical Development Parcel Lease described below, the minimum guaranteed rent shall be \$3,800,000.00 per year; and (b) after the effective date of the Ballpark Vertical Development Parcel Lease described below, the minimum guaranteed rent shall be \$2,300,000.00 per year. To the extent not payable under any Vertical Development Parcel Lease, the Oakland A's shall pay Participation Rent as defined in Vertical Development Parcel Lease Agreement(s) Section C(4)(a)(ii) (Participation Rent) under the Master Lease, if applicable. The first installment of minimum guaranteed rent shall be due upon execution of the Master Lease, and thereafter payable in quarterly installments, subject to proration for the Port's exercise of the lands for the Turning Basin and in addition to the payment to the Port of any additional amounts owed to the Port as per Section 15 (Vertical Development Proceeds) and participation rent, if any.
6. Security Deposit: Equivalent of three (3) months' worth of the then current minimum guaranteed rent.
7. Purpose and Use of Premises: Master Lessee shall construct the Site-Wide Horizontal Infrastructure improvements necessary for the Stadium Mixed Use Project (as approved by the Port under a Port Development Permit and other applicable regulatory agencies) consistent with the Phasing Plan on the Master Premises and operate the improvements for the intended purposes of the approved Stadium Mixed Use Project as well as for related interim uses such as stadium parking.

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8. Site Control: Master Lessee shall assume possession and control of Master Premises at commencement of the Master Lease through the end of the term.
9. Construction of Improvements, Maintenance and Utilities: All on-site horizontal infrastructure improvements for the Stadium Mixed Use Project, and necessary off-site improvements for the Stadium Mixed Use Project, shall be constructed by Master Lessee, or other parties, at their sole cost and expense. There shall be no obligation or responsibility of the Port to construct any improvements (horizontal infrastructure, utilities, any vertical development or otherwise), remove or relocate any structures, utilities, or equipment, or perform environmental remediation necessary for the Project. Master Lessee shall reimburse the Port for any cost or liability of any such removal or operationally or legally required relocation undertaken by the Port for the development of the Stadium Mixed Use Project. Master Lessee shall have the duty to maintain and repair to an agreed upon standard the Master Premises and improvements thereon during the term of the Master Lease at Master Lessee's sole cost and expense, including installation and maintenance of all utilities serving the Master Premises.
10. Assignment of Vertical Development Rights: During the term of the Master Lease, but subject to the conditions precedent described below, the A's or their permitted assignee shall have the right to enter into separate Vertical Development Parcel Leases (in the case of ground leased parcels) and Purchase and Sale Agreements (in the case of fee parcels) for the development parcels identified on Attachment A for construction of vertical improvements consistent with the Stadium Mixed Use Project entitlements granted by the City and Port and the Phasing Plan approved by the A's and Port. Each specific Vertical Development Parcel Lease shall be distinct and apart from the Master Lease, and the Master Lease premises shall be revised to remove each parcel subject to a Vertical Development Parcel Lease Premises and each parcel sold in fee under a Purchase and Sale Agreement effective as of the closing of any such transaction. However, the removal of parcel(s) from the Master Lease shall not cause any reduction of any rent installments payable under the Master Lease or the term of the Master Lease.
 - a. Ballpark Vertical Development Parcel Lease: The parties agree that the Vertical Development Parcel Lease for the parcel on which the Oakland Athletics' Stadium will be constructed (the "Ballpark Vertical Development Parcel Lease") shall be executed by the Oakland Athletics or an affiliate of the Oakland Athletics that satisfies certain "qualified transferee" thresholds to be set forth in the Option Agreement, as determined by the Board of Port Commissioners. Any assignee must be approved by the Board, and the Oakland Athletics and its assignee must be jointly and severally liable under the Ballpark Vertical Development Parcel Lease.
 - b. Other "Subsequent" (to the Ballpark Vertical Development Parcel Lease) Vertical Development Parcel Leases and Purchase and Sale Agreements: The Option Agreement shall provide the A's a right to assign to affiliates or third-parties the option to enter into subsequent Vertical Development Parcel Leases (but not the Ballpark Vertical Development Parcel Lease) and Purchase and Sale Agreements for portions of the Master Premises (except for any portions of the Maritime Reservation Lands, Reacquisition Lands, and/or the Variant Lands the Port had elected to reserve under the Exclusive Negotiation Term Sheet). Any such assignee of a Vertical Development Parcel Lease or Purchase and Sale Agreement must either be an A's "affiliate" (such term to be defined in the Option Agreement) or satisfy "qualified assignee" thresholds to be set forth in the Option Agreement, as determined by the Board, which thresholds

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shall be based upon financial wherewithal as well as the construction and operational experience to perform all of the obligations of the subject Vertical Development Parcel Lease or Purchase and Sale Agreement, as applicable.

11. Conditions Precedent to Execution of a Vertical Development Parcel Lease or a Vertical Development Purchase and Sale Agreement: The following conditions precedent shall be satisfied prior to execution of any Vertical Development Parcel Lease or Vertical Development Purchase and Sale Agreement described below:

a. Ballpark Vertical Development Parcel Lease:

- i. The Ballpark Vertical Development Parcel Lease must be executed within 2 years of the effective date of the Master Lease and must be included within the first Phase of the Stadium Mixed Use Project;
- ii. As a condition to the effectiveness of the Ballpark Vertical Development Parcel Lease, the State Lands Commission shall have adopted trust consistency findings for the Ballpark to the extent required by authorizing legislation or as otherwise requested by the A's and the Port; and
- iii. A's shall have given not less than 6 months' prior notice of the intention to execute the Ballpark Vertical Development Parcel Lease.

b. Subsequent Vertical Development Parcel Leases and Purchase and Sale Agreements:

- i. The Ballpark Vertical Development Parcel Lease shall have been executed and ballpark vertical development shall have commenced on the site;
- ii. All Site-Wide Horizontal Infrastructure that is required under the Phasing Plan shall have been completed in accordance with the Phasing Plan, or sufficient assurances (e.g., performance deposit or guaranty) are in place to secure its completion, and parcel-specific horizontal infrastructure associated with the applicable development parcel shall have been completed or will be completed concurrently in accordance with the Phasing Plan;
- iii. The applicable parcel shall have been appraised as set forth in Vertical Development Parcel Lease Agreement(s) Section C(4)(b) (Other Vertical Development Parcel Leases) below and Purchase and Sale Agreement(s) Section D(5) (Price) below;
- iv. A's shall have given not less than 9 months' prior notice of the intention to execute the applicable Vertical Development Parcel Lease or Purchase and Sale Agreement; and
- v. The Subsequent Vertical Development Parcel Leases and Purchase and Sale Agreements shall be executed and effective in a manner consistent with the Phasing Plan approved by the Port and the A's as specified in the Option Agreement and incorporated into the Master Lease.

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12. Hazardous Materials: All site investigation, monitoring and remediation necessary for Stadium Mixed Use Project, as determined by applicable regulatory agencies and the Port, to be paid for by Master Lessee at Master Lessee's sole cost and expense, in full compliance with the Port of Oakland Environmental Ordinance and Environmental Exhibit.
13. Workforce/Community Benefits Requirements: Parties to negotiate (i.e. Living Wage applicability, MAPLA or other workforce policies), consistent with the terms of **Attachment C** (Community Benefits).
14. Obligation to Commence Construction of Improvements: Lessee shall commence construction of the horizontal improvements within 12 months of execution of the Master Lease, consistent with the Phasing Plan developed and agreed to between the A's and the Port as further described in the Option Agreement and incorporated into this Master Lease, subject to Force Majeure extension; provided however under no circumstances shall the extension be longer than three (3) years.
15. Vertical Development Proceeds: In light of (i) Master Lessee agreeing to pay Port guaranteed rent under the Master Lease and (ii) Master Lessee investing upfront funds to construct all onsite and offsite horizontal development costs for the redevelopment of the Master Premises (collectively, the "Horizontal Investment"), revenue generated by (a) prepaid base ground lease rent under Vertical Development Parcel Leases (not including the Master or Ballpark Vertical Development Parcel Lease) and (b) proceeds of sale of Fee Simple Parcels (as defined below) will (1) first, be paid or credited to Master Lessee until such time as Master Lessee has been reimbursed for all Horizontal Investment and received a mutually agreed market-based return and reasonable fees on the Horizontal Investment and (2) thereafter, be distributed pro rata (based upon mutually agreed revenue sharing percentages) to Port and Master Lessee. Any other amount payable to or received by the Port (including, but not limited to, guaranteed minimum rent or participation rent in the form of on-site or off-site parking revenues, TNC fees, or Condominium Transfer fee referenced below) shall not be included in said credit or payment to the Master Lessee.
16. Existing Improvements: Except for the improvements listed below, all other existing improvements on the Master Premises shall be subject to the provisions in Sections B(7),(8) and (9) relating to on-site improvements constructed by Master Lessee.
 - a. Cranes: Lessee shall assume possession and responsibility for all four (4) Port-owned Cranes on the Premises. Lessee shall, at its sole cost, adequately maintain or, at Lessee's election, remove the Cranes and ensure they do not impede water navigation when extending over the water.
 - b. Shore Power Infrastructure at Berth 68 ("Shore Power Infrastructure"): Lessee shall either allow the Shore Power Infrastructure to remain on the Premises, or remove subject to the terms below. Shore Power Infrastructure, such as transformers, remains property of the Port and may be retrieved by the Port. If Lessee requires the removal of the Shore Power Infrastructure, Lessee shall pay for the cost of removal and any regulatory or grant requirement for penalties or repayment.

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C. Vertical Development Parcel Lease Agreement(s):

1. Premises: Premises under each of the Vertical Development Parcel Lease (including the Ballpark Vertical Development Parcel Lease) shall be defined as a defined portion of the Master Premises consisting of a single development site, as agreed to between Port and A's consistent with the Phasing Plan, and consistent with the EIR and land use approvals granted for the project.
2. Term: Each Vertical Development Lease shall have a term of not more than 66 years, to the extent legally permissible. Close of escrow shall occur on each Vertical Development Parcel Lease Premises in a manner consistent with the Phasing Plan, and shall occur on or before the date of expiration of the Master Lease term. If close of escrow does not occur on or before the deadline, all rights to execute a Vertical Development Parcel Lease for any portion of the Master Lease Premises that is not already subject to an executed Vertical Development Parcel Lease, shall expire. Provided that the parties agree that a term of up to 99 years is legally permissible, at the election of the Oakland A's, each Vertical Development Lease shall provide for such extended term and shall otherwise be on mutually agreeable terms (including fair market valuation and rent for such extended term).
3. Parties: The parties to each Vertical Development Lease shall be the Port and A's or an affiliate thereof, or assignee as approved by Board for any Vertical Development Parcel Lease as set forth in Master Lease Section B(10)(b) (Other "Subsequent" Vertical Development Parcel Leases) above (each, a "Vertical Development Parcel Lessee"), other than the Phase 1 Ballpark Vertical Development Parcel Lease which shall be between the Port and the A's or an affiliate of the A's that has been approved by the Board of Port Commissioners as described in Master Lease Section B(10)(b) (Other "Subsequent" Vertical Development Parcel Leases) above. The A's and any assignee approved by the Board shall be jointly and severally liable for any payment to the Port under the Phase 1 Vertical Development Ballpark Vertical Development Parcel Lease.
4. Rent:
 - a. Ballpark Vertical Development Parcel Lease:
 - i. Minimum Guaranteed Rent Payment Schedule: The first installment of guaranteed rent under the Ballpark Vertical Development Parcel Lease shall be due upon signing of the Ballpark Vertical Development Parcel Lease, and thereafter payable in quarterly installments in the amount of \$1,500,000.00 per year for years one (1) through twenty (20) of the Ballpark Vertical Development Parcel Lease term, increasing thereafter to \$2,500,000.00 per year beginning on the first day of the year twenty-one (21) of the Ballpark Vertical Development Parcel Lease term, and increasing thereafter to \$3,500,000.00 per year beginning on the first day of year fifty-six (56) of the term through the last day of year sixty-six (66) of the term of the Ballpark Vertical Development Parcel Lease.
 - ii. Participation Rent: The parties agree that this Participation Rent Section shall be included in the Master Lease, Ballpark Vertical Development Parcel Lease, and/or any Vertical Development Parcel Lease, as applicable, relating to all or any portion of the premises on which public parking facilities and/or TNC lots have been developed (but expressly excluding off-street parking facilities

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constructed on mixed-use development parcels that are primarily intended to serve occupants of such residential or commercial parcels).

1. On-site Parking Revenues: The Port shall receive 10% of the net parking revenues generated by public parking fees collected on public parking facilities within the Howard Terminal premises (but expressly excluding off-street parking facilities constructed on mixed-use development parcels that are primarily intended to serve occupants of such residential or commercial parcels) during the entire term of the Master Lease, Ballpark Vertical Development Parcel Lease, and/or term of the Vertical Development Parcel Lease, whichever are applicable, upon which such public parking is located on the premises. (The parties agree to specify the terms of "net parking revenues" during the term of the Exclusive Negotiation Term Sheet, but the intention is that such revenues are those gross revenues collected less expenses for operation of such public parking operations.)
 2. Transportation Network Company ("TNC") Surcharge: The Ballpark Lessee intends to establish a TNC drop-off and pick-up area on the Premises. Beginning in year 21 of the Ballpark Vertical Development Parcel Lease and continuing thereafter until the end of the Ballpark Vertical Development Parcel Lease term, the Port will receive 100% of the proceeds received from a surcharge placed on every TNC drop-off and pickup for all ballpark events (approximately 91 per year). The drop-off/pick-up surcharge is \$3.00 per drop-off/pick-up and appreciates at 1% per year. If the establishment, regulation, and enforcement of such a program and surcharge fee proves infeasible or unenforceable, the Ballpark Lessee and the Port agree to meet and adjust the On-site Parking Revenue share percentage accordingly to ensure the Port receives the proceeds equivalent to that would have been received from the TNC Surcharge had it been enforceable.
- b. Other Vertical Development Parcel Leases: Rent under each Vertical Development Parcel Lease shall be pre-paid at execution thereof, based upon fair market value as determined in accordance with appraisal instructions to be agreed upon by the parties in the Transaction Documents. See Master Lease Agreement Section (B)15 (Vertical Development Proceeds) above regarding disposition of proceeds.
- c. Off-site Parking Revenues: The Ballpark Vertical Development Parcel Lessee intends to pre-purchase parking vouchers for 400 public parking spaces in the Port-owned Washington Street garage for use on ballpark game days (approximately 91 per year) during the first twenty years of the term of the Ballpark Vertical Development Parcel Lease. The Ballpark Vertical Development Parcel Lease shall provide that the Lessee shall pre-pay the Port, on a monthly basis, for the use of 400 public parking spaces by parkers to whom vouchers have been issued to by the Ballpark Vertical Development Parcel Lessee, and the Port shall collect 30% of the net sale proceeds from the sale of such vouchers by the Ballpark Lessee in addition to the applicable public parking

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rates for these spaces as established by the Port, and as may be amended by the Port from time to time, for years 1-20 of the Ballpark Vertical Development Parcel Lease term.

5. Security Deposit: Equivalent of three (3) months' the then current minimum guaranteed rent.
6. Use of Premises: Each Vertical Development Parcel Lessee shall construct the vertical improvements applicable to the subject Vertical Development Parcel Lease premises (consistent with the Phasing Plan and Stadium Mixed Use Project approvals granted by the City and Port for the subject Vertical Development Parcel Lease premises, and other applicable regulatory agencies) and operate the improvements for their intended purposes. Permitted uses shall include any use permitted under the City General Plan and application zoning and Port regulations; provided however, that residential development and use shall not be permitted. Each Vertical Development Parcel Lease for any stand-alone parking facility shall provide that parking shall be made available to the general public.
7. Site Control: Each Vertical Development Parcel Lessee will assume possession and control of Vertical Development Parcel Lease premises at commencement of each Vertical Development Parcel Lease term through the end of each such Lease term.
8. Construction of Improvements, Maintenance and Utilities: Each Vertical Development Parcel Lessee shall, at its sole cost and expense, construct all on-site vertical improvements for each Vertical Development Parcel Lease, and necessary off-site improvements. There shall be no Port obligation to construct improvements or infrastructure, remove or relocate any structures, utilities, or equipment, and Lessee shall reimburse the Port for any cost of any such removal or operationally or legally required relocation undertaken by the Port for the development of the Project. Lessee must provide for the removal of all vertical improvements, at Lessee's sole cost and expense, prior to the end of the term unless otherwise allowed to remain by the Port. Lessee shall have the duty to maintain the premises and improvements during the term of the Lease at Lessee's sole cost and expense, including installation and maintenance of all utilities serving the Lease premises.
9. Haz Mats: All site investigation, monitoring and remediation necessary for Vertical Development Parcel Lease(s), as determined by applicable regulatory agencies and the Port, to be paid for the Lessee at Lessee's sole cost and expense, in full compliance with the Port of Oakland Environmental Ordinance and Environmental Exhibit.
10. Workforce/Community Benefits Requirements: Parties to negotiate and comply with (i.e. Living Wage applicability, MAPLA or other workforce policies), consistent with the terms of **Attachment C** (Community Benefits).
11. Obligation to Commence Construction of Stadium: The Phase 1 Ballpark Vertical Development Parcel Lessee shall commence vertical construction of the Stadium within 12 months of execution of the Ballpark Vertical Development Parcel Lease, subject to Force Majeure extension; provided however under no circumstances shall the extension be longer than three (3) years. Lessee shall commence construction of the horizontal improvements of other subsequent phase Vertical Development Parcel Leases consistent with the Phasing Plan developed and agreed to between the A's and the Port as further described in the Option Agreement and incorporated into this Master Lease, subject to Force Majeure extension; provided however under no circumstances shall the extension be longer than three (3) years.

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12. "Force Majeure" means 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 premises. In the event an of the Parties is delayed in the performance of any act or thing required under the terms of the applicable agreement (Option, Master Lease, or Vertical Development Parcel Lease) because of Force Majeure, such failure shall not be deemed to be a breach of the applicable agreement and the time within which the Party must perform any said act shall be extended by a period of time equal to the period of delay arising from any of said causes; provided, however, that any such extension shall not be longer than three (3) years. In addition, the Parties will negotiate in the Transaction Documents provisions and conditions that may provide for excusable delays or permitted extensions in meeting specified time-sensitive obligations or requirements upon the occurrence of specified event(s) beyond the Parties' control.
13. Existing Improvements: Except for the improvements listed below, all other existing improvements on each Vertical Development Parcel Lease Premises shall be subject to the provisions of Sections C(6), (7), and (8) relating to on-site improvements constructed by Master Lessee.
 - a. Cranes: Lessee shall assume possession and responsibility for all four (4) Port-owned Cranes on the Premises. Lessee shall, at its sole cost, adequately maintain or remove the Cranes and ensure they do not impede water navigation when extending over the water.
 - b. Shore Power Infrastructure at Berth 68 ("Shore Power Infrastructure"): Lessee shall either allow the Shore Power Infrastructure to remain on the Premises, or remove subject to the terms below. Shore Power Infrastructure, such as transformers, remains property of the Port and may be retrieved by the Port. If Lessee requires the removal of the Shore Power Infrastructure, Lessee shall pay for the cost of removal and any regulatory or grant requirement for penalties or repayment.

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D. Purchase and Sale Agreement(s):

1. Term: The term shall run from the effective date of the Purchase and Sale Agreement through the date that is no later than the expiration of the Master Lease term. The Purchaser shall provide the Port with at least 9 months' notice prior to their intended close of escrow date for the premises. The parties agree that the right to purchase any portion of the Master Premises shall not occur until the Phase 1 Vertical Development Ballpark Vertical Development Parcel Lease is fully executed and construction of the vertical improvements has commenced thereunder.
2. Premises: The premises eligible to be purchased shall be lands that are:
 - (a) identified as "Fee Simple Parcels" on Attachment A which shall include no more than approximately 8 acres of land within the total Master Premises comprised of either:
 - a. Blocks 2, 3, 4, 5, 6, 9, 10, 11, and 12; or
 - b. If the Port elects to pursue the Variant Lands pursuant to Section 7 of the Exclusive Negotiation Term Sheet: Blocks 2, 3, 4, 5, 6, 9, 10, 11, and:
 - i. Block 7 or other mutually agreed parcel within the Master Premises, or
 - ii. Some other mutually agreeable Port-owned property(s) located southwesterly of Clay Street and Embarcadero, subject to existing third-party rights;
 - (b) during the term of the Agreement, determined by the relevant authorities are not subject to granted lands Trust restrictions;
 - (c) during the term of the Agreement, determined to be no longer needed for Trust purposes by the Port; and
 - (d) consistent with the Phasing Plan developed and approved by the Port and A's during the Option Agreement.
3. Parties: Port and A's or Affiliate (term to be defined) thereof, or assignee as approved by Board for any Purchase and Sale Agreement as set forth in Option Agreement Section 7 (Assignment) above (the "Purchaser").
4. As-Is Condition: The property shall be sold in its as-is condition, no improvement or remediation obligations shall be assumed by the Port. Purchaser shall have a title report prepared for the property and the Port shall not be obligated to remove any existing title encumbrances prior to the sale of the premises, but may elect to do so in the Port's sole and absolute discretion.
5. Price: The purchase and sale price shall be determined by an FMV appraisal of the premises prepared within 9 months prior to the intended date of close of escrow on the property. See Master Lease Agreement Section B(15) (Vertical Development Proceeds) above regarding the disposition of proceeds.
6. Transfer Fee Condominium Payment: At the close of escrow on any fee parcel, a covenant shall be recorded against title to such parcel obligating each seller of a constructed residential condominium unit (other than the initial seller) to pay to Port a transfer fee equal to 0.35% of the purchase price for such unit. Such payment shall be deemed to be compensation to the Port for the access through, availability, proximity, and access to public amenities through or on Port Lands within the larger Howard Terminal property and Jack London Square area (which may include, public open spaces, special events held on the premises, and/or public parking provided within close proximity to the premises) and for the Port's relinquishment of its' rights over the sale premises. The transfer fee obligation shall not require the Port in any way to provide any

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maintenance or other services within the premises or provide any specific form of common benefit adjacent to the premises. During the course of negotiations under the Agreement, the Parties will work cooperatively to evaluate the feasibility and enforceability of the proposed transfer fee. If the establishment and enforcement of such a transfer fee is infeasible or unenforceable, the Parties agree to meet and negotiate another Port revenue source to ensure the Port receives the proceeds equivalent to that would have been received from the transfer fee had it been enforceable.

7. Close of Escrow: Close of escrow shall occur on the date that is 9 months and one day from the date the Purchaser provides notice to the Port of their intention to close escrow on the premises (or such other date as agreed by the parties), or the date that is no later than the expiration of the Master Lease term, whichever occurs first. If close of escrow does not occur on or before the aforementioned deadlines, all rights to purchase the premises shall terminate, but the premises shall remain subject to the Master Lease (unless expired).

Attachment C

Community Benefits

The following is a list of categories that will guide the negotiations regarding community benefits for the Project.

This is a preliminary list that will be subject to negotiations regarding community benefits between the parties and community stakeholders, including organized labor, community organizations, housing organizations, environmental organizations, and other impacted stakeholders. The outcome of the negotiations between the Parties will be reflected in any Option Agreement and other negotiated transaction documents, subject to the permitting and regulatory jurisdiction of all applicable state, federal, and local agencies.

- Project labor agreements and labor peace.
- Local employment and targeted hire requirements, job access provisions including Fair Chance, workforce training and funding, retention of existing workers, and apprenticeship policies.
- Living wages, benefits and stable employment opportunities.
- Local business and small business policies and green business fund.
- Environmental mitigation measures and clean energy infrastructure.
- Open space elements.
- Sustainable and healthy development measures for the surrounding community, e.g., healthy food access and measures to improve indoor air quality.
- Transportation infrastructure and transportation demand management programs, including transit affordability and accessibility.
- Affordable housing development (where allowed, subject to all applicable law including the requirements of Tidelands Trust), including, potentially, funding for housing preservation and anti-displacement protections including tenant education and outreach, and enforcement of tenants' rights laws.
- Community implementation and monitoring.
- Other community benefits as needed and feasible, to be negotiated.