

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Betsy Lake  
Deputy City Administrator

**SUBJECT:** Waterfront Ballpark District at  
Howard Terminal

**DATE:** June 25, 2019

City Administrator Approval

Date:

6/27/19

## RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report On The Status, Goals And Potential Impacts Of The Proposed Waterfront Ballpark District At Howard Terminal (Incorporating Housing, Open Space, Adjacent Infrastructure), Including But Not Limited To (1) Pending State Legislation, Assembly Bill 1191 (Bonta) And Senate Bill 293 (Skinner); (2) Status Of Negotiations Between The Port Of Oakland And The Oakland A's; (3) The Environmental Impact Report (EIR) Review Process, Including Scoping, Designation Of Lead Agency, Project Objectives And Description, And Timeline; (4) Transportation/Transit Infrastructure Challenges To And From The Ballpark; (5) Identification Of Concerns To Nearby Maritime Industry; (6) Pending Financial Issues For Ballpark And Related Infrastructure; (7) Work To-Date On Community Benefits; And (8) Potential Jobs Impacts.

## EXECUTIVE SUMMARY

The Oakland Athletics (Oakland A's) have applied to the City for a General Plan Amendment of the approximately 50-acre site commonly known as Howard Terminal, located within the Port of Oakland on the Oakland Estuary at the southerly terminus of Market Street, to facilitate development of a new, 35,000-person capacity Major League 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, a 400-room hotel, and approximately 15 acres of new, publicly-accessible open space (the Project).

The Project will require multiple discretionary approvals at the state and local levels, including but not limited to the City's General Plan Amendment, the State Lands Commission's approval of a trust exchange agreement for the property and trust-consistency determination with regard to the proposed uses on trust lands, the Bay Conservation and Development Corporation's issuance of a Major Permit for the Project, the Department of Toxic Substances Control's approval of a remedial action plan (or equivalent) for the site, and the Port's approval of an Option Agreement and Port Building Permit. All agencies are working collaboratively with City staff and the Project sponsor (the Oakland A's) to develop a shared vision for the Project and a workable regulatory framework for its review and approval.

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This informational report provides an update on each of the items listed under the title of the report and is organized accordingly.

## **BACKGROUND / LEGISLATIVE HISTORY**

### **1) Pending State Legislation:**

Assembly Bill (AB) 1191 (Bonta) and Senate Bill (SB) 293 (Skinner) are pending in the current state legislative session. Brief descriptions of the purpose and scope of each bill may be found immediately below. AB 734, which was enacted in 2018, is discussed in greater detail in Section 3 (Environmental Impact Report) below.

#### **AB 1191:**

Due to a long history of human alteration to the Oakland waterfront, as well as the City's sale and re-acquisition of portions of the Howard Terminal site and litigation related thereto, the exact boundary and status of the public trust within the Howard Terminal site is not known with precision, and is the subject of a bona fide title dispute. In addition, the determination of whether or not a particular use, such as the proposed Major League Baseball park, is consistent with the public trust, is dependent on many factors.

AB 1191 would (i) authorize the State Lands Commission (SLC) 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 SLC 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 separately approved by the SLC and the Bay Conservation and Development Corporation (BCDC). AB 1191 does not require SLC to enter into the contemplated exchange or remove the SLC's or BCDC's discretion to independently review and approve the trust-consistency of proposed uses on trust lands. In short, AB 1191 allows for, but does not require, contemplated SLC and BCDC actions. None of the contemplated SLC or BCDC actions will take place before certification of a Final Environmental Impact Report (FEIR) for the proposed project.

#### **Background:**

AB 1191 represents the collaborative efforts, led by the SLC, of City, Port, SLC, BCDC and the Oakland A's, all of whom worked together in good faith to arrive at a consensus version of the proposed bill. The City was represented in these discussions by staff from the City Administrator's Office, the City Attorney's Office, and outside counsel.

#### **Summary of Proposed Legislation**

AB 1191 would do the following, as currently drafted:

- Authorize the SLC to enter into an exchange of lands currently believed to lie within the public trust for other non-trust lands, all within the boundaries of the property, provided certain conditions are met, including:

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- The lands added to the trust have a monetary value equal to or greater than the value of the lands terminated from the trust;
  - Lands to be removed from the public trust are only to be sold or leased at fair market value;
  - Proceeds of such lease or sale will be used only for trust-consistent purposes;
  - The exchange will not interfere with existing or planned Port operations, including the potential expansion of the Inner Harbor turning basin;
  - Lands to be retained within the public trust shall be publicly accessible and developed with open space and trust-consistent, visitor-serving recreational, retail and hospitality uses; and
  - BCDC has approved an amendment to the Seaport Plan; the Department of Toxic Substances Control has approved a cleanup plan for the site; the Governor has certified the site as meeting the additional environmental protections of AB 734.
- Set forth required findings for a SLC trust-consistency determination for the ballpark project, including:
  - The project will maximize public access to and enjoyment of the waterfront, including continuous public access along the estuary frontage, significant new open space development, and free and low-cost visitor serving events and amenities;
  - The ballpark will provide views of the estuary, the Port's working waterfront and the Bay currently unavailable to the public, and allows free public access to exterior portions of the ballpark; and
  - The ballpark will not interfere with navigation of commercial vessels/operations of the SF Bar Pilots.
- Set a schedule of one hundred (100) days from the certification of the EIR for BCDC to make a determination under the Seaport Plan.
- Establish required findings for a BCDC water-oriented use determination and/or permit, including:
  - The project has been designed using the Bay as a design asset to attract large numbers of people to enjoy the Bay, includes a substantial quantity of high-quality open space and public access thereto, and provides water views from all buildings on BCDC jurisdiction lands;
  - The project promotes activation of adjacent public open spaces, significantly contributing to the publics' use and enjoyment of the waterfront, and enhances rather than privatizes the public realm; and
  - The project provides significant pedestrian and bicycle improvements on- and off-site to promote and encourage public access to the shoreline.

#### *Legislative History and Schedule*

AB 1191 was approved in the California State Assembly and referred to the State Senate on May 22, 2019 with a vote of 69 "ayes" and 1 "no". AB 1191 was subsequently approved at the Senate Committee on Natural Resources and Water on June 25, 2019 by a vote of 9 "ayes" and 0 "noes". The legislation will proceed to the Senate Appropriations Committee in mid August in

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advance of a full floor vote by mid-September. If enacted, AB 1191 will become effective January 1, 2020.

The current version of AB 1191 (as amended in Committee) is included herewith as **Attachment A**, and may also be found online at <https://leginfo.legislature.ca.gov>. As with any statewide legislation, it should be noted that AB 1191 remains in draft form until the final vote in September, and additional amendments are possible.

*Prior Council Direction:*

At the City Council meeting of June 12, 2019, staff received direction from Councilmembers with regard to AB 1191. A copy of Resolution No. 87733 C.M.S. is included for reference herewith as **Attachment B**.

Staff will continue its efforts, working in collaboration with the SLC, Port, BCDC, Oakland A's, and the Author's office, to craft legislation mutually acceptable to all parties and consistent with City Council direction.

**SB 293:**

SB 293 would authorize the City to establish an Infrastructure Financing District (IFD), which is a tax-increment financing vehicle that would enable the City, upon approval by the City Council, to capture and bond against any or all of its portion of the future property tax increment generated within the boundaries of the district for a period of up to 45 years. Other taxing entities' (for example, Alameda County's) revenues will not flow to the district unless they affirmatively opt in. Bond proceeds may be used to fund a variety of facilities serving the public, as set forth in an Infrastructure Financing Plan to be approved by the City Council.

Existing IFD and Enhanced IFD (EIFD) law have various limitations that are cumbersome and/or limit bonding capacity. SB 293, as further described below, would provide the option, but not the obligation, for the City to establish one or more infrastructure financing districts to capture the "but for" taxes created within the district and fund any future City contributions to infrastructure improvements that cannot feasibly be privately financed. An Oakland IFD is one potential source of infrastructure financing for the Oakland Athletics' proposed redevelopment at Howard Terminal.

*Background:*

SB 293 is closely modeled on the Port of San Francisco's IFD law, which was enacted in 2010 and amended in 2012.

The SF IFD law has been used to create infrastructure financing districts for the Treasure Island, Pier 70, Chase Center (Warriors), and Mission Rock (Giants "Lot A") projects, and presents some key advantages over both existing IFD and EIFD statutes.

*What this bill does:*

- Creates a more streamlined process for issuance of bonds, and allows flexibility to maximize capture and bonding capacity by:
  - Eliminating the vote requirement for bond issuance;
  - Allowing creation of project areas, each subject to its own increment capture period of up to 45 years;
  - Starting the 45-year clock for each project area only upon receipt of \$100,000 in incremental tax revenues.
- Includes a public protest procedure requiring three public hearings and a possible district-wide mail-in election prior to formation of the district. Note these requirements are far in excess of the approval process set forth in the approved San Francisco IFD law, which allows for formation via ordinance with no election required for either formation or bond issuance, but consistent with SB 128 (which proposes to amend the EIFD statute by removing the existing vote requirement for bond issuance).
- Requires that public facilities to be funded be limited to those that have communitywide significance and are available to serve the general public (specifically excluding the proposed Oakland A's ballpark).
- Requires City Council approval to form the district, set the district boundaries, and create an infrastructure financing plan, which will include (a) a description of the public facilities required to serve the district, including those to be privately financed as well as those to be financed with assistance from the proposed district, and (b) financing provisions, including the maximum portion of incremental tax revenue proposed to be committed, projected tax revenues, projected sources of financing, a limitation on the aggregate dollars of levied taxes allocated to the district, and an end date.

*What this bill doesn't do:*

- Obligate the City to form a district or contribute money to the Howard Terminal project or any other development;
- Define the boundaries of the district, or identify specific improvements which may or may not be funded; or
- Require other taxing entities to commit tax revenue unless they affirmatively opt in.

*Key benefits of the proposed legislation, as currently drafted:*

- This IFD bill would allow an Oakland IFD to be subdivided into project areas, each with its own 45-year tax capture period, beginning only upon receipt of \$100,000 in incremental tax revenues. Due to the idiosyncratic nature of the Howard Terminal project – with the Port holding back over 10 acres of the developable land area for a period of up to 10 years for the potential future expansion of its Inner Harbor turning basin – the use of sub-district project areas has the potential to significantly increase the bonding capacity of an Oakland IFD, if any, formed to support the proposed redevelopment of Howard Terminal.

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*Legislative History and Schedule:*

SB 293 was approved in the California State Senate and referred to the State Assembly on May 6, 2019 with a vote of 36 "ayes" and 0 "noes". SB 293 is next scheduled to be heard on July 3, 2019 at the Assembly Committee on Local Government. Thereafter, SB 293 will proceed to a full floor vote in August. If approved, SB 293 will become effective January 1, 2020.

*Prior Council Direction:*

At the Rules and Legislation Committee meeting of May 30, 2019 and the City Council meeting of June 12, 2019, staff received queries and direction from Councilmembers with regard to SB 293. A copy of Resolution No. 87734 C.M.S. is included herewith as **Attachment C**.

In collaboration with the Author's office, SB 293 has since been substantially revised in response to the Council's direction; the current text of the bill is included herewith as **Attachment D** and may also be found online at <https://leginfo.legislature.ca.gov>. As with any statewide legislation, it should be noted that SB 293 remains in draft form until the final vote in August, and additional amendments are possible.

Responses to prior Councilmember queries may be found immediately below.

*Frequently Asked Questions:*

Q: Is this IFD a mechanism or tool that can be used Citywide (e.g. for affordable housing) or is it just restricted to the ballpark? Have the boundaries of the IFD been defined?

*A: As revised, the IFD can be used anywhere in Oakland, not just at Howard Terminal. The boundaries of an Oakland IFD formed pursuant to SB 293 would be set forth in the IFD's Infrastructure Financing Plan prior to formation of the district and subject to City Council's discretionary approval.*

Q: What is the cost of public infrastructure (for the Howard Terminal project) and does SB 293 define that cost or provide a procedure for defining what that cost is before commitments are made to fund the infrastructure? Will an IFD commit all property tax revenue within the district boundary?

*A: Costs of infrastructure for the Howard Terminal project are not yet fully known. In order to form an IFD for Howard Terminal or any other district, the City Council would be required to create and approve an Infrastructure Financing Plan before funding any infrastructure. In that plan, the City Council would decide (a) what infrastructure to finance, after considering a full description of the public facilities required to serve the district, including those to be privately financed as well as those to be financed with assistance from the proposed district, and (b) how much money to commit, including the maximum portion of incremental tax revenue proposed to be committed, projected tax revenues, projected sources of financing, and a limitation on the aggregate dollars of levied taxes allocated to the district. An IFD*

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*would only commit that portion of future City property tax revenues set forth in the Infrastructure Financing Plan, subject to City Council's discretionary approval.*

Q: If the City Council forms an IFD and tax increment is lower than projected, who is on the hook for the missing money to cover IFD debt service payments?

*A: It depends how the district is formed. For Howard Terminal, staff would recommend a model similar to that being used in the SF IFD, which transfers this risk to the developer – specifically, the formation of a Community Facilities District (CFD) with boundaries coterminous with that of the IFD. Used together, the CFD and IFD provide two benefits (1) credit enhancement, and (2) risk transfer, generally as follows:*

- Form an IFD for purposes of the division of taxes (i.e., the IFD is used primarily as a mechanism for capturing future “but for” taxes, but does not issue bonds).*
- As part of the Infrastructure Financing Plan, (a) project future “but for” tax revenues within the IFD, and (b) identify infrastructure improvements to serve the IFD, including those to be funded by the IFD.*
- Form a CFD with boundaries coterminous with that of the IFD.*
- Set a new special tax rate within the CFD at a discount to future “but for” taxes projected to be generated within the IFD. For example, the special tax rate could be set such that the CFD generates 80 percent of the income projected to be captured by the IFD.*
- Issue CFD bonds backed – as is typical of all CFD bonds – by the special tax and the real property (an established product within the public markets – this is credit enhancement).*
- “But for” taxes generated within the IFD can be directed to service CFD debt, but to the extent the IFD revenues are insufficient to service or retire the debt (unlikely given the discount, but still possible), the bondholders recourse is to the ratepayers (property owners within the district and/or those with a possessory interest therein – i.e., the developer) and the real property, and not the City's General Fund. This is risk transfer.*

Q: Would the City have say with regard to Community Benefits?

*A: For Howard Terminal, staff would recommend that an IFD be formed only after other project approvals, including approval of a Development Agreement. We anticipate any Development Agreement between the City and A's would include a Community Benefits Agreement.*

Q: Pursuant to the Port's term sheet with the A's, do the Port or the A's have the responsibility to fund public infrastructure or reimburse the City for all or a portion of the infrastructure costs?

*A: Under the Port's term sheet, the A's have the responsibility to fund all infrastructure costs. The City is not a party to that agreement.*

Q: If City forms an IFD and pays for infrastructure, is there a mechanism for reimbursement? How much is reimbursable?

*A: There is no mechanism for reimbursement in an IFD. Any such mechanism would need to be separately negotiated in a Development Agreement between the City and A's, if requested, and/or a separate agreement between the City and Port.*

Q: Does the (Howard Terminal) deal generate any other revenue to the City? Is there an economic analysis to see if any of this is feasible?

*A: The City has not yet completed an economic impact analysis of the Howard Terminal project. That analysis is a required element of the Infrastructure Financing Plan, should City Council elect to form an IFD for the proposed project. Generally, in addition to property taxes, the development of the ballpark, together with the ancillary residential, commercial, hotel and retail, would generate transfer taxes, parking taxes, new parking revenues at off-site meters and in City-owned garages, business taxes, sales taxes, and transient occupancy (hotel) taxes.*

## **2) Negotiations Between Port of Oakland and the Oakland A's:**

On May 13, 2019, the Port Board of Port Commissioners approved, in a 7-0 vote, an Exclusive Negotiation Term Sheet for Howard Terminal (the Term Sheet).

The Term Sheet (**Attachment E**) is included herewith for reference and summarized below.

### *Purpose:*

- The Term Sheet establishes a preliminary, non-binding framework for further negotiation of financial terms and development principles for an Option Agreement between the Port and Oakland A's with regard to Howard Terminal.

### *Schedule:*

- The Term Sheet terminates May 13, 2023 if no Option Agreement has been executed.
- The Option Agreement, including mutually acceptable forms of the Master Lease, Ballpark Vertical Development Parcel Lease, and subsequent Vertical Development Parcel Lease and Purchase and Sale Agreements, terminates May 13, 2025 if no Master Lease has been executed.
- The Master Lease will terminate within two years of its effective date if the Ballpark Vertical Development Parcel Lease has not been executed, or within one year of the effective date of an executed Ballpark Vertical Development Parcel Lease if construction of the ballpark has not commenced. Ballpark Vertical Development Parcel Lease and Vertical Development Parcel Leases are to have 66-year terms.



- Other development parcels within the Project area cannot be sold or leased before construction of the ballpark and backbone infrastructure begins, and completion guarantees and other security have been provided for completion thereof.
- Horizontal and vertical construction to be conducted pursuant to a Phasing Plan, with backbone infrastructure construction to commence within one year of execution of the Master Lease, and subsequent infrastructure supporting individual buildings to be installed concurrently with each vertical development phase.

*Key Business Terms:*

- Port reserves for a period of up to 10 years a total of approximately 10 acres of land generally located within the southwest corner of the approximately 50-acre Howard Terminal site for the potential expansion or reconfiguration of the Inner Harbor Turning Basin. Port's exercise of its rights with regard to the reserved lands will reduce the Oakland A's fixed base rent on a pro rata basis.
- No residential uses on land subject to a Vertical Development Parcel Lease (see Attachment A to the Port's Term Sheet, **Attachment E** of this report).
- No Port obligation to spend Port funds on improvements.
- Future users, owners, lessees, and residents of and in the Project to be notified of potential impacts of Port maritime and marine operations on their use and waive rights to claims arising therefrom.
- Ballpark Vertical Development Parcel Lease is assignable only to an approved affiliate of the Oakland A's.
- Subsequent Vertical Development Parcel Leases and Purchase and Sale Agreements are assignable to financially qualified non-affiliates.
- \$3.8M total annual base rent due to the Port for the term of the 20-year Master Lease, including ballpark rent.
- Subsequent Vertical Development Parcel Leases and Purchase and Sale Agreements (excluding the ballpark) shall be at fair market value as established by an independent appraisal.
- The proceeds of Vertical Development Parcel Leases and Purchase and Sale Agreements shall be prepaid and first credited to Master Lessee to defray the costs of its infrastructure investment, including a market-based return thereon.
- Thereafter, proceeds of Vertical Development Parcel Leases and Purchase and Sale Agreements to be shared pro rata between the Port and Master Lessee.
- Port will also receive:
  - 10 percent of net parking revenues for on-site public parking facilities;
  - Transportation Network Companies (TNC) (e.g. Uber and Lyft) surcharge of \$3/ride on game days, beginning in year 21;
  - Pre-purchase of 400 parking spaces in the Port-controlled Washington Street garage on game days; and
  - Transfer fee of 0.35 percent on all condo sales after the initial sale.

*Additional Required Port Approvals:*

- Concurrently with consideration of the EIR and the Option Agreement, Port will review a proposed Port Building Permit for compliance with:
  - Alternatives and mitigation measures identified in the EIR to lessen or avoid significant impacts;
  - City's General Plan designation and land use regulations;
  - A comprehensive transportation and circulation plan to minimize vehicular congestion and avoid conflicts between vehicular and pedestrian traffic generated by the Project and seaport operations, including cargo trucks; and
  - Other seaport compatibility measures deemed necessary to ensure that the construction and long-term operation of the proposed Project will not interfere with the Port's existing or reasonably anticipated use, operation and development of Port facilities, or the health and safety of Port tenants and workers.

**3) Environmental Impact Report (EIR):**

In November 2018, the City issued a Notice of Preparation of a Draft EIR (DEIR) for the Oakland Waterfront Ballpark District Project. Public scoping meetings on the EIR were conducted at the City of Oakland Landmarks Preservation Advisory Board on December 17, 2018, and at 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.

City staff and consultants, working collaboratively with Port staff and consultants, are currently preparing a DEIR pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines to analyze potential physical environmental impacts of the proposed Project. The Port is a department of the City and not a separate legal entity. However, under the Charter, the Port has been delegated substantial regulatory and proprietary authority over the lands within the Port Area, which include the project site, Howard Terminal. Adoption of a General Plan is not amongst these authorities, and Port Area lands are subject to the City's General Plan. Development of the proposed Project requires a General Plan Amendment, a discretionary City action which is anticipated to be the first discretionary land use action for the Project. Therefore, the City is acting as Lead Agency under CEQA, with the Port acting as a Responsible Agency.

Proposed Project objectives to be set forth in the EIR generally include:

- Redevelopment of the Howard Terminal site with a range of uses designed to expand business and employment opportunities, tourism and visitor activity, and housing availability at a range of affordability levels;
- Construction of a state-of-the-art waterfront ballpark for the Oakland A's that meets Major League Baseball requirements, responds to Project site conditions, including wind, sun and thermal conditions, maximizes water views, and connects to Jack London Square to create a seamless and lively neighborhood along the waterfront.
- Provision of public access to the Bay where it is currently precluded, including extension of the Bay Trail and construction of a major new waterfront park and promenade.

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AB 734, enacted in 2018, also governs the CEQA process for the Project. AB 734 provides for expedited judicial review (challenges, including appeals, to be resolved within 270 days), and also requires enhanced opportunities for public input, including the following:

- Additional workshop to be held within 10 days of publishing the DEIR;
- Electronic version of the DEIR and all documents submitted to or relied on by the Lead Agency in preparation of the DEIR to be made available starting three days after publishing the DEIR;
- All electronic comments on the DEIR to be made available within five days of receipt, and all other comments converted to electronic format and made available within seven days; and
- Within five days after the close of public comment period, commenter may request nonbinding arbitration to be completed prior to final certification, with any agreed upon resolution incorporated.

The DEIR is expected to be available for public review and comment in late summer or early fall of 2019. In addition to the workshop to be conducted pursuant to AB 734 (see above), during the 45-day public comment period commencing upon release of the DEIR, the Landmarks Preservation Advisory Board and the Planning Commission will each conduct a public hearing on the draft. These hearings will focus on the adequacy of the DEIR rather than the merits of the underlying Project. As required by AB 734, all electronic comments received with regard to the DEIR will be posted within 5 days of receipt. At the conclusion of the comment period, staff, in collaboration with its consultant team, will prepare a Response to Comments and Final EIR (FEIR) for the Project, which, together with the Rezoning and General Plan Amendment, will be considered thereafter at additional public hearings of the Landmarks Preservation Advisory Board, Planning Commission, and City Council.

It is anticipated that subsequent Project approvals, including the Port's approval of an Option Agreement and Port Building Permit, SLC's approval of a trust exchange agreement, and BCDC's issuance of Major Permit, will rely in whole or in part on the City's EIR. As such, the Port, SLC, and BCDC, among others, are acting as Responsible Agencies under CEQA, and their discretionary approvals, including but not limited to those set forth above, may only be undertaken following the City's certification of an FEIR for the Project.

#### **4) Transportation:**

The Oakland Department of Transportation's (OakDOT) mission is to envision, plan, build, operate, and maintain the City's transportation system, and to assure safe, equitable, and sustainable access and mobility for residents, businesses and visitors. Within this framework, OakDOT staff and consultants have been tasked with reviewing transportation plans for the Project and working with the Project sponsor and other relevant agencies to modify proposed plans as needed to ensure alignment with this mission.

In alignment with past City Council policy direction, including but not limited to the Energy and Climate Action Plan, Complete Streets Policy, Transit First Policy, and new CEQA guidelines, OakDOT is actively exploring measures that encourage transportation to and from the ballpark and the adjacent development via mass transit (AC Transit, BART, Capitol Corridor/Amtrak, and ferry), walking, bicycling and other forms of micromobility (e.g. shared or personally owned

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scooters). This focus on mass transit, sustainable transit, and people-powered modes of transit represents an approach that is healthier for the community, minimizing greenhouse gas emissions and other pollutants, more economical and equitable, and more efficient for both game day crowds and non-ballpark trips.

#### *CEQA Thresholds of Significance*

On September 21, 2016, the Planning Commission directed staff to update the City's CEQA Thresholds of Significance Guidelines related to transportation impacts in compliance with SB 743 (Steinberg, 2013). SB 743 directed cities to modify local environmental review processes by removing automobile delay, as described solely by level of service (LOS) or traffic congestion, as a significant impact on the environment pursuant to CEQA, and replacing it with per capita vehicle miles traveled (VMT). This direction was consistent with proposed guidance from the Governor's Office of Planning and Research and many adopted City plans and policies related to transportation, which promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. Consistent with Planning Commission direction and SB 743 requirements, the City published its revised Transportation Impact Review Guidelines (TIRG) on April 14, 2017 to guide the evaluation of transportation impacts associated with land use development projects.

The City's TIRG indicates that a project would have a significant effect on the environment if it would:

- Conflict with a plan, ordinance, or policy addressing the safety or performance of the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths (except for automobile level of service or other measures of vehicle delay); or
- Cause substantial additional VMT per capita, per service population, or other appropriate efficiency measure; or
- Substantially induce additional automobile travel by increasing physical roadway capacity in congested areas (i.e., by adding new mixed-flow lanes) or by adding new roadways to the network.

The following are thresholds of significance related to VMT:

- For residential projects (including hotels), a project would cause substantial additional VMT if it exceeds existing regional household VMT per capita minus 15 percent.
- For office projects, a project would cause substantial additional VMT if it exceeds the existing regional VMT per worker minus 15 percent.
- For retail projects, a project would cause substantial additional VMT if it results in a net increase in regional VMT per service population (defined as the total number of residents plus workers in the City).

In addition, AB 734 requires that the Project achieve a 20 percent reduction in the number of vehicle trips generated by both the ballpark and the ancillary development.

Analysis of a transportation plan for the site is ongoing, including both CEQA and non-CEQA (including LOS) considerations. The transportation plan, which represents a collaborative effort

of City and Port staff and consultants, as well as the Oakland A's, will be described in detail in the EIR and at future Planning Commission and City Council meetings.

#### *Project Site*

The Project presents both challenges and opportunities from a transportation perspective. This section describes in greater detail the Project setting and the challenges and opportunities arising therefrom.

- *Roadways:*

The Project site is currently accessible via Embarcadero West, which extends along the northern boundary of the site, and via at-grade railroad crossings of Embarcadero West and the railroad tracks at Clay Street, Martin Luther King Jr. Way, and Market Street.

- *Transit:*

- There are 13 AC Transit local lines, two Transbay lines and a Broadway shuttle which currently operate within a 15-minute walk from the Project site.
- BART stations most likely to serve the Project include the 12<sup>th</sup> Street Oakland City Center Station, Lake Merritt Station, and the West Oakland Station. They are 0.8, 1.1 and 0.8 miles, respectively, from the project's eastern boundary.
- Amtrak operates regional and interregional rail service through the Oakland Jack London Square Station on 2<sup>nd</sup> Street between Harrison Street and Jackson Street, about 0.6 miles from the Project site. Amtrak's Capitol Corridor connects Sacramento and San Jose through Oakland with 15 trains per direction on weekdays and 11 trains per direction on weekends, with hourly headways during peak periods.
- WETA operates the San Francisco Bay Ferry, which provides regular weekday and weekend ferry service between the Oakland Jack London Square Ferry Terminal (less than 1,000 feet from the eastern edge of the Project site) and the Alameda Main Street Ferry Terminal, the San Francisco Ferry Building, San Francisco Pier 41, and South San Francisco.

- *Pedestrian and bicycle facilities:*

Access to the site via walking and bicycling includes at-grade crossings across the railroad tracks at Embarcadero West. There are some incomplete sidewalk networks leading to the project site; and much of the pedestrian infrastructure in the area is designed for a more industrial setting, with some crosswalks not painted, narrow sidewalks, and limited intersection traffic controls. Bicycle facilities leading to the site include the Bay Trail path. There are bicycle facilities in the vicinity, including along 3rd Street, Washington Street and 2nd Street.

Key transportation challenges include:

- Safety concerns at existing at-grade crossings of the Union Pacific Railroad (UPRR) and Amtrak lines generally located along Embarcadero West.

- Distance from BART (the site located 0.8 to 1.1 miles from the three nearest stops) and lack of infrastructure that prioritizes surface transit to the site.
- Potential for conflicts between game-day pedestrians, bicyclists and vehicles, heavy truck traffic, and other Port operations.
- Traffic congestion and parking impacts on nearby communities if trips to Howard Terminal and parking in the vicinity aren't well managed.

Key transportation opportunities:

- Shared and managed parking, both within the proposed Project and within walking distance to the Project (including Jack London Square, Downtown, West Oakland and Chinatown).
- Improved pedestrian, bicycle, transit and vehicular connections between Jack London Square, Downtown, West Oakland, Chinatown and the Project.
- Rail safety and quiet corridor improvements along the existing UPRR and Amtrak lines.
- Continued rationalization and regulation of truck routes.

## **ANALYSIS AND POLICY ALTERNATIVES**

The proposed Project is currently being analyzed for its conformance with CEQA thresholds, its adherence to adopted City policies, plans and projects, and its functionality in close proximity to the Port and the urban core. Current transportation management strategies are outlined below for Councilmember consideration and input; however, please note that in all cases, further analysis is required and ongoing, and the strategies set forth herein remain subject to change and refinement pending that analysis.

### ***Parking Management***

There is a direct relationship between parking availability and driving; people are more likely to travel by vehicle when parking is readily available and easily affordable. Limiting the amount of parking available, and pricing available parking to match demand are two key components of a successful trip reduction strategy. In addition, the City is working with the Project sponsor to develop robust transit, walking and bicycling strategies to ensure that alternatives to driving are available; these are described in further detail below.

City staff and consultants are currently developing a Parking Management Plan for the Project. The plan will set forth strategies and required implementation measures to manage parking by (1) limiting onsite parking, (2) expanding meters and dynamically pricing on-street parking to match demand, (3) expanding residential parking permits, and (4) managing off-street parking in publicly-accessible garages.

Below is a summary of key strategies, with outstanding considerations and policy decisions highlighted for additional discussion:

- *Limiting onsite parking:* The proposed Project includes 3,500 onsite parking spaces in Phase I, reducing to no more than 2,000 spaces at full build out. By way of comparison, the 47,000-person capacity Coliseum has approximately 9,000 onsite parking spaces.

- *Expanding meters and dynamically pricing on-street parking to match demand:* Most on-street parking spaces adjacent to the Project site aren't currently managed and/or wouldn't be managed during evening and weekend game times (weekday evenings, Saturday evenings, and Sundays). In order to ensure that parking is both available to support existing commerce in the Project vicinity, and to achieve vehicle trip reduction goals, parking must be adequately managed. Proposed parking management strategies, including the installation of meters on non-residential streets in the area, expanding hours of meter operations in order to coincide with game times, and increasing the hourly price cap in order to dynamically price parking to match demand, would require City Council approval.
- *Expanding residential parking permits (RPP):* In order to minimize negative impacts to nearby residential communities, and to achieve vehicle trip reduction goals, ballgame patrons, office workers, and other Project visitors should be prevented from regularly driving and parking on nearby residential streets. Expansion of the RPP program, including expanding the hours thereof to coincide with game times, to residential streets in the vicinity of the Project would also require City Council authorization.
- *Managing off-street parking:* In 2016, the City of Sacramento's Parking Services Division implemented its SacPark model in conjunction with the development of the Golden 1 Arena (home to the Sacramento Kings) to provide event parking for the downtown arena and accelerate the modernization of its parking program to the benefit of the entire community. SacPark allows event-goers and other downtown patrons to reserve parking online or on their mobile app in advance and guarantees the availability of parking in a predetermined location. Arena visitors can reserve parking together with their ticket purchase, in a single transaction. Parking prices vary based on location, providing customers with rate options to match their budget. The parking reservation system is available seven days a week, not just on game days, and aims to make better use of existing parking by creating public/private partnerships between the city and private garages owners/operators. In exchange for its management of SacPark, the City of Sacramento receives a percentage of all parking revenues generated, whether in City- or privately-owned garages. The SacPark model is being scoped as an element of the Parking Management Plan and would apply to all City garages in the vicinity of the project (approximately one mile), and privately-owned parking facilities willing to opt-in to the program. The Parking Management Plan will outline the operational, technological and staffing needs required to ensure successful implementation, as well as the program's potential to generate additional revenues to the City. In Sacramento, SacPark has been highly successful in generating substantial new parking revenues, even taking into account reduced parking citation revenues, by achieving better compliance overall.

#### *Transit*

Given the Project's location, there is an opportunity to provide connections to BART, downtown, and dense neighborhoods in the Project vicinity through surface transit. This is also essential to ensure access for people with disabilities, seniors, and families with children. In order to efficiently, sustainably, and reasonably move people to and from the site, transit should be prioritized through some or all of the following strategies:

- *Infrastructure:* In order to ensure that transit is a reliable and attractive option to reach Howard Terminal for both ballgame and non-ballgame trips, staff is investigating a network of transit-only lanes to connect the Project site to nearby BART stations (West Oakland, 12th Street, and Lake Merritt) and beyond. Analysis is ongoing; potential streets which may accommodate permanent, transit-only lanes include Broadway from the 12th St BART Station to 2nd Street, Martin Luther King Jr. Way, and 7th Street. In addition to transit-only lanes, staff is currently working with the Oakland A's to locate and scope a transit hub to serve the Project and the greater Jack London Square community. The hub is envisioned as an attractive experience where game day crowds and daily commuters may easily and comfortably wait for buses, access bike share, valet bike parking, scooters, and other types of mobility.
- *Transit Operations:* Staff and its consultants are currently working in collaboration with AC Transit to develop options to expand daily and gameday service to the Project site and the greater Jack London Square community. While it is possible to provide a private shuttle to meet gameday needs, fulfilling this need via AC Transit is preferred as it would create better and more affordable connections beyond BART. In addition, staff is working with BART, WETA and Capitol Corridor/Amtrak to pursue service coordination and expansion opportunities to meet Project and community needs.
- *Pricing:* In order to effectively shift Project patrons from driving and TNCs (primarily Uber and Lyft) to transit, it may be necessary to make transit more economical. Both AC Transit and BART have expressed interest in working with the City and the Oakland A's to establish a game day transit fare, similar to the arrangement currently being piloted by the San Francisco Municipal Transportation Agency at Chase Center.
- *Long-range transit planning:* To the greatest degree possible, design of the Project should accommodate important if uncertain long-range major capital projects including a potential Jack London Square infill BART station and a potential second BART transbay tube. Both of these options would require significant capital investments, well beyond the scope of the proposed Project.

#### *Transportation Network Company (TNC) Management*

In order to ensure that (1) the Project meets the required vehicle trip reductions, (2) the transportation system is well managed and congestion due to large numbers of TNCs accessing streets around the site, double parking, and making unsafe turn movements is limited, and (3) the streets surrounding the site are safe for all users, especially pedestrians and bicyclists, management of game day TNC pickups and drop-offs is needed.

City staff is working with the Project sponsor to develop a set of strategies to manage TNCs on game days within the legal framework set forth by the California Public Utilities Commission (CPUC), which regulates TNCs. As compliance will be based primarily on voluntary agreements to be entered into with the TNC operators, graduated measures will be developed and implemented if initial measures do not produce the desired results. Currently, staff have requested that TNC drop off/pick up areas be limited to off-street lots that can be well managed, potentially including an onsite lot and Caltrans-owned lots under the adjacent freeway. Analysis of this plan is ongoing, but generally speaking, locating loading zones farther from the Project



site than more sustainable and efficient forms of transportation is preferred to effect mode shift, and staff will continue to prioritize the development of a robust network of safe, fast, reliable and no/low-cost means to reach the ballpark, including the transit, pedestrian and bicycle enhancements described elsewhere in this report.

Strategies under consideration to manage TNCs and ensure usage of designated drop off/pick up areas include:

- Voluntary agreements with one or more TNC companies that could include, but are not limited to:
  - Access to private lots to drop off and pick up ball game attendees;
  - Surcharges to conduct drop offs and pick ups in those lots;
  - Geofencing that directs patrons and drivers to the designated drop off/pick up lots; and
  - App-based ride matching that facilitates patrons and drivers easily locating one another.
- In the absence of an effective and enforceable voluntary plan, the City could institute additional measures such as partial street closures and on-street enforcement of no stopping zones to make lack of a management agreement or non-conformance with the agreement undesirable.

#### *Pedestrian and Bicycle Connections*

Staff is evaluating pedestrian and bicycle connections to and from the three nearby BART stations. Ideal walking routes are being evaluated for Americans with Disabilities Act (ADA) access, gameday platooning of pedestrians, sidewalk connectivity and widths, connectivity across major barriers including the railroad tracks and I-880 freeway, appropriate intersection safety measures and controls, and for their potential to support Oakland's commercial districts, encouraging pedestrians to "stop and shop" en route to games. Potential priority pedestrian corridors include:

- West Oakland: 7th Street to Market Street; 3rd Street to Market Street.
- Downtown: Broadway, Washington Street (with potential as a pedestrian-only street on game days), and Martin Luther King Jr. Way.
- Lake Merritt/Chinatown: 8th Street to Broadway, Oak and Madison to 2nd Street, Webster to Water Street.

Bicycle improvements reflect a combination of planned network enhancements and modified infrastructure improvements to reflect the additional need for a safe bicycle network to and from Howard Terminal. It should be noted that improvements to the bicycle network are also expected to serve those riding electric bicycles and scooters. Proposed improvements include:

- West Oakland: 3rd and 7th Street bicycle lanes in conformance with the West Oakland Specific Plan.
- Downtown: A new protected bicycle lane on Martin Luther King Jr. Way from Howard Terminal to 7th Street and a buffered bicycle lane to connect to the proposed 14th Street protected cycle tracks.

- Lake Merritt/Chinatown: Oak Street protected bicycle lanes, and potential bicycle lanes along Embarcadero, 2nd and/or 3rd Streets; alternatives are still being evaluated in the context of truck and transit routes and existing uses. Currently, the Oakland-Alameda Access Project is proposing a two-way cycle track from 3rd to 9th Streets along Oak.

#### *Port Truck Traffic*

The Port is an extremely important employer and economic driver for the City and the greater Bay Area. As such, the City and its Port Department have articulated a shared goal of minimizing vehicular congestion surrounding the Port and avoiding, to the greatest degree possible, conflicts between vehicular and pedestrian traffic generated by the Project and ongoing seaport operations, including cargo trucks.

City staff and consultants are working directly, collaboratively and regularly with the Port and its peer review team to analyze intersection operations and potential adjustments to traffic operations in order to facilitate goods movement. This analysis is still in process and more complete results are expected in the coming weeks.

#### *Rail Safety*

In the rail industry, grade separation is considered the "gold standard" for safety. Used in combination with other strategies to accommodate rail crossings as safely as possible, new grade-separated crossings would aid in mitigating the following existing conditions in the Project vicinity:

- The Jack London Square segment experiences some of the highest collision rates in Amtrak's Capitol Corridor network
- Proximity to the Port results in occasional very long train dwell times (15 – 20 minutes) as freight trains maneuver on tracks

Currently, there are grade-separated pedestrian and bicycle crossing options being considered at Jefferson and Washington Streets, generally aligned to provide easy access to the entrance of the ballpark. Both options would accommodate persons with disabilities. To maximize compliance and the effectiveness of this potential improvement, it's essential that pedestrian and bicycle grade-separated crossings be made as direct and attractive as possible. In addition, the Project sponsor is proposing at-grade pedestrian rail safety improvements along Embarcadero West such as fencing parallel to the railroad tracks and pedestrian quad gates in compliance with established best practices for at-grade crossings.

The Project sponsor has also studied vehicular grade-separated crossings (overpass and underpass) at Market Street and deemed these grade separations infeasible. City staff are still reviewing this study and have reached no conclusions with regard to feasibility and potential design exceptions. Generally speaking, an underpass would be preferred as an urban form. In the absence of a grade-separated vehicular crossing, emergency vehicle access and site flushing in the event of an emergency are of particular concern, and options for emergency ingress and egress are being evaluated in conjunction with the development of an emergency management plan for the ballpark.

### *Gondola*

A gondola connecting Jack London Square to approximately Washington and 10th Streets is being studied as a variant in the EIR. The gondola would carry 6,000 passengers per hour. As the gondola is a variant, and not a part of the Project, staff efforts are focused on ensuring that the transportation plan operates with or without the gondola.

### **5) Maritime Industry Concerns:**

Maritime industry concerns center primarily on (i) the potential for conflicts between Port operations, including Port-related truck traffic and water navigation, and the Project (particularly residential uses and game-day traffic), (ii) the potential loss of maritime jobs, both those at Howard Terminal and beyond, and (iii) the loss of waterfront land for water-oriented seaport operations.

In response to these concerns, the Port, in its Term Sheet (described in greater detail above), has prohibited residential development on any leased portions of the Howard Terminal site, and required, as a condition precedent to its issuance of a Port building permit, a comprehensive transportation and circulation plan, consistent with CEQA, to minimize vehicular congestion and avoid conflicts between vehicular and pedestrian traffic generated by the Project and seaport operations, including cargo trucks. Further, the Port's Term Sheet requires that its Option Agreement include measures, designs, and operational standards, developed in consultation with seaport and maritime stakeholders, to ensure that the Project does not impact or interfere with the Port's current or reasonably anticipated future use, operation, and development of Port facilities, or the health and safety of Port tenants and workers, and that the future users, owners, lessees, and residents of and in the Project will be notified of potential impacts of Port maritime and marine operations on their use, and waive rights to claims arising therefrom.

Finally, the potential for land use and transportation conflicts between Port and Project uses will also be analyzed at length in the EIR, and the Port, as a Responsible Agency; and the City, as Lead Agency under CEQA, reserve all of their respective rights, responsibilities, obligations, powers, and discretion under the provisions of CEQA to evaluate the environmental impacts of the proposed Project, modify the Project as may be necessary to include or adopt feasible mitigation measures to avoid or lessen significant environmental impacts, or balance the benefits of the Project against any significant impact of the proposed Project prior to taking final action, if such impacts cannot be avoided.

### **6) Financial Issues:**

The Oakland A's have indicated that they wish to enter into a Development Agreement with the City governing development of the proposed Project. Development Agreement negotiations and supporting financial analysis have not yet begun. The City and Port are working through jurisdictional City Charter issues and the City and Port are aligned in applying the zoning code to the project site and delegating that authority to the City; however, the legal mechanism for accomplishing such an approach is pending. While Development Agreement negotiations have not begun, the Oakland A's have committed to the City and in a variety of forums that the ballpark itself will be privately financed. In addition, the Oakland A's have also indicated that they are looking for a public private partnership on infrastructure. Staff understands and shares

the City Council's concern that the City consider the full project - costs and benefits - before making any financial commitments of any nature to this Project. Staff is working with Leo Ma at Century Urban to initiate and create the project proforma and will be seeking direction from City Council as the Development Agreement negotiations proceed regarding the extent to which, if any, the City will use its 'but for' taxes or any other revenues to contribute to infrastructure of communitywide significance.

## **7) Community Benefits:**

Both the Port Term Sheet and AB 734 contemplate a community benefits agreement (CBA) for the proposed Project, as follows:

### *AB 734:*

AB 734 requires that the Project be subject to a comprehensive package of community benefits approved by the Port or City, as applicable, which may include local employment and job training programs, local business and small business policies, public access and open space, affordable housing, transportation infrastructure, increased frequency of public transit, and transit accessibility and sustainable and healthy development measures for the surrounding community.

Further, AB 734 requires that the Project create high-wage, highly skilled jobs that pay prevailing and living wages. Under AB 734, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the Project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, unless all contractors and subcontractors performing work on the Project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the Project and provides for enforcement of that obligation through an arbitration procedure.

### *Port Term Sheet:*

The Port Term Sheet requires that the A's and the Port negotiate community benefits with community stakeholders, including organized labor, community organizations, housing organizations, environmental organizations, and other impacted stakeholders. The Port's community benefits negotiations are anticipated to address a variety of topics, including but not limited to employment, environmental sustainability, and housing. 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.

Additionally, the Port has stated that the Maritime Aviation Project Labor Agreement will apply to construction on the Howard Terminal site.

*City Efforts to Date:*

The Oakland Athletics have requested a Development Agreement for the proposed Project. However, entering into a Development Agreement requires resolution of certain jurisdictional issues between the City and Port. Staff expects that any such Development Agreement would include a CBA, and to that end, has begun studying potential components of a CBA, as set forth in greater detail below.

City of Oakland Municipal Code 2.29.170 specifies that "the City of Oakland will intentionally integrate, on a Citywide basis, the principle of 'fair and just' in all the City does in order to achieve equitable opportunities for all people and communities." To this end, staff recommends that the process to design a CBA center on equity and be explicitly focused on contributing to a future Oakland where currently underserved communities are benefitting from economic security, health and wellbeing currently only enjoyed by some residents of Oakland.

The process to determine components of a CBA for the Project has not yet begun. However, in anticipation of the near-term commencement of CBA discussions, the City's department of Race & Equity is supervising a study to establish a baseline of existing disparities in the community and create metrics against which potential community benefits may be measured.

Baseline conditions are measurable, existing conditions that serve as a benchmark against which goals will be established for improvement. The indicators to be included are a subset of those set forth in the 2018 City of Oakland Equity Indicators Report, narrowed to reflect realistic expectations of the potential impacts of a CBA for the Project. A CBA cannot be reasonably expected to eliminate all existing disparities as there are many variables that affect and contribute to existing conditions. However, a CBA can mitigate potential negative impacts of the Project, and ideally will result in significant improvements for current residents of the affected communities. Further, existing conditions data will provide a guide for prioritizing potential community benefits elements that focus on the removal of barriers to opportunity for those who are most impacted by racial disparities. Ultimately this approach will also establish meaningful performance measures that capture whether target populations are better off because of CBA programs.

Baseline conditions are being analyzed for the City as a whole, as well as for the zip codes in which Howard Terminal and the Coliseum are located (94607 and 94621). The report will be general in scope to provide a broadly applicable framework for future CBA design for major real estate projects developed on public land and/or utilizing public funds, but will also include specific, preliminary recommendations for the Howard Terminal CBA. The study will be complete in late summer 2019.

The following data indicators will be included in the report:

- Median Income: What is the median income by race?
- Housing: What are the levels of home ownership versus renter, as well as homelessness by race?
- Labor Force Participation: What are the levels of employment and unemployment by race?
- Educational Attainment: What are the levels of educational attainment by race?

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- Health Indicators (data pending): What are the health disparities by race for the following indicators: asthma, cardiovascular disease, stroke, cancer, obesity

These indicators will utilize quantitative data that is, when available, disaggregated by race. Data has been drawn primarily from the 2017 American Community Survey administered by the U.S. Census (the most recent year for which information is available). To the greatest extent feasible, the study will also utilize Alameda County Public Health Department data.

An equity driven CBA approach will require that the community be broadly engaged in the process, with emphasis on including those who are most impacted by racial disparities. This involvement will provide essential insights about root causes and barriers driving the existing conditions that they navigate daily. The wisdom of those closest to the problem and what they see as critical strategies needed to address the disturbing level of racial disparities in the City is essential to moving the needle on these outcomes.

#### **8) Jobs Impacts:**

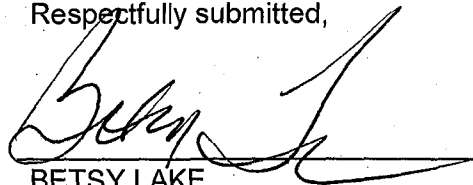
Analysis of the jobs impacts of the proposed Project has not yet begun.

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

Staff Recommends That The City Council Receive An Informational Report About The Status, Goals And Potential Impacts Of The Proposed Waterfront Ballpark District At Howard Terminal (Incorporating Housing, Open Space, Adjacent Infrastructure), Including But Not Limited To (1) Pending State Legislation, Assembly Bill 1191 (Bonta) And Senate Bill 293 (Skinner); (2) Status Of Negotiations Between The Port Of Oakland And The Oakland A's; (3) The Environmental Impact Report (EIR) Review Process, Including Scoping, Designation Of Lead Agency, Project Objectives And Description, And Timeline; (4) Transportation/Transit Infrastructure Challenges To And From The Ballpark; (5) Identification Of Concerns To Nearby Maritime Industry; (6) Pending Financial Issues For Ballpark And Related Infrastructure; (7) Work To-Date On Community Benefits; And (8) Potential Jobs Impacts.

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

Respectfully submitted,



BETSY LAKE  
Deputy City Administrator

Prepared by:  
Molly Maybrun, Project Manager III  
Real Estate and Major Projects

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Attachments (5):

- A- Current text of Assembly Bill No. 1191
- B- Resolution No. 87733 C.M.S.
- C- Resolution No. 87734 C.M.S.
- D- Current text of Senate Bill No. 293
- E- Port Exclusive Negotiation Term Sheet for Howard Terminal

AMENDED IN SENATE JUNE 13, 2019  
AMENDED IN ASSEMBLY APRIL 11, 2019  
AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019—20 REGULAR SESSION

ASSEMBLY BILL

No. 1191

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Introduced by Assembly Member Bonta

February 21, 2019

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An act relating to the grant of public trust lands to the City of Oakland.

LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as amended, Bonta. State Lands Commission: exchange of trust lands: City of Oakland: Howard Terminal property: Oakland Waterfront Ballpark Act. *Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act.*

(1) *Under existing law, the State Lands Commission has jurisdiction over certain public lands in the state, including tidelands and submerged lands. Existing law authorizes the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that specified conditions are met, as prescribed.*

*This bill would enact the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act and would authorize the State Lands Commission and the San Francisco Bay Conservation and Development Commission to take certain actions related to the development of the Howard Terminal.*



property located in the City of Oakland for the Oakland Sports and Mixed-Used Project, as defined. The bill would require the San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission to take certain actions related to the San Francisco Bay Seaport Plan and San Francisco Bay Plan. By imposing additional duties on the Metropolitan Transportation Commission, this bill would impose a state-mandated local program.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute governing public trust lands at the Howard Terminal property in the City of Oakland.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(1) Under existing law, the State Lands Commission has jurisdiction over certain public lands in the state, including tidelands and submerged lands. Existing law authorizes the commission to enter into an exchange, with \_\_\_ any person or any private or public entity, of filled or reclaimed tidelands \_\_\_ and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, \_\_\_ and fisheries, for other lands or interests in lands, if the commission finds that specified conditions are met, as prescribed.

This \_\_\_ bill would enact the Oakland Waterfront Ballpark Act, which would authorize the commission to enter into an exchange with the City of \_\_\_ Oakland, of filled or reclaimed tidelands and submerged lands or beds \_\_\_ of navigable waterways, or interests in these lands, located in the

Howard Terminal property, as defined, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands under the jurisdiction and control of the city, if the commission finds \_\_\_ that specified conditions exist. The bill would also authorize the commission \_\_\_ to impose any additional conditions on an exchange of land \_\_\_ authorized under the bill, if the commission determines that the conditions \_\_\_ are necessary to protect the public trust. The bill would authorize \_\_\_ the commission to establish the ordinary high water mark or the ordinary low water watermark of any tidelands or submerged lands

within \_\_\_\_\_ the boundaries of the Howard Terminal property that are exchanged pursuant to an agreement with the City of Oakland.

(2) This bill would make legislative findings and declarations as to the \_\_\_\_\_ necessity of a special statute governing public trust lands at the Howard Terminal property in the City of Oakland.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. This act shall be known, and may be cited, as the  
2     Oakland Waterfront Sports and Mixed-Use Project, Waterfront  
3     Access, Environmental Justice, and Revitalization Act.

4     SEC. 2. (a) The Legislature finds and declares all of the  
5     following:

6         (1) The Oakland Coliseum is an aging facility and one of the  
7         oldest ballparks in the nation.

8         (2) The City of Oakland wishes to retain the Oakland Athletics  
9         professional baseball franchise in the city, and, along with the  
10        Oakland Athletics, has identified the Howard Terminal property  
11        as a potential site for a new, state-of-the-art Major League  
12        Baseball park.

13        (3) The city seeks to capitalize on the development of a new  
14        baseball park to maximize the benefits of the team and its facilities  
15        to the city, the Port of Oakland, the region, and the West Oakland  
16        community. The proposed Oakland Sports and Mixed-Use Project  
17        has the potential to create new public open space and recreational  
18        opportunities on the Oakland waterfront, incorporate transit and  
19        transportation infrastructure improvements consistent with city  
20        and regional goals for sustainable, transit-oriented development,  
21        and result in an increased supply of housing, including affordable  
22        housing. In addition to these benefits, in accordance with  
23        subdivision (d) of Section 21168.6.7 of the Public Resources Code,  
24        the proposed project is expected to include a comprehensive  
25        package of community benefits that may include local employment  
26        and job training programs, and healthy development measures for  
27        the surrounding community. The Oakland Athletics anticipate that  
28        the proposed project will directly generate many thousands of  
29        full-time jobs, including employees hired during construction and  
30        operation.

1 (4) The Howard Terminal property is located near bus, rail,  
2 ~~and water transit facilities and is proposed to be designed to~~  
3 maximize opportunities for nonautomobile modes of travel pursuant  
4 to the policies and regional vision included in the sustainable  
5 communities strategy Plan Bay Area 2040 that the Metropolitan  
6 Transportation Commission and the Association of Bay Area  
7 Governments adopted pursuant to Section 65080 of the Government  
8 Code.

9 (5) Chapter 959 of the Statutes of 2018 established special  
10 procedures and expedited judicial review under the California  
11 Environmental Quality Act (Division 13 (commencing with Section  
12 21000) of the Public Resources Code) for the Oakland Sports and  
13 Mixed-Use Project, if the project meets certain conditions, as  
14 detailed in that statute.

15 (6) The Howard Terminal property is roughly 50 acres of land  
16 and includes two deep-water berths adjacent to the Inner Harbor  
17 channel. It is bounded approximately by the Inner Harbor to the  
18 south, Schnitzer Steel Industries, Inc., to the west, Embarcadero  
19 West to the north, and Clay Street to the east. Marine terminal  
20 operations at the Howard Terminal property ended in 2014 when  
21 SSA Terminals relocated the operations of the former APL/EMS  
22 Terminal. Because of its size and shallow water depth relative to  
23 other modern container terminals, older container gantry cranes,  
24 and limited room for expansion, Howard Terminal is not desirable  
25 for loading and unloading of the larger container ships that call  
26 the port. The Howard Terminal property has been used since 2014  
27 for ancillary maritime operations, including truck parking, loaded  
28 and empty container storage and staging, transloading logistics  
29 facilities, the Pacific Maritime Association's International  
30 Longshore and Warehouse Union longshoreperson training  
31 facilities, and berthing vessels, all of which operate under  
32 short-term agreements with the port. The site is inaccessible to  
33 the public.

34 (7) The Howard Terminal property abuts the estuary and has  
35 historically been used for industrial purposes, including a marine  
36 terminal. The Howard Terminal property directly adjoins Jack  
37 London Square, an area that has undergone a transformation from  
38 industrial maritime use to a vibrant and active mixed-use area  
39 that includes pedestrian-oriented retail, dining, and entertainment  
40 uses and a ferry terminal, which reinforce the connections between

1 the waterfront and the city, draw local and regional visitors to the  
2 waterfront, and link the area to the region.

3 (8) The state conveyed portions of the Howard Terminal  
4 property to the city by legislative grants to hold and manage in  
5 trust for the benefit of the statewide public. In 1927, the Port of  
6 Oakland was established by amendment to the charter of the City  
7 of Oakland. The port controls and manages more than 4,000 acres  
8 of land on which it operates marine cargo terminals, an  
9 international airport, and substantial public access and  
10 visitor-serving amenities. The port is required to manage its  
public

11 lands consistent with the terms and obligations of its grants,  
12 constitutional, common law, and statutory fiduciary duties,  
13 including the requirements of Sections 6006, 6009, and 6009.1 of  
14 the Public Resources Code.

15 (9) Portions of the Howard Terminal property consist of Rancho  
16 Uplands that the city or port acquired from private owners over  
17 the years. Rancho Uplands are held by the port as assets of the  
18 public trust, but they can be sold into private ownership for fair  
19 market value if they are no longer useful or needed for trust  
20 purposes. The port must use proceeds from the sale of those lands  
21 as trust assets to be used only for trust purposes.

22 (10) The tidelands granted to the city in trust pursuant to  
23 Chapter 107 of the Statutes of 1852 (1852 Tidelands) lie  
landward

24 of the lands granted to the city in trust pursuant to Chapter 174  
25 of the Statutes of 1923, as amended, (1923 Tidelands) and  
26 waterward of the Rancho Uplands. Shortly after being granted  
27 the 1852 Tidelands, the city attempted to convey them to private  
28 parties. The city later disputed the validity of this conveyance.  
29 Pursuant to legislative authorization, Chapter 230 of the Statutes  
30 of 1867–68, the city and the private parties settled these title  
31 disputes in a compromise that the California Supreme Court  
upheld

32 in *City of Oakland v. Oakland Water-Front Co.* (1897) 118 Cal.  
33 160. Over the past 110 years, the city and port reacquired all of  
34 the 1852 Tidelands at the Howard Terminal property.

35 (11) The city's conveyance of the 1852 Tidelands to private  
36 parties in 1852 did not terminate the state's sovereign interest in  
37 these lands or remove them from the public trust. However, the  
38 *Oakland Water-Front Co.* case held that, pursuant to a settlement  
39 confirmed by later enacted statutes, the city's conveyance to  
private

40 parties of the 1852 Tidelands was valid. The legal effect of this

1 holding on the 1852 Tidelands is the subject of a bona fide title  
2 dispute. The 1852 Tidelands have been filled and reclaimed  
3 through dredging the estuary and the construction of the 1910  
4 quay wall, the Grove Street Pier, and a concrete wharf in 1981.  
5 Due to this history of human influences to the Oakland waterfront,  
6 the boundary between the Rancho Uplands and the 1852 Tidelands  
7 has not been located with precision, nor has this boundary been  
8 fixed by agreement. Although a portion of the boundary between  
9 the 1852 Tidelands and the 1923 Tidelands was fixed by agreement  
10 between the city and private parties, the validity of this agreement  
11 is also subject to dispute.

12 (b) The Legislature further finds and declares both of the  
13 following:

14 (1) The Ballpark and Public Lands Development is intended to  
15 further public use, access, and enjoyment of the public lands and  
16 navigable waters at the Howard Terminal property by providing  
17 an open-air ballpark designed in a manner that is consistent with  
18 the public trust and that can also be used for events and public  
19 assembly, coupled with public access, open space, water-oriented  
20 recreational activities, preservation of maritime resources, and  
21 other potentially public trust-consistent uses, such as hotels,  
22 visitor-serving retail, restaurants, and parking to promote public  
23 trust purposes. The Ballpark and Public Lands Development is  
24 proposed to include:

25 (A) Waterfront improvements, event programming, and parks.

26 (B) Significant infrastructure investments throughout the entire  
27 Howard Terminal property to address sea-level rise threats.

28 (C) Improved access from the surrounding neighborhood and  
29 other areas and regional transportation networks that will open  
30 new connections to the Howard Terminal property and the entire  
31 waterfront.

32 (D) A new network of public streets and sidewalks that provide  
33 connectivity to and through the Howard Terminal property, with  
34 streetscapes that provide safe pedestrian access and are  
35 bike-friendly, and public pathways that lead visitors directly to  
36 the waterfront and related amenities.

37 (E) The preservation and integration of historic maritime  
38 features associated with the port and existing container cranes to  
39 honor the port's maritime history and provide educational  
40 opportunities related to port and maritime functions.

1 (F) A continuous waterfront trail that connects the Howard  
2 Terminal property to the San Francisco Bay Trail.

3 (G) Dedication of the waterward edge of Howard Terminal for  
4 ongoing water-dependent or maritime use, which may include  
5 access for excursion boats, recreational watercraft, and industrial  
6 small vessel mooring.

7 (2) Due to its location adjacent to Jack London Square, which  
8 is served by bus, rail, and regional ferry, and its prime waterfront  
9 location, the Ballpark and Public Lands Development is anticipated  
10 to attract visitors from the region and the state to the waterfront.  
11 If appropriately and properly designed, the Ballpark and Public  
12 Lands Development has the potential to provide substantial views  
13 of the bay from waterfront public access areas and raised areas  
14 around the ballpark that will be publicly accessible.

15 (c) The Legislature further finds and declares that, because of  
16 the unique circumstances existing at the Howard Terminal property  
17 and described in this section, this act does not set a precedent for  
18 any other location or project in the state.

19 (d) It is the intent of the Legislature in enacting this act to  
20 authorize the State Lands Commission to approve an exchange  
21 subject to the terms and conditions of this act that will settle these  
22 disputes over boundary locations and the title status of the 1852  
23 Tidelands. It is the further intent of the Legislature in enacting  
24 this act to authorize the commission to establish the ordinary high  
25 or ordinary low water mark and to fix the boundary between public  
26 trust lands and the Rancho Uplands. The Legislature finds that an  
27 exchange meeting the requirements of this act meets the purposes  
28 enumerated in subdivision (c) of Section 6307 of the Public  
29 Resources Code.

30 SEC. 3. The Legislature also finds and declares all of the  
31 following with respect to the Seaport Plan port priority use  
32 designation at the Howard Terminal property:

33 (a) The San Francisco Bay Conservation and Development  
34 Commission's (BCDC's) San Francisco Area Seaport Plan  
35 (Seaport Plan) designates certain areas of the port for port priority  
36 use, including the Inner Harbor area that includes the Howard  
37 Terminal property. The Seaport Plan documents that in 1996,  
38 when the Seaport Plan was last updated, the cargoes handled at  
39 the Howard Terminal property included containers, break bulk,  
40 and steel. The Howard Terminal property ceased use as a container

1 terminal in 2014, but continues to be used for maritime commerce,  
2 including container storage, truck parking, and ancillary services.

3 (b) In response to, among other things, regional and local  
4 environmental concerns, the increased size of container vessels  
5 and containers that cannot use more shallow berth depths, and  
6 the need for greater efficiency in moving containers to their  
7 destinations with the least relative environmental impact, the port  
8 has been consolidating, reconfiguring, and expanding its existing  
9 marine terminals pursuant to port improvement plans.

10 (c) BCDC is updating the Seaport Plan to forecast through 2050  
11 future needs to throughput marine cargo through the San Francisco  
12 Bay region's ports and the throughput capacity of the ports, given  
13 present and anticipated efficiency. BCDC has also initiated, at the  
14 request of the Oakland Athletics, the planning process to determine  
15 whether the Howard Terminal property is needed to help provide  
16 projected regional cargo throughput needs.

17 SEC. 4. The Legislature also finds and declares all of the  
18 following with respect to the San Francisco Bay Conservation and  
19 Development Commission's (BCDC's) jurisdiction within the  
20 Howard Terminal property:

21 (a) In 1965, the Legislature adopted the McAteer-Petris Act  
22 (Title 7.2 (commencing with Section 66600) of the Government  
23 Code) to protect and enhance the San Francisco Bay, including  
24 the estuary, and its natural resources. Among other things, the  
25 McAteer-Petris Act grants BCDC regulatory authority over fill in  
26 San Francisco Bay through exercise of its bay jurisdiction, and  
27 limits that activity to water-oriented uses that meet specified  
28 criteria, or minor fill that improves shoreline appearance or public  
29 access. The McAteer-Petris Act further provides that BCDC should  
30 authorize projects on bay fill only when no alternative upland  
31 location is available and the fill is the minimum necessary. BCDC  
32 can alternatively find that certain activities are necessary for the  
33 health, safety, and welfare of the public in the entire San Francisco  
34 Bay area. The McAteer-Petris Act also mandates BCDC to require  
35 the provision of maximum feasible access to the bay and its  
36 shoreline consistent with a project.

37 (b) In 1969, the Legislature received and acted upon BCDC's  
38 report and recommendations from a three-year study of the San  
39 Francisco Bay. The resulting San Francisco Bay Plan (Bay Plan)  
40 adopted by BCDC pursuant to the McAteer-Petris Act contains,

1 among other things, BCDC's policies to guide use and protection  
2 of all areas within BCDC's jurisdiction, including the bay and the  
3 100-foot shoreline band, and ensures that proposed projects,  
4 among other things, minimize bay fill and provide maximum  
5 feasible public access to the bay.

6 (c) Portions of the Howard Terminal property include the former  
7 Grove Street Pier, which consisted of pile-supported fill that  
8 predated the adoption of the McAteer-Petris Act. In 1979, BCDC  
9 issued Permit No. 13-78 that resulted in the removal of portions  
10 of the Grove Street Pier and the placement of new bay fill at the  
11 property located waterward of the 1910 quay wall to allow use of  
12 the Howard Terminal property as a maritime terminal. Permit No.  
13 13-78 provides that an area that is within BCDC's jurisdiction  
14 under subdivision (a) of Section 66610 of the Government Code  
15 remains within that jurisdiction even after fill or a substantial  
16 change in use authorized by BCDC may have changed the  
17 character of the area, and that further permit action will be  
18 required prior to any future changes of use or work within the  
19 filled area. ~~In addition,~~ Section 10710 of Title 14 of the California  
20 Code of Regulations provides: "[a]reas once subject to  
21 Commission jurisdiction remain subject to that same jurisdiction  
22 even if filled or otherwise artificially altered whether pursuant to  
23 Commission permit or not."

24 (d) Portions of the Howard Terminal property ~~currently~~ consist  
25 of areas that were part of the bay that were filled before BCDC  
26 was formed ~~on~~ in September 17, 1965, and BCDC jurisdictional  
bay  
fill lands. The Oakland Sports and Mixed-Use Project is not  
28 expected to involve new fill that would reduce the existing surface  
29 area of the bay other than minor improvements to improve public  
30 access or access to the water. However, the project would involve  
31 a substantial change in use of, and structural improvements to,  
32 BCDC jurisdictional bay fill lands for development of the ballpark,  
33 water-oriented commercial recreation, and bay-oriented public  
34 assembly uses.

35 (e) Under the McAteer-Petris Act, BCDC must grant a permit  
36 for a project if it finds that the project is either necessary to the  
37 health, safety, or welfare of the public in the entire San Francisco  
38 Bay area, or of such a nature that it will be consistent with the  
39 provisions of the McAteer-Petris Act and the provisions of the Bay  
40 Plan then in effect. A proposed substantial change of use and



1 structural improvements on the BCDC jurisdictional bay fill lands  
2 associated with construction of the Oakland Sports and Mixed-Use  
3 Project would trigger BCDC's bay jurisdiction. The McAteer-Petris  
4 Act and existing Bay Plan policies applicable to its bay jurisdiction  
5 may not allow the project, as proposed, on BCDC jurisdictional  
6 bay fill lands.

7 SEC. 5. For purposes of this act, the following definitions  
8 apply:

9 (a) "1852 Grant" means Chapter 107 of the Statutes of 1852.

10 (b) "1852 Tidelands" means all or any portion of the tidelands  
11 granted to the city in trust for the purposes in the 1852 Grant.

12 (c) "1923 Grant" means Chapter 174 of the Statutes of 1923,  
13 as amended.

14 (d) "1923 Tidelands" means all or any portion of the tidelands  
15 or submerged lands granted to the city in trust for the purposes  
16 in the 1923 Grant.

17 (e) "Ballpark and Public Lands Development" or "ballpark  
18 project" means a baseball park that will ~~may~~ become the new  
home

19 to the Oakland Athletics, along with other potentially public  
20 trust-consistent uses, such as visitor-serving retail ~~uses~~, hotels ~~uses~~,  
21 public access improvements, visitor-serving or water-oriented  
22 recreation, cultural and entertainment uses, and other uses to be  
23 developed on the final trust lands at the Howard Terminal property,  
24 consistent with the public trust and 1923 Grant, as determined by

25 the commission pursuant to this act and other applicable law. The  
26 Ballpark and Public Lands Development is a component of the  
27 larger Oakland Sports and Mixed-Use Project.

28 (f) "Bay" means the San Francisco Bay, including the estuary.

29 (g) "Bay Plan" means the San Francisco Bay Plan as adopted  
30 and administered by the San Francisco Bay Conservation and  
31 Development Commission pursuant to the McAteer-Petris Act

32 (Title 7.2 (commencing with Section 66600) of the Government  
33 Code).

34 (h) "BCDC" means the San Francisco Bay Conservation and  
35 Development Commission.

36 (i) "BCDC jurisdictional bay fill lands" means those portions  
37 of the Howard Terminal property that were part of San Francisco

38 Bay and on which fill was placed for water-oriented port use on  
39 or after September 17, 1965~~56~~, pursuant to BCDC Permit No. 13-

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40 and subsequent permit and amendments issued by BCDC.

1 (j) "City" means the City of Oakland or the Town of Oakland,  
2 as applicable.

3 (k) "Commission" means the State Lands Commission.

4 (l) "Estuary" means that arm of San Francisco Bay being a  
5 body of tidal water lying between the city on the east and north  
6 and the City of Alameda on the west and south.

7 (m) "Exchange" means all or any of a boundary line agreement,  
8 title settlement, trust exchange, or quitclaim at the Howard  
9 Terminal property pursuant to Section 6 of this act.

10 (n) "Final trust lands" means those lands that are subject to  
11 the public trust and the terms, conditions, reservations, and  
12 restrictions of the 1923 Grant upon completion of an exchange  
13 pursuant to this act and other applicable laws.

14 (o) "Howard Terminal property" or "property" means an  
15 approximately 55-acre site located within the port area of the city,  
16 including berths 67 and 68, bounded by the estuary on the south,  
17 Jack London Square to the east, and the parallel Union Pacific  
18 railroad tracks and Embarcadero West roadway on the north.

19 (p) "Inner Harbor turning basin" means the portion of the  
20 estuary adjacent to the southeast corner of the Howard Terminal  
21 property and north of the City of Alameda used for the turning of  
22 vessels in the estuary, as it currently exists or as may be expanded.

23 (q) "Legislative grants" means those grants of tidelands and  
24 submerged lands by the Legislature to the city in trust for public  
25 trust purposes, including the 1852 Grant and the 1923 Grant.

26 (r) "Liability measures" means measures intended to protect  
27 the commission, the state, and public trust funds from increased  
28 responsibility or liability associated with hazardous materials at,  
29 on, or under, the Howard Terminal property. Liability measures  
30 may include, without limitation, the commission's right to approve  
31 the remedial plan, applicable indemnities, or insurance policies.

32 (s) "Maritime reservation area" means an area located within  
33 the southwest corner of Howard Terminal reserved by the port  
34 under transaction documents for the Oakland Sports and  
35 Mixed-Use Project to accommodate a potential expansion or  
36 reconfiguration of the Inner Harbor turning basin.

37 (t) "Oakland Sports and Mixed-Use Project" has the meaning  
38 defined in Section 21168.6.7 of the Public Resources Code. The  
39 Oakland Sports and Mixed-Use Project includes the Ballpark and  
40 Public Lands Development.

1 (u) "Port" means the Port of Oakland established by the charter  
2 of the City of Oakland, exclusive control and management of which  
3 the charter of the City of Oakland vests in the board of port  
4 commissioners, acting pursuant to city charter as the trustee for  
5 the lands granted pursuant to the legislative grants and any  
6 improvements or related assets and any other lands owned by the  
7 city that are located in the port area, including any portion of the  
8 Rancho Uplands within the port area, or any successor trustee for  
9 those lands.

10 (v) "Port area" means lands that are under the jurisdiction of  
11 the board of port commissioners for the port in accordance with  
12 the charter of the city.

13 (w) "Public trust" or "trust" means the constitutional and  
14 common law doctrine providing the state's sovereign authority  
15 over the navigable waters of the state, including the tidelands and  
16 submerged lands underlying those waters that are held in trust for  
17 the benefit of all the people of the state and for purposes that  
18 include maritime or water-dependent commerce, navigation,  
19 fisheries, the preservation of the lands in their natural state for  
20 scientific study, open space, wildlife habitat, and water-oriented  
21 recreation.

22 (x) "Rancho Uplands" means lands within the Howard Terminal  
23 property that were never owned by the state, were within the  
24 rancho grant confirmed and patented by the United States to  
25 Vincente and Domingo Peralta, and are generally located  
26 landward of the ordinary high water mark in its last natural  
27 location.

28 (y) "Remedial plan" means the written plan approved by the  
29 California Department of Toxic Substances Control acting as the  
oversight agency for investigation and remediation of hazardous  
30 materials at, on, or under the Howard Terminal property, including  
31 the establishment of screening and remediation goals therefor.

32 (z) "Seaport Plan" means the San Francisco Bay Area Seaport  
33 Plan adopted by BCDC and the Metropolitan Transportation  
34 Commission, as updated April 18, 1996, and amended through  
35 January 2012, and as may be amended from time to time.

36 (aa) "Trust addition lands" means those portions of the 1852  
37 Tidelands, the Rancho Uplands, the 1923 Tidelands, or other lands,  
38 or interests in those lands, approved by the commission that meet  
39 the criteria set forth in Section 6 of this act for lands to be

1 confirmed in or impressed with the public trust and the terms,  
2 conditions, reservations, and restrictions of the 1923 Grant.

3 (ab) "Trust termination lands" means those portions of the  
4 1852 Tidelands, Rancho Uplands, the 1923 Tidelands, or interests  
5 in those lands, approved by the commission that meet the criteria  
6 set forth in Section 6 for lands to be removed from the public trust  
7 and the terms, conditions, reservations, and restrictions of the  
8 legislative grants.

9 SEC. 6. (a) The Legislature hereby authorizes the commission  
10 to approve an exchange at the Howard Terminal property, if the  
11 commission finds that the exchange meets the terms and conditions  
12 of this section.

13 (b) The commission, as part of the exchange, may settle by  
exchange any dispute as to

14 the boundary or title status of the 1852 Tidelands, 1923 Tidelands,  
15 and Rancho Uplands within the Howard Terminal property. In  
16 the settlement of that dispute, the commission may establish the  
17 ordinary high water mark or the ordinary low water mark of  
18 tidelands and submerged lands at the Howard Terminal property.

19 (c) The final trust lands resulting from any exchange that the  
20 commission may approve pursuant to this act will be held by the  
21 port, as granted sovereign lands subject to the public trust and  
22 the terms, conditions, reservations, and restrictions of the 1923  
23 Grant.

24 (d) No exchange shall be effective unless and until the  
25 commission, at a properly noticed public meeting, approves the  
26 exchange. The commission shall not approve an exchange pursuant  
27 to this act unless it finds all of the following:

28 (1) The trust termination lands have been filled and reclaimed,  
29 are cut off from access to tidelands, submerged lands, and  
30 navigable waters, are no longer in fact tidelands or navigable  
31 waterways, and are relatively useless for public trust purposes.

32 (2) The trust addition lands have a monetary value equal to or  
33 greater than the monetary value of the trust termination lands. If  
34 the trust addition lands have a value insufficient to meet this  
35 requirement, the commission may consider a deposit of funds into  
36 the Land Bank Fund established under Section 8610 of the Public  
37 Resources Code to be held for acquisition of property, in an amount  
38 at least equal to the difference in value between the trust  
39 termination lands and trust addition lands, for purposes of making  
40 the finding required by this paragraph.

1 (3) The exchange will not substantially interfere with public  
2 trust uses and purposes, including public rights of navigation and  
3 fishing.

4 (4) The trust termination lands are a relatively small portion  
5 of the tidelands and submerged lands granted to the city.

6 (5) The trust termination lands do not include any lands located  
7 within the BCDC jurisdictional bay fill lands.

8 (6) The final trust lands will provide a significant benefit to the  
9 public trust and are useful for public trust purposes.

10 (7) The final trust lands are configured so they are accessible  
11 from the streets as finally configured within the Howard Terminal  
12 property.

13 (8) BCDC has approved an amendment to the Seaport Plan and  
14 removed the port priority use designation from the Howard  
15 Terminal property or portions of the Howard Terminal property.  
16 Any areas within the Howard Terminal property that remain  
17 subject to the port priority use designation shall remain subject  
18 to the public trust and the terms, conditions, reservations, and  
19 restrictions of the legislative grants, and shall not be included  
20 within the trust termination lands.

21 (9) The Governor has certified the Oakland Sports and  
22 Mixed-Use Project for streamlining pursuant to subdivision (d) of  
23 Section 21168.6.7 of the Public Resources Code.

24 (10) The exchange, considering the entire Oakland Sports and  
25 Mixed-Use Project, will not interfere with existing or planned port  
26 operations, including, but not limited to, commercial navigation  
27 and shipping. In making this finding, the commission may consider,  
28 without limitation, transportation and circulation plans, physical  
29 measures, such as barriers and buffer zones along the western end  
30 of the Howard Terminal property, and institutional controls, such  
31 as land use covenants, easements, conditions, releases, waivers,  
32 mandatory disclosures, restrictions, and lease terms.

33 (11) The exchange, considering the entire Oakland Sports and  
34 Mixed-Use Project, is consistent with the commission's  
35 Environmental Justice and Tribal Consultation policies.

36 (12) The exchange, considering the entire Oakland Sports and  
37 Mixed-Use Project, includes a band of final trust lands along the  
38 estuary side of the Howard Terminal property that will  
39 accommodate open space, public access, and water-dependent  
40 public recreational amenities, including free or low-cost amenities.

1 The width of the band shall take into account the maximum  
2 potential expansion of the Inner Harbor turning basin.

3 (13) The final trust lands are preserved, improved, and enhanced  
4 for public trust uses, including, but not limited to: open space;  
5 plant and animal habitat; public access to and unobstructed views  
6 of the estuary, San Francisco Skyline, and the Port's water; a  
working waterfront; water-oriented recreation;  
7 preservation of historical maritime resources; pedestrian, bicycle,  
8 and vehicular circulation to and along the waterfront; and  
9 ~~commercial services~~ amenities for waterfront visitors, such as  
restaurants

10 and public trust-consistent visitor serving retail and hotels and  
other overnight  
11 accommodations, such as hostels or other lower cost  
12 accommodations.

13 (14) Development of the final trust lands is consistent with state  
14 policy and guidance regarding sea-level rise resiliency planning  
15 and adaptation, such as the Ocean Protection Council's 2018 State  
16 of California Sea-Level Rise Guidance. The Legislature finds that  
17 the Oakland Sports and Mixed-Use Project qualifies for the  
18 medium-high risk aversion for the high-risk emissions scenario  
19 through 2100, and plans for the Oakland Sports and Mixed-Use  
20 Project shall account for 100-year storm events, wave run-ups,  
21 king tides, and other extreme high tides associated with those  
22 scenarios. Plans to address sea-level rise associated with the  
23 Oakland Sports and Mixed-Use Project shall include enforceable  
24 strategies incorporating an adaptive management approach to  
25 sea-level rise for the duration of the ground lease term for the final  
26 trust lands. If needed to comply with state policy and guidance  
27 regarding the plausible high-end climate change scenarios,  
28 otherwise known as H++ scenarios, the plan shall include  
29 consideration of the H++ scenarios, for purposes of risk  
30 management, by outlining adaptation pathways that would be  
31 implemented as contingency plans to ensure resiliency if H++  
32 scenarios occur.

33 (15) The appropriate state agencies, including the Department of  
Toxic Substances Control as the oversight agency, have approved an  
34 environmental site investigation and risk assessment of the Howard  
35 Terminal property, and agreed on subsequent actions and  
36 development standards needed to ensure appropriate management  
37 of potential risks from hazardous materials through development  
38 of a risk management plan and a remedial plan. The exchange  
39 shall ensure that sufficient liability measures that protect the state  
40 will be in place when the exchange is complete.

1 (16) Public streets and other transportation facilities on the  
2 final trust lands are designed to be compatible with the public  
3 trust and to serve primarily public trust purposes of public access  
4 to shoreline improvements and shoreline circulation, and other  
5 public trust amenities, rather than serving nontrust purposes.

6 Parking on the final trust lands is limited to public parking and  
7 shall not be restricted to residential or commuter parking.

8 Management strategies for the public parking, including, but not  
9 limited to, time limits and rates, shall be structured to ensure that  
10 parking is accessible to visitors to the Ballpark and Public Lands  
11 Development year-round and that use for residential or commuter  
12 parking is discouraged.

13 (17) The removal of existing interim uses, as necessary, to  
14 accommodate the Oakland Sports and Mixed-Use Project will not  
15 significantly impair the port's maritime functions or cause  
16 materially adverse consequences on the livability of residential  
17 communities in the surrounding region.

18 (18) The board of port commissioners has approved the  
19 exchange after at least one properly noticed public meeting and  
20 has found that the final trust lands provide a significant benefit to  
21 the public trust and are useful for public trust purposes.

22 (19) The commission has approved the Ballpark and Public  
23 Lands Development on the final trust lands pursuant to Section 7  
24 of this act.

25 (20) The exchange otherwise complies with the requirements  
26 of this act.

27 (21) The exchange is consistent with and furthers the purpose  
28 of the public trust and this act.

29 (22) The exchange is otherwise in the best interests of the  
30 statewide public.

31 (e) The commission may impose additional conditions on an  
32 exchange authorized by this act if the commission determines that  
33 those conditions are necessary to protect and further the purpose  
34 of the public trust or are in the best interests of the state.

35 (f) Any surveys or legal descriptions required for the parcels  
36 in conjunction with an exchange shall be approved by the  
37 commission or its executive officer.

38 (g) Any sale or lease of trust termination lands or Rancho  
39 Uplands, or interest in those lands shall be for fair market value.  
40 All revenue resulting from that sale or lease shall be retained and

1 used only for purposes consistent with the public trust, the 1923  
2 grant, and this act, and shall be accounted for in compliance with  
3 Section 6306 of the Public Resources Code.

4 SEC. 7. (a) The Commission is authorized to approve a Ballpark  
and Public Lands Development on the final trust lands that meets  
the requirements of this act. The Commission may not approve the  
Ballpark and Public Lands Development unless it finds that all of  
the following conditions have been met Legislature, in the exercise  
of its retained

5 power as trustee of the public trust, and in view of the unique  
6 circumstances existing at the Howard Terminal property, hereby  
7 authorizes the commission to approve the Ballpark and Public  
8 Lands Development on the final trust lands, if the commission  
9 finds, at a properly noticed public meeting, that all of the following  
10 conditions are met:

11 (1) The ballpark project is designed to attract the statewide public  
people to the  
12 waterfront, increase public enjoyment of the waterfront, encourage  
13 public trust activities, and maximize public use of trust assets and  
14 resources on the waterfront.

15 (2) The ballpark project provides multiple significant views  
16 presently unavailable to the public of the estuary the San  
Francisco Skyline and the port's

17 working waterfront from a variety of elevations and vantage points  
18 within the baseball park, including significant views from various  
19 seating and viewing areas. An upper-level area around the  
20 perimeter of the baseball park will be publicly accessible  
21 year-round on nongame and nonevent days. In addition, To  
22 encourage the statewide public to visit come to the waterfront, the  
ballpark design

23 shall provide free public views of the field from the outside, and  
24 the operator of the ballpark operator shall be required to allow the  
public

25 to view the field from these outside areas during games and events.  
26 (3) The ballpark project allows and promotes free public access  
27 to exterior portions of the baseball park and to areas from which  
28 the public can view the estuary and the port's working waterfront,  
29 subject to reasonable limitations based on security.

30 (4) Buildings, other than the ballpark, that are located on the  
31 BCDC jurisdictional bay fill lands are designed to allow significant  
32 and important views from the upper level park, such as views of  
33 the bay, the San Francisco skyline, and the port's Oakland's  
working  
34 waterfront.



35 (5) The ballpark project includes significant public plazas open  
36 to the public year-round, including on game and event days, that  
37 can be accessed via public pedestrian promenades at the site that  
38 encourage public use of the Howard Terminal property and provide  
39 a variety of views of the estuary, the San Francisco Skyline, and  
the port's working waterfront.

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1 (6) The ballpark project will not involve any new fill that would  
2 reduce the existing surface area of the bay other than minor  
3 improvements to improve public access and access to the water.

4 (7) The design, construction, and operation of the ballpark  
5 project will not interfere with navigation of commercial vessels  
6 or the operations of the San Francisco Bar Pilots in piloting those  
7 vessels, the safe operation of ongoing maritime activities in  
8 navigable waters, or the construction and operation of a potentially  
9 expanded Inner Harbor turning basin.

10 (8) The ballpark project includes continuous public access along  
11 the estuary frontage of the Howard Terminal property that is open  
12 to the public year-round and includes an interpretive program to  
13 enhance the public's enjoyment and connection with the port's  
14 maritime history.

15 (9) Public trust-consistent events, uses, and programming are  
16 offered regularly at the ballpark project, including free and  
17 low-cost visitor-serving events.

18 (10) A public community room will be made available within  
19 the ballpark project for free or low cost to members of the statewide  
20 public, without preference to local residents or organizations, if  
21 the commission or BCDC finds that there is a demand or need for  
22 those facilities.

23 (11) The Oakland Sports and Mixed-Use Project will allow for  
24 hotels and other overnight accommodations, such as hostels or  
25 other lower cost accommodations, and visitor-serving uses that  
26 will materially enhance public access and public trust uses on the  
27 Howard Terminal property.

28 (12) Accessory office use within the ballpark project shall be  
29 occupied only by public trust-consistent tenants that may include  
30 the primary tenants and users of the ballpark project, and office  
space necessary for the

31 operation and management of the open space and other public  
32 facilities on the ballpark project, except that relatively small  
33 amounts of incidental nonpublic trust uses located on floors above  
the ground

34 floor of the ballpark project may be provided, with the maximum

35 amount of those uses be approved by the commission.  
36 (13) A notice of determination for the Oakland Sports and  
37 Mixed-Use Project has been filed pursuant to the California  
38 Environmental Quality Act (Division 13 (commencing with Section  
39 21000) of the Public Resources Code), and the city or the port has  
given the project all necessary local approvals, each following at  
least one public hearing, and the approvals include an enforceable  
comprehensive package of community benefits consistent with  
Section 21168.6.7 of the Public Resources Code. If th  
40 ~~approved the project at a properly noticed public meeting.~~

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1 ~~including an enforceable comprehensive package of community~~  
2 ~~benefits as required pursuant to subdivision (d) of Section~~  
3 ~~21168.6.7 of the Public Resources Code.~~

(14) A major permit application for the Oakland Sports and Mixed-  
use Project has been submitted to BCDC.

(15) If the public lands development is approved and constructed on  
Howard Terminal, the Port shall submit and present at a properly  
noticed public Commission meeting a trust program report no later  
than one year from the date of the opening of the ballpark project,  
and every five years thereafter through the term of the ground lease  
for the ballpark project that contains the following information:

(A) A list and description of the trust related events and the  
programming that have occurred at the Ballpark and Public Lands  
Development over the preceding one-year or five-year period,  
including the dates on which the events occurred, and identifying  
free or low-cost visitor-serving events.

(B) A detailed narrative statement regarding the uses of the  
Ballpark and Public Lands Development, including a list of  
subtenants.

(C) Any other information specifically requested by the State lands  
Commission that pertains to the program of trust uses for the  
ballpark project.

4 ~~(164) In consideration of the conditions described in paragraphs~~  
5 ~~(1) to (153), inclusive, and all other relevant information known to~~  
6 ~~the commission, the ballpark project is otherwise consistent with~~  
7 ~~the public trust and the terms, conditions, reservations, and~~  
8 ~~restrictions of the legislative grants.~~

9 (15) The ballpark project is in the best interests of the state.

10 (b) Notwithstanding the 1923 grants, the ballpark project shall

11 be an allowed use of the final trust lands if the commission  
12 approves the project pursuant to subdivision (a).  
13 (c) Commission staff shall coordinate and consult with BCDC  
14 staff to ensure that all appropriate information is available to the  
15 commission for its consideration of the conditions in subdivision  
16 (a). The commission and BCDC shall closely coordinate the  
17 scheduling of public meetings related to the determinations under  
18 this act.  
19 (d) Notwithstanding subdivision (a), if the port and the Oakland  
20 Athletics do not enter into a binding agreement that allows for the  
21 construction of the Oakland Sports and Mixed-Use Project ~~on all~~  
22 ~~or any portion of~~ on the Howard Terminal property or if  
the  
23 agreement is subsequently terminated before construction has  
24 commenced on all or any portion of the Howard Terminal property,  
25 then the port may use and operate any portion of the Howard  
26 terminal property pursuant to the 1923 grant and for any trust  
27 consistent use, including marine terminal and ancillary uses,  
28 without further approvals or restriction in place on the Oakland  
29 Sports and Mixed-Use Project.  
30 SEC. 8. The Legislature, in the exercise of its retained power  
31 as trustee of the public trust, and in view of the unique  
32 circumstances existing at the Howard Terminal property, hereby  
33 authorizes the following:  
34 (a) BCDC shall determine by February 28, 2020, or 100 days  
35 after the certification by the City of Oakland of a project-level  
36 environmental impact report for the Oakland Sports and Mixed-Use  
37 Project, whichever is later, whether the Howard Terminal property  
38 and adjacent areas ~~currently~~ designated for port priority use, or  
39 portions of them, are no longer required for port priority use and  
40 shall be deemed free of the port priority use area designation for

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1 purposes of the Oakland Sports and Mixed-Use Project, or whether  
2 these areas are needed for port priority use and should continue  
3 in port priority use designation. If BCDC determines that these  
4 areas are no longer required for port priority use, BCDC and the  
5 Metropolitan Transportation Commission shall reprint the Seaport  
6 Plan and Bay Plan to reflect deletion of the port priority use  
7 designation on these areas.

8 (b) Notwithstanding subdivision (a), if the port and the Oakland  
9 Athletics have not entered into a binding agreement by January  
10 1, 2025, that allows for the construction of the Oakland Sports  
11 and Mixed-Use Project, the port priority use designation shall be  
12 automatically reinstated on the Howard Terminal property as if it

13 had not previously been deleted pursuant to BCDC's Seaport Plan  
14 and Bay Plan amendment process. ~~In addition, if the port and the~~  
15 Oakland Athletics have entered into a binding agreement by  
16 January 1, 2025, that allows for the development of the project,  
17 but that agreement is subsequently terminated before construction  
18 has commenced on all or any portion of the Howard Terminal  
19 property, then the port priority use designation shall be  
20 automatically reinstated, if it had previously been deleted pursuant  
21 to BCDC's Seaport Plan and Bay Plan amendment process, on  
22 the undeveloped portions of the Howard Terminal property for  
23 which the agreement has terminated, ~~without further legislative~~  
24 ~~action.~~ In either case, BCDC and the Metropolitan Transportation  
25 Commission shall reprint the Seaport Plan and Bay Plan to reflect  
26 the reinstatement of the port priority use designation on the  
27 applicable areas, but this subdivision shall apply regardless of  
28 whether the conforming changes have been made.

29 (c) Except as otherwise provided, this section does not limit the  
30 authority or the discretion of BCDC to consider amendments to  
31 the Seaport Plan or the Bay Plan to retain or remove Seaport Plan  
32 or Bay Plan port priority use designations from the Howard  
33 Terminal property and adjacent areas currently designated for  
34 port priority use.

35 SEC. 9. (a) The Legislature finds and declares that unique  
36 circumstances exist at the site to be used for the Oakland Sports  
37 and Mixed-Use Project, including that the BCDC jurisdictional  
38 bay fill land, while still considered to be a part of the bay were  
39 filled for port use, and that considerable public benefits could be  
40 realized by the Oakland Sports and Mixed-Use Project that are

1 substantially greater than could be obtained otherwise through  
2 the BCDC's permit process.

3 (b) In light of subdivision (a), in the exercise of its retained  
4 powers as trustee of the public trust, the Legislature hereby  
5 authorizes BCDC, in considering ~~granting~~ permits for those  
aspects of the

6 Oakland Sports and Mixed-Use Project that lie within the BCDC's  
7 jurisdiction, to find that the ballpark, public trust, and public  
8 open-space uses that lie within the BCDC jurisdictional bay fill  
9 lands are water-oriented uses within the meaning of subdivision  
10 (a) of Section 66605 of the Government Code if BCDC finds, at a

11 properly noticed public meeting, that all of the following conditions  
12 exist, and further provided that BCDC shall not issue  
13 permits for those aspects of the Oakland Sports and Mixed-  
14 use Project that lie within BCDC's jurisdiction unless it  
15 finds that all of the following conditions are met:

13 (1) The ballpark stadium has been designed using the bay as a  
14 design asset to attract large numbers of people to enjoy the bay,  
15 including a substantial quantity of high-quality open space and  
16 public access that serves the surrounding district and the region,  
17 and view of the bay from a rooftop park ringing the top of the  
18 stadium that will be publicly accessible on nongame and nonevent  
19 days subject to reasonable limitations based on security.

20 (2) Buildings on BCDC jurisdictional bay fill lands other than  
21 the ballpark stadium are designed using the bay as a design asset,  
22 including providing water views from public spaces within and  
23 around those buildings.

24 (3) Buildings developed on BCDC jurisdictional bay fill lands  
25 are designed to allow for significant and important view from the  
26 upper-level park within the ballpark stadium, such as views of the  
27 bay, the San Francisco skyline, and the Port's Oakland's working  
waterfront.

28 (4) Public trust uses on BCDC jurisdictional bay fill lands are  
29 designed to promote activation of the adjacent public open spaces,  
30 significantly contribute to the public's use and enjoyment of the  
31 waterfront, and enhance rather than privatize the public realm.

32 (c) The Legislature further authorizes BCDC to grant a permit  
33 for those aspects of the Oakland Sports and Mixed-Use Project  
34 that lie within BCDC jurisdiction, including the substantial change  
35 of use of the BCDC jurisdictional bay fill lands, notwithstanding  
36 the findings and declarations set forth in subdivisions (b), (c), (d)  
37 and to (f),

37 ~~inclusive~~, of Section 66605 of the Government Code and the San  
38 Francisco Bay Plan policies on "Fills in Accord with Bay Plan,"  
39 "Fill for Bay-Oriented Commercial Recreation and Bay-Oriented  
40 Public Assembly on Privately-Owned or Publicly-Owned

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1 Property," and "Filling for Public Trust Uses on Publicly-Owned  
2 Property Granted in Trust to a Public Agency by the Legislature,"  
3 if BCDC finds, at a properly noticed public meeting, that the  
4 Oakland Sports and Mixed-Use Project is otherwise consistent  
5 with all other applicable BCDC laws and policies and both of the  
6 following:

7 (1) The Oakland Sports and Mixed-Use Project will provide a  
8 substantial quantity of high-quality open space and public access,

9 and will provide the public with views from and along major  
10 thoroughfares that invite the public to the waterfront.

11 (2) The Oakland Sports and Mixed-Use Project will provide  
12 significant pedestrian and bicycle improvements both onsite and  
13 offsite in the vicinity of the project site to promote and encourage  
14 public access to, and public assembly at, the shoreline of the bay.

(d) Nothing in this act limits the authority or discretion of BCDC to  
approve or deny permits for those aspects of the Oakland Sports and  
Mixed-use Project described in this act that are within BCDC's  
jurisdiction in a manner consistent with the McAteer-Petris Act  
(Title 7.2 (commencing with Section 66600 of the Government Code)  
and the bay plan except as otherwise provided in this Act, including  
the authority and discretion of BCDC to impose terms and  
conditions on the permits for the project.

15 (ed) BCDC's findings pursuant to this section shall be made  
16 independently from the commission's findings pursuant to Sections  
17 6 and 7.

18 SEC. 10. Nothing in this act limits the authority or discretion  
19 of the commission.

20 SEC. 11. Any exchange entered into pursuant to Section 6 shall  
21 be conclusively presumed valid unless held to be invalid in an  
22 appropriate proceeding in a court of competent jurisdiction to  
23 determine the validity of the transaction commenced within 60  
24 days after the recording of the exchange transaction.

25 SEC. 12. (a) An action may be brought under Chapter 4  
26 (commencing with Section 760.010) of Title 10 of Part 2 of the  
27 Code of Civil Procedure by the parties to any exchange entered  
28 into pursuant to this act to confirm the validity of the transaction.  
29 Notwithstanding Section 764.080 of the Code of Civil Procedure,  
30 the statement of decision in the action shall include a recitation  
31 of the underlying facts and a determination whether the transaction  
32 meets the requirements of this act, Sections 3 and 4 of Article X  
33 of the California Constitution, the public trust, the 1923 grant,  
34 applicable provisions of the Public Resources Code, and any other  
35 law applicable to the validity of the transaction.

36 (b) For purposes of Section 764.080 of the Code of Civil  
37 Procedure and unless otherwise agreed in writing, any exchange  
38 entered into pursuant to this act shall be deemed to be entered into  
39 on the date it is executed by the executive officer of the commission,  
40 who shall be the last of the parties to sign prior to the signature

1. of the Governor. The effective date of the exchange transaction  
shall be

2 deemed to be the date on which it is executed by the Governor  
3 pursuant to Section 6107 of the Public Resources Code.

4 SEC. 13. The Legislature finds and declares that a special  
5 statute is necessary and that a general statute cannot be made  
6 applicable within the meaning of Section 16 of Article IV of the  
7 California Constitution because of the findings and declarations  
8 set forth in Sections 2 to 4, inclusive, of this act.

9 SEC. 14. If the Commission on State Mandates determines that  
10 this act contains costs mandated by the state, reimbursement to  
11 local agencies and school districts for those costs shall be made  
12 pursuant to Part 7 (commencing with Section 17500) of Division  
13 4 of Title 2 of the Government Code.

14 SECTION 1. This act shall be known, and may be cited, as the  
15 Oakland Waterfront Ballpark Act.

16 SEC. 2. (a) For purposes of this section, the following  
17 definitions apply unless the context requires otherwise:

18 (1) "1852 grant" means Chapter 107 of the Statutes of 1852.

19 (2) "1923 grant" means Chapter 174 of the Statutes of 1923, as  
20 amended.

21 (3) "Ballpark project" means a proposed baseball park that will  
22 become the new home of the Oakland Athletics, which will include  
23 visitor \_\_\_\_\_-serving or water-oriented recreation, cultural, and  
24 entertainment----uses, public access, and other public amenities to  
25 be \_\_\_\_\_ developed at the Howard Terminal property in the City of  
26 Oakland, consistent with public trust purposes.

27 (4) "Charter" means the Charter of the City of Oakland, as  
28 amended.

29 (5) "City" means the City of Oakland or the Town of Oakland,  
30 as \_\_\_\_\_ applicable.

31 (6) "Commission" means the State Lands Commission.

32 (7) "Howard Terminal property" or "property" means lands  
33 located \_\_\_\_\_ in the city, within the port area commonly known as the  
34 Howard \_\_\_\_\_ Terminal, consisting of properties identified by the  
e 35 assessor \_\_\_\_\_ parcel numbers: 018-0405-000; 018-0405-002;  
36 018-0405-003-01; 018-0405-003-02; 018-0405-004; 018-0410-004;  
e 37 018-0410-005; \_\_\_\_\_ 018-0410-006-01; 018-0410-001-04; and  
38 018-0410-001-05.

39 (8) "Legislative grants" means those grants of tidelands \_\_\_\_\_ or  
40 submerged \_\_\_\_\_ lands made by the Legislature to the city for public

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1 trust purposes, including the 1852 grant and the 1923 grant, which  
2 include lands in the Howard Terminal property that are under the  
3 jurisdiction of, and controlled by, the port.

4 (9) "Port" means the Port of Oakland acting under the direction

5 of \_\_\_\_\_ the Board of Port Commissioners for the Port of Oakland  
6 pursuant to the charter as the trustee for granted public trust lands  
7 and any improvements or related assets and any other lands owned  
8 by \_\_\_\_\_ the city that are located in the port area, including the Rancho  
9 uplands \_\_\_\_\_ acquired by the city, and any improvements or related  
10 assets.

11 (10) "Port area" means any lands that are under the jurisdiction  
12 of the Board of Port Commissioners for the Port of Oakland.

13 (11) "Public trust" or "trust" means the common law doctrine  
14 applicable to the state's authority over the navigable waters of the  
15 state, \_\_\_\_\_ including tidelands and submerged lands, for purposes  
16 relating \_\_\_\_\_ to maritime or water-dependent commerce, navigation,  
17 and \_\_\_\_\_ fisheries for the benefit of the people of the state.

18 (12) "Rancho uplands" means lands within the Howard Terminal  
19 property that were never owned by the state, are not tidelands or  
20 submerged \_\_\_\_\_ lands, and are located landward of the ordinary high  
21 water mark of 1850.

22 (13) "State" means the State of California.

23 (b)(1) The commission may, pursuant to its authority under  
24 Section 6307 of the Public Resources Code, enter into an exchange  
25 with the city, of filled or reclaimed tidelands and submerged lands  
26 or beds of navigable waterways, or interests in these lands, located  
27 in the Howard Terminal property, that are subject to the public

28 trust \_\_\_\_\_ for commerce, navigation, and fisheries, for other lands or  
29 interests in lands under the jurisdiction and control of the city, if  
30 the commission finds all of the following conditions exist:

31 (A) The exchange meets the requirements of Section 6307 of  
32 the \_\_\_\_\_ Public Resources Code.

33 (B) The exchange ensures that the use of any lands or interests  
34 in \_\_\_\_\_ lands exchanged is consistent with and furthers public trust  
35 purposes \_\_\_\_\_ relating to maritime or water-dependent commerce,  
36 navigation, and fisheries.

37 (C) The exchange is in the best interests of the state.

38 (2) The commission may also impose additional conditions on  
39 the exchange of lands under paragraph (1), if the commission



1 determines that the conditions are necessary to protect the public  
2 trust.

3 (c) The commission may establish the ordinary high water mark  
4 or \_\_\_\_\_ the ordinary low water mark of any tidelands or submerged  
5 lands within the boundaries of the Howard Terminal property that  
6 are exchanged pursuant to an agreement with the city authorized  
7 under \_\_\_\_\_ this section.

8 SEC. 3. (a) This act does not limit the authority of the San  
9 Francisco \_\_\_\_\_ Bay Conservation and Development Commission to  
10 consider \_\_\_\_\_ seaport plan and bay plan amendments and retain or  
11 remove \_\_\_\_\_ seaport plan and bay plan port priority use designations  
12 from the Howard Terminal property and adjacent areas currently  
13 designated for port priority use.

14 (b) This act does not limit the authority of the San Francisco  
15 Bay \_\_\_\_\_ Conservation and Development Commission to approve or  
16 deny \_\_\_\_\_ permits for those aspects of the Oakland Sports and  
17 Mixed-Use Project described in this act that are within the

18 commission's jurisdiction in a manner consistent with the

19 McAteer-Petris Act (Title 7.2 (commencing with Section 66600)  
20 of the Government Code) and the bay plan, including the authority

21 and discretion of the commission to impose terms and conditions  
22 on the permits for the project.

23 (c) This act does not limit the authority or discretion of the  
24 commission to enforce any of its permits issued for the project.

25 SEC. 4. The Legislature finds and declares that a special statute  
26 is necessary and that a general statute cannot be made applicable  
27 within \_\_\_\_\_ the meaning of Section 16 of Article IV of the California  
28 Constitution \_\_\_\_\_ because of the unique circumstances regarding the  
29 development \_\_\_\_\_ of the Howard Terminal property in the City of  
30 Oakland.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

  
City Attorney's Office

19 JUN 14 PM 2:53

## OAKLAND CITY COUNCIL

RESOLUTION NO. 87788 C.M.S.

INTRODUCED BY COUNCILMEMBER NIKKI FORTUNATO BAS AND  
COUNCILMEMBER LOREN TAYLOR

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**RESOLUTION SUPPORTING WITH AMENDMENTS ASSEMBLY BILL 1191, ENTITLED, "STATE LANDS COMMISSION: EXCHANGE OF TRUST LANDS: CITY OF OAKLAND: HOWARD TERMINAL PROPERTY: OAKLAND WATERFRONT BALLPARK ACT" ("AB 1191"), INTRODUCED BY ASSEMBLY MEMBER ROBERT BONTA**

**WHEREAS**, Beginning in 1852 and through a series of legislative grants, including the 1852 tidelands grant and the 1923 tidelands grant, the State of California, granted to the City of Oakland ("City"), in trust, sovereign tide and submerged lands located within its boundaries, including portions of the property referred to as the "Howard Terminal"; and

**WHEREAS**, Through the City's Charter, portions of these public trust lands are delegated to the department of the Port of Oakland ("Port") and are managed by the City acting by and through its Board of Port Commissioners; and

**WHEREAS**, Over the years, the City and the Port, acquired, sold and then re-acquired additional lands that were never owned by the State, referred to as the "Rancho Uplands", that are now included within the Howard Terminal; and

**WHEREAS**, The Howard Terminal property is approximately 50 acres; includes two deep-water berths adjacent to the Inner Harbor Channel; and is situated between Schnitzer Steel and Jack London Square in the City; and

**WHEREAS**, Under existing law the State Lands Commission ("SLC") has jurisdiction over certain public lands in the State, including tidelands and submerged lands, and existing law authorizes the State Lands Commission to enter into an exchange, with any other public entity, any person or any private entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that specified conditions are met; and

**WHEREAS**, A dispute exists as to the public trust status of the lands comprising the Howard Terminal and SLC's jurisdiction over such lands; and

**WHEREAS**, The Howard Terminal Property retains its capacity to function as a Marine terminal; is currently in the San Francisco Bay Conservation and Development Commission ("BCDC") Seaport plan for Port priority use; and is being used for ancillary maritime operations; and

**WHEREAS**, State law requires sponsors of projects that propose to fill or extract materials from the Bay to apply for a BCDC permit as well as get a permit from BCDC within the Bay's 100-foot shoreline band upon providing "maximum feasible public access"; and

**WHEREAS**, the Oakland Athletics have identified Howard Terminal as its preferred location to develop a new baseball park; and

**WHEREAS**, The SLC is not authorized to issue a permit for the proposed project under existing state law; and

**WHEREAS**, AB 1191 would enact the Oakland Waterfront Ballpark Act, which would authorize the SLC to enter into a trust exchange agreement with the Port, whereby certain portions of Howard Terminal would be settled as being subject to the public trust for commerce, navigation, and fisheries and other portions would be freed from the public trust, if the SLC finds that specified conditions exist ("Trust Exchange Agreement"); and

**WHEREAS**, AB 1191 also would authorize the SLC to impose any additional conditions on an exchange of land authorized under the bill, if the SLC determines that the conditions are necessary to protect the public trust; and

**WHEREAS**, AB 1191 would authorize the SLC to establish the ordinary high water mark or the ordinary low water watermark of any tidelands or submerged lands within the boundaries of the Howard Terminal property that are exchanged pursuant to an agreement with the Port; and

**WHEREAS**, AB 1191 would not limit the authority of the BCDC to review any project at the Howard Terminal or decide whether Howard Terminal still is a Port priority use; and

**WHEREAS**, A version of AB 1191 has passed the Assembly floor and is being considered by the Senate; and

**WHEREAS**, The Oakland Athletics, Port and City staff are negotiating further amendments to AB 1191 with SLC and BCDC;

now, therefore be it

**RESOLVED:** That the Oakland City Council supports and urges the California Legislature to pass and Governor Newsom to sign into law California Assembly Bill 1191, with the following amendments:

- 1) that the bill explicitly name the City as a party to the Trust Exchange Agreement, which shall require City Council approval;
- 2) that any contribution, grant or concession that the City makes to enable the proposed project, including offsite infrastructure, be eligible for reimbursement by trust revenues;
- 3) that any police or fire safety services provided by the City to serve the proposed project be eligible for reimbursement by trust revenue; and
- 4) that any parking services provided by the City on public or private streets, garages or lots in the proposed project be eligible for reimbursement by trust revenue; and further; and be it

**FURTHER RESOLVED:** That the City Council directs the City Administrator to negotiate and advocate for the 1) incorporation of language into AB 1191 that reflects the foregoing amendments stipulated in this Resolution and 2) passage of the final bill, as so amended, all in consultation with the City Attorney; and be it

**FURTHER RESOLVED:** That the Oakland City Council hereby directs the City Clerk to convey a copy of the Resolution to the State Legislature, to Assembly Member Robert Bonta and Governor Gavin Newsom.

IN COUNCIL, OAKLAND, CALIFORNIA

JUN 12 2018

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, ~~DAVIS, MCILHANEY~~, KALB, REID, TAYLOR, THAO  
AND PRESIDENT KAPLAN — 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 1 McElhaneay

ATTEST:



LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

19 JUN 14 PM 2:58

Approved as to Form and Legality

  
City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. 87734 C.M.S.

INTRODUCED BY COUNCILMEMBER NIKKI FORTUNATO BAS AND  
COUNCILMEMBER LOREN TAYLOR

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**RESOLUTION SUPPORTING WITH AMENDMENTS SENATE BILL 293,  
ENTITLED, "INFRASTRUCTURE FINANCING DISTRICTS: OAKLAND  
WATERFRONT REVITALIZATION AND ENVIRONMENTAL JUSTICE  
INFRASTRUCTURE FINANCING DISTRICT", INTRODUCED BY  
CALIFORNIA SENATOR NANCY SKINNER**

**WHEREAS**, existing law authorizes the legislative body of a city or county to designate one or more infrastructure financing districts, adopt an infrastructure financing plan, and issue bonds, for which only the district is liable, to finance specified public capital facilities of communitywide significance and specifies procedures for the preparation and adoption of an infrastructure financing plan and the issuance of bonds by a district, including requiring that the issuance of bonds be approved by 2/3 of the voters residing within the boundaries of the district who vote on the proposition; and

**WHEREAS**, Senate Bill 293 ("SB 293") states that the City of Oakland wishes to "establish an infrastructure financing district to finance certain public facilities required for the successful redevelopment of the Howard Terminal waterfront and the revitalization of its West Oakland environs"; and

**WHEREAS**, the Oakland Athletics are negotiating with the Port of Oakland for the development of a new ballpark and mixed use project at the Port-controlled Howard Terminal site ("Howard Terminal Project"); and

**WHEREAS**, SB 293 defines the proposed project to mean "the construction at Howard Terminal of a privately financed ballpark that will be home to the Oakland Athletics baseball franchise, together with complementary commercial, residential, and public open-space development and amenities, new public access to the waterfront, and onsite and offsite infrastructure improvements"; and

**WHEREAS**, SB 293 would establish alternative procedures for the formation of an Oakland Waterfront Revitalization and Environmental Justice Infrastructure

Financing District, pursuant to which the California Legislature would find and declare "that consolidating in a single agency the ability to capture property tax increment revenues to finance qualified public facilities in the City of Oakland will further the enjoyment of the waterfront by the people of this state"; and

**WHEREAS**, through SB 293, the California Legislature would provide the City of Oakland with "additional latitude, within the framework of the laws governing infrastructure financing districts, to create and operate an infrastructure financing district in a manner that optimizes its financing options to facilitate the construction of much needed public facilities meeting the stated goals of statewide significance"; and

**WHEREAS**, SB 293 provides that the City shall initiate proceedings for the formation of the district by adoption of a resolution of intention to establish the district; that, among other things, provides for a district board consisting of each member of the City Council and a representative of each affected taxing entity that has approved any proposed financing plan; and

**WHEREAS**, the boundaries of the district, project areas within the district, and the facilities to be financed will be determined by the City Council in the future and not through SB 293; and

**WHEREAS**, the City Council has not approved any agreement with the Port of Oakland or the Oakland Athletics related to the financing of the requisite infrastructure for the proposed project; and the City, under the proposed structure, will not have any ability to recover the infrastructure costs or to participate in the future revenues generated by the proposed project; and

**WHEREAS**, SB 293 would allow the district board to adopt a financing plan that uses all incremental property tax revenue generated within the district by the City of Oakland and some or all tax revenue of any affected taxing entity, but would prohibit the division of taxes with respect to nonconsenting affected taxing agencies as well as any local educational agencies; and

**WHEREAS**, SB 293 would require the district board to hold three noticed public hearings on the financing plan and conduct a protest proceeding as provided in the bill; and

**WHEREAS**, SB 293 would require the district board to terminate the proceedings if a majority protest, which would mean protests filed by over 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age, and an election to be called if between 25 percent and 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest; and

**WHEREAS,** SB 293 would allow the district to finance the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer, and the facilities need not be physically located within the boundaries of the district; and the district shall only finance public facilities of communitywide significance; and the district shall not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind; and

**WHEREAS,** SB 293 stipulates that the date on which the financing plan will cease to be in effect and all tax allocations to the district will end, and a date on which the district's authority to repay indebtedness with incremental tax revenues received under SB 293, will not exceed 45 years from the date the district has actually received one hundred thousand dollars (\$100,000) in incremental tax revenues; and

**WHEREAS,** the district board may approve and issue bonds, either taxable or tax exempt, for the district according to the procedures set forth in SB 293;

now, therefore be it

**RESOLVED:** That the Oakland City Council supports and urges the California Legislature to pass and Governor Newsom to sign into law California Senate Bill 293 this year if all of the requirements of this Resolution are satisfied, or if more time is needed to incorporate the requirements of this Resolution into the final bill, then the Council requests that the Legislature place the bill on the two-year legislative cycle; and be it

**FURTHER RESOLVED:** That the City Council's support is contingent upon Senate Bill 293 being approved with the following amendments:

- 1) removal from the bill of any mandate to the City Council to form an infrastructure financing district;
- 2) stipulation in the bill that any infrastructure financing district will be created only upon a determination by the City Council that
  - (a) there is a need for the district;
  - (b) a thorough financial analysis and plan for the infrastructure has been completed;
  - (c) the boundaries for the infrastructure financing district have been determined;
  - (d) analyses and determinations of: the projected cost of the public infrastructure; who, including the state, the developer, Port of Oakland or other taxing entities, will contribute to the costs; whether and the extent to which the City will be reimbursed for its contributions and/or participate in the revenue stream generated by any project on City-owned property, including property controlled by the Port of Oakland; and

- (e) analyses and determination of the City's role in negotiating the terms of any project on City-owned property, including property controlled by the Port of Oakland , such as community benefits, public open space, affordable housing, mitigation measures;
- 3) expansion of the City's authority beyond the creation of a project specific district benefitting the Howard Terminal Project to the creation of any district(s) citywide; and
- 4) inclusion of any conforming changes necessary to reflect the intent of this resolution;

now be it

**FURTHER RESOLVED:** That the City Council directs the City Administrator to negotiate and advocate for 1) incorporation of language into SB 293 that reflects the foregoing amendments stipulated in this Resolution and 2) passage of the final bill, as so amended, all in consultation with the City Attorney; and be it

**FURTHER RESOLVED:** That the Oakland City Council hereby directs the City Clerk to convey a copy of the Resolution to the State Legislature, to Senator Nancy Skinner, and Governor Gavin Newsom.

IN COUNCIL, OAKLAND, CALIFORNIA

JUN 12 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, ~~MASON MCILHANE~~ KALB, REID, TAYLOR, THAO  
AND PRESIDENT KAPLAN - 7

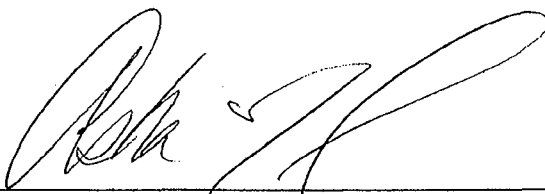
NOES - 0

ABSENT - 0

ABSTENTION - 0

*Excused - 1 McElhane*

ATTEST:



LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California



AMENDED IN ASSEMBLY JUNE 20, 2019

AMENDED IN SENATE APRIL 29, 2019

AMENDED IN SENATE MARCH 27, 2019

SENATE BILL

No. 293

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Introduced by Senator Skinner

February 14, 2019

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An act to add Section 53395.82 to the Government Code, relating to infrastructure financing districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 293, as amended, Skinner. Infrastructure financing districts: ~~Oakland Waterfront Revitalization and Environmental Justice Infrastructure Financing District~~. *formation: issuance of bonds: City of Oakland.*

Existing law authorizes a legislative body of a city or county to designate one or more infrastructure financing districts, adopt an infrastructure financing plan, and issue bonds, for which only the district is liable, to finance specified public capital facilities of communitywide significance. Existing law specifies procedures for the preparation and adoption of an infrastructure financing plan and the issuance of bonds by a district, including requiring that the issuance of bonds be approved by  $\frac{2}{3}$  of the voters residing within the boundaries of the district voting on the proposition. Existing law authorizes the inclusion of a provision for the division of taxes in an infrastructure financing plan. Existing law establishes certain alternative procedures for the formation and financing activities of a waterfront district, as defined, in the City and County of San Francisco.

This bill would establish alternative procedures for the formation of an ~~Oakland Waterfront Revitalization and Environmental Justice Infrastructure Financing District~~ *an infrastructure financing district by the City of Oakland* under these provisions. The bill would require the City Council of the City of Oakland to initiate proceedings for the formation of the district by adoption of a resolution of intention to establish the district that, among other things, ~~provides for a district board, composed of specified members, to serve as the district's governing body and~~ directs the preparation of an infrastructure financing plan. The bill would require the infrastructure financing plan to include a provision for the division of taxes, but would prohibit the division of taxes with respect to nonconsenting affected taxing agencies and specified local educational agencies. The bill would require ~~the a district board~~ *board, composed of specified members*, to hold 3 noticed public hearings on the infrastructure financing plan and to conduct a protest proceeding, as provided. The bill would authorize the establishment of the district if fewer than 25% of the combined number of landowners and residents in the area file a protest to the infrastructure financing plan, or if between 25% and 50% of those landowners file such a protest and the infrastructure financing plan is submitted to the voters and approved. The bill would require the district board to provide an annual report to each landowner, resident, and affected taxing entity that participates in the plan, as provided. The bill would also authorize the district board to approve and issue bonds for the district by adopting a resolution that contains specified information. *The bill would authorize a district formed under these provisions to finance specified facilities and projects.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Oakland.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. The Legislature finds and declares the following:~~
- 2    ~~(a) The City of Oakland (hereafter referred to as the city) desires~~
- 3    ~~to retain the Oakland Athletics professional baseball franchise in~~
- 4    ~~the city while maximizing the economic benefit of the sports team~~
- 5    ~~and its facilities to the city.~~

1 (b) The city has identified a viable site for the development of  
2 a state-of-the-art sports facility for the Oakland Athletics: Howard  
3 Terminal, which is controlled by the Port of Oakland (hereafter  
4 referred to as the port).

5 (c) Howard Terminal was previously used as a shipping  
6 container terminal. However, the terminal operator vacated the  
7 site in 2014 and the property is currently used for ancillary services;  
8 including truck parking and chassis storage.

9 (d) Howard Terminal is located adjacent to West Oakland, a  
10 neighborhood bounded by freeways and impacted by poor air  
11 quality, elevated asthma rates, and higher than average  
12 unemployment. Its waterfront-adjacent location also makes West  
13 Oakland particularly susceptible to flooding due to climate change  
14 and sea level rise.

15 (e) Redevelopment of the Howard Terminal property as a site  
16 for the Oakland Athletics' privately financed ballpark, together  
17 with complementary commercial and residential uses, new public  
18 access to world-class waterfront parks and open spaces, remediation  
19 of existing soil and groundwater contaminants, and implementation  
20 of a community benefits package that provides jobs and economic  
21 development opportunities to the surrounding residents and  
22 neighborhoods, including West Oakland, would provide significant  
23 public benefits for the city, adjacent communities, and the region.  
24 Further, the incremental tax revenues generated by the proposed  
25 redevelopment of Howard Terminal will provide an additional  
26 source of funds for much needed infrastructure investment in the  
27 community, which would not be available but for the  
28 implementation of the proposed project.

29 (f) The city wishes to establish an infrastructure financing  
30 district to finance certain public facilities required for the successful  
31 redevelopment of the Howard Terminal waterfront and the  
32 revitalization of its West Oakland environs. It is therefore the intent  
33 of the Legislature to provide the city with additional latitude, within  
34 the framework of the laws governing infrastructure financing  
35 districts, to create and operate an infrastructure financing district  
36 in a manner that optimizes its financing options to facilitate the  
37 construction of much needed public facilities meeting the stated  
38 goals of statewide significance. In order to adapt the provisions of  
39 Chapter 2.8 (commencing with Section 53395) of Part 1 of Division  
40 2 of Title 5 of the Government Code, relating to infrastructure

1 financing districts, to these unique circumstances, a special act is  
2 necessary.

3 *SECTION 1. The Legislature finds and declares the following:*

4 *(a) Under existing law, cities and counties can create*  
5 *infrastructure financing districts, hereinafter referred to as IFDs,*  
6 *and enhanced infrastructure financing districts, hereinafter*  
7 *referred to as EIFDs, and issue bonds to pay for community-scale*  
8 *public works, including highways, transit, water systems, sewer*  
9 *projects, flood control, childcare facilities, libraries, and parks.*  
10 *To repay the bonds, IFDs and EIFDs divert local, incremental*  
11 *property tax revenues for a specified time period.*

12 *(b) Forming an IFD can be difficult, and the bonding capacity*  
13 *of IFDs is limited. As a result, few IFDs have been formed, and*  
14 *most of those have utilized special legislation enacted for*  
15 *waterfront districts in the City of San Francisco, codified as*  
16 *Sections 53395.8 and 53395.81 of the Government Code, upon*  
17 *which this act is closely based.*

18 *(c) Some limitations of the IFD law were addressed with the*  
19 *introduction of EIFDs; however, EIFDs have still proved to be*  
20 *challenging to implement and administer, and are rarely used.*

21 *(d) California is facing an affordable housing crisis that*  
22 *necessitates the creation of additional tools for local jurisdictions*  
23 *to create new local funding streams that will support equitable*  
24 *infill housing and associated supportive utility and transit*  
25 *infrastructure.*

26 *(e) It is therefore the intent of the Legislature to provide the*  
27 *City of Oakland, hereafter referred to as the city, with additional*  
28 *latitude, within the framework of the laws governing IFDs, to*  
29 *create and operate an IFD in a manner that optimizes its financing*  
30 *options to facilitate the construction of much needed public*  
31 *facilities and affordable housing meeting the stated goals of*  
32 *communitywide significance. The city may wish to establish an*  
33 *IFD at Howard Terminal or another location. This will spur private*  
34 *investment and provide additional dollars to support development*  
35 *and revitalization of urbanized areas that include housing for all*  
36 *income levels with equal access to public transit, goods, services,*  
37 *and economic opportunities. In order to adapt the provisions of*  
38 *Chapter 2.8 (commencing with Section 53395) of Part 1 of Division*  
39 *2 of Title 5 of the Government Code, relating to infrastructure*

1 *financing districts, to the unique circumstances within the city, a*  
2 *special act is necessary.*

3 *(f) It is the intent of the Legislature that this district does not*  
4 *interfere or override the authority of the State Lands Commission*  
5 *or the San Francisco Bay Conservation and Development*  
6 *Commission.*

7 SEC. 2. Section 53395.82 is added to the Government Code,  
8 to read:

9 53395.82. (a) This section applies only to the City of Oakland  
10 ~~and the proposed Oakland Waterfront Revitalization and~~  
11 ~~Environmental Justice Infrastructure Financing District~~ *any*  
12 *infrastructure financing district proposed by the City of Oakland,*  
13 *as described in this section.*

14 (b) In addition to the findings and declarations in Section 53395,  
15 the Legislature further finds and declares that consolidating in a  
16 single agency the ability to capture property tax increment revenues  
17 to finance qualified public facilities in the City of Oakland will  
18 ~~further the enjoyment of the waterfront by the people of this state.~~  
19 *provide communitywide benefits.*

20 (c) For purposes of this section:

21 (1) "Affected taxing entity" means any governmental taxing  
22 agency, except Oakland and its local educational agencies, that  
23 levied or had levied on its behalf a property tax on all or a portion  
24 of the land located in the proposed district in the fiscal year prior  
25 to the designation of the district, all or a portion of which the  
26 district proposes to collect in the future under its infrastructure  
27 financing plan.

28 (2) "Base year" means the fiscal year in which the assessed  
29 value of taxable property in the district was last equalized prior to  
30 the effective date of the ordinance adopted to create the district,  
31 or a subsequent fiscal year specified in the infrastructure financing  
32 plan for the district.

33 (3) "City council" means the City Council of the City of  
34 Oakland.

35 ~~(4) "County auditor-controller" means the auditor-controller~~  
36 ~~for the County of Alameda.~~

37 ~~(5)~~

38 (4) "Debt" means loans, advances, or other forms of  
39 indebtedness and financial obligations, including, but not limited  
40 to, commercial paper, variable rate demand notes, all moneys

1 payable in relation to the debt, and all debt service coverage  
2 requirements in any debt instrument, in addition to the obligations  
3 specified in the definition of “debt” in Section 53395.1.

4 (6)

5 (5) “District” or “Oakland revitalization district” means the  
6 ~~Oakland Waterfront Revitalization and Environmental Justice~~  
7 ~~Infrastructure Financing District~~ *any district* created pursuant to  
8 this section, including any project area within the ~~a~~ district.

9 (7)

10 (6) “District board” means the governing body for the district  
11 created pursuant to this section. *The district board shall include*  
12 *each member of the city council and one member from each*  
13 *affected taxing entity, if any, that adopts a resolution approving*  
14 *an infrastructure financing plan pursuant to this section. If no*  
15 *affected taxing entity adopts a resolution approving an*  
16 *infrastructure financing plan pursuant to this section, the district*  
17 *board shall be the city council.*

18 (8)

19 (7) “Local educational agencies” means, collectively, the  
20 Oakland Unified School District, the Peralta Community College  
21 District, and the Alameda County Office of Education.

22 (9)

23 (8) “Oakland” means the City of Oakland.

24 (10) ~~“Project” means the construction at Howard Terminal of~~  
25 ~~a privately financed ballpark that will be home to the Oakland~~  
26 ~~Athletics baseball franchise, together with complementary~~  
27 ~~commercial, residential, and public open-space development and~~  
28 ~~amenities, new public access to the waterfront, and onsite and~~  
29 ~~offsite infrastructure improvements.~~

30 (11)

31 (9) “Project area” means a defined area ~~designated for~~  
32 ~~development within a waterfront district formed under this chapter~~  
33 ~~in accordance with subdivision (e).~~

34 (12)

35 (10) “Public facilities” means facilities authorized to be financed  
36 in whole or in part by a district formed under this chapter in  
37 accordance with subdivision (e). Public facilities may be publicly  
38 owned or privately owned if they are available to ~~or~~ *and* serve the  
39 general public, but shall not include ~~the stadium~~ *any ball park* for  
40 the Oakland Athletics ~~baseball~~ *Major League Baseball* franchise.

(d) (1) ~~The Oakland revitalization~~ A district may finance the design, purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer, as described in this chapter. The facilities need not be physically located within the boundaries of the district. *However, any facilities financed outside a district shall have a tangible connection to the work of the district, as detailed in the infrastructure financing plan adopted in accordance with subdivision (e).* Subdivision (b) of Section 53395.3 shall not apply to the district, but the district shall only finance public facilities of communitywide—~~significance~~. *significance that provide significant benefits to the district or the surrounding community.*

(2) ~~The A~~ district shall not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

(3) *In addition to any other project authorized by this chapter, a district formed pursuant to this section may finance any of the following:*

(A) *Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities.*

(B) *Sewage treatment and water reclamation plants and interceptor pipes.*

(C) *Facilities for the collection and treatment of water for urban uses.*

(D) *Flood control levees and dams, retention basins, and drainage channels.*

(E) *Childcare facilities.*

(F) *Libraries.*

(G) *Parks, recreational facilities, and open space.*

(H) *Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.*

(I) *Brownfield restoration and other environmental mitigation.*

(J) *The development of projects on a former military base, provided that the projects are consistent with the military base authority reuse plan and are approved by the military base reuse authority, if applicable.*

(K) *The repayment of the transfer of funds to a military base reuse authority pursuant to Section 67851 that occurred on or after the creation of the district.*

1     (L) *The acquisition, construction, or rehabilitation of housing*  
2     *for very low income households and persons and families of low*  
3     *or moderate income, as those terms are defined in Sections 50105*  
4     *and 50093, respectively, of the Health and Safety Code, for rent*  
5     *or purchase.*

6     (M) *Acquisition, construction, or repair of industrial structures*  
7     *for private use.*

8     (N) *Transit priority projects, as defined in Section 21155 of the*  
9     *Public Resources Code, that are located within a transit priority*  
10    *project area. For purposes of this paragraph, "transit priority*  
11    *project area" includes a military base reuse plan that meets the*  
12    *definition of a transit priority project area or a contaminated site*  
13    *within a transit priority project area.*

14    (O) *If the State Air Resources Board, pursuant to Chapter 2.5*  
15    *(commencing with Section 65080) of Division 1 of Title 7, has*  
16    *accepted a metropolitan planning organization's determination*  
17    *that the sustainable communities strategy or the alternative*  
18    *planning strategy would, if implemented, achieve the greenhouse*  
19    *gas emission reduction targets, projects that implement a*  
20    *sustainable communities strategy.*

21    (P) *Projects that enable communities to adapt to the impacts*  
22    *of climate change, including, but not limited to, higher average*  
23    *temperatures, decreased air and water quality, the spread of*  
24    *infectious and vectorborne diseases, other public health impacts,*  
25    *extreme weather events, sea level rise, flooding, heat waves,*  
26    *wildfires, and drought.*

27    (Q) *Port or harbor infrastructure, as defined by Section 1698*  
28    *of the Harbors and Navigation Code.*

29    (R) *The acquisition, construction, or improvement of broadband*  
30    *Internet access service, as defined in Section 53167.*  
31    *Notwithstanding any other law, a district that acquires, constructs,*  
32    *or improves broadband Internet access service may transfer the*  
33    *management and control of those facilities to a local agency that*  
34    *is authorized to provide broadband Internet access service, and*  
35    *that local agency when providing that service shall comply with*  
36    *the requirements of Article 12 (commencing with Section 53167)*  
37    *of Chapter 1.*

38    (S) *Remediation of hazardous materials in, on, under, or around*  
39    *any real or tangible property.*

40    (T) *Seismic and life safety improvements to existing buildings.*



1 (U) Rehabilitation, restoration, and preservation of structures,  
2 buildings, or other facilities having special historical, architectural,  
3 or aesthetic interest or value and that are listed on the National  
4 Register of Historic Places, are eligible for listing on the National  
5 Register of Historic Places individually or because of their location  
6 within an eligible registered historic district, or are listed on a  
7 state or local register of historic landmarks.

8 (V) Structural repairs and improvements to piers, seawalls, and  
9 wharves, and installation of piles.

10 (W) Removal of bay fill.

11 (X) Stormwater management facilities, other utility  
12 infrastructure, or public open-space improvements.

13 (Y) Other repairs and improvements to public facilities.

14 (Z) Planning and design work that is directly related to any  
15 public facilities authorized to be financed by a district.

16 (AA) Reimbursement payments made to the California  
17 Infrastructure and Economic Development Bank in accordance  
18 with paragraph (5) of subdivision (e) of Section 53395.81.

19 (BB) Improvements, which may be publicly owned, to protect  
20 against potential sea level rise.

21 (e) Notwithstanding Sections 53395.10 to 53395.25, inclusive,  
22 the district board may adopt or amend one or more infrastructure  
23 financing plans for the ~~Oakland revitalization~~ district according  
24 to the procedures in this section. The district shall include only  
25 those areas that the district board finds are necessary to achieve  
26 the goals of the district, as identified in the resolution of intention  
27 adopted pursuant to this section. Any district may be divided into  
28 project areas, each of which may be subject to distinct limitations  
29 established under this section. The district board may, at any time,  
30 add territory to the district or amend the infrastructure financing  
31 plan for the district in accordance with the same procedures for  
32 the formation of the district and adoption of the infrastructure  
33 financing plan pursuant to this section.

34 (1) Before initiating proceedings for the establishment of a  
35 district pursuant to this section, the city council shall make all of  
36 the following findings:

37 (A) There is a need for the district.

38 (B) A thorough financial analysis and plan for the public  
39 facilities in the district have been completed.

40 (C) The boundaries for the district have been identified.

1 (D) Analyses and determinations have occurred regarding all  
2 of the following:

3 (i) The projected cost of the public facilities.

4 (ii) The parties that, in addition to the city, will contribute to  
5 the cost of constructing the public facilities.

6 (iii) Whether, and the extent to which, development facilitated  
7 by the district will generate economic benefits to the city, including,  
8 but not limited to, participation in any revenue stream to be  
9 generated by any project on city-owned property, or community  
10 benefits, such as public open space and affordable housing.

11 ~~(1) The city council shall~~

12 (2) Upon making the findings required by paragraph (1), the  
13 city council may initiate proceedings for the establishment of a  
14 district by adopting a resolution of intention to establish the  
15 proposed ~~district that does~~ district, which shall do all of the  
16 following:

17 (A) ~~States~~ State that an infrastructure financing district is  
18 proposed to be established and describes the boundaries of the  
19 proposed district. The boundaries may be described by reference  
20 to a map on file in the office of the clerk of the city council.

21 (B) ~~States~~ Describe the type of public facilities proposed to be  
22 financed by the district.

23 (C) ~~States~~ State that some or all of the incremental property tax  
24 revenue from Oakland and some or all affected taxing entities  
25 within the district, but none of the local educational agencies, may  
26 be used to finance these public facilities.

27 ~~(D) Provides for a district board consisting of each member of~~  
28 ~~the city council. Upon approval of the infrastructure financing plan~~  
29 ~~by an affected entity agency pursuant to paragraph (5), the district~~  
30 ~~board shall include a representative of that affected taxing entity.~~

31 (D) State the need for the district and identify the goals that the  
32 district proposes to achieve.

33 (E) ~~Directs~~ Direct the district board to prepare preparation of  
34 a proposed infrastructure financing plan.

35 (2)

36 (3) The city council shall direct the city clerk to mail a copy of  
37 the resolution of intention to any affected taxing entities.

38 (3)

1 (4) The proposed infrastructure financing plan shall be consistent  
2 with the general plan of Oakland, as amended from time to time,  
3 and shall include all of the following:

4 (A) A map and legal description of the proposed district, which  
5 may include all or a portion of the district designated by the *district*  
6 board in its resolution of intention.

7 (B) A description of the public facilities required to serve the  
8 development proposed in the district, including those to be provided  
9 by the private sector, those to be provided by governmental entities  
10 without assistance under this chapter, those public facilities to be  
11 financed with assistance from the proposed district, and those to  
12 be provided jointly. The description shall include the proposed  
13 location, timing, *purpose*, and projected costs of the public  
14 facilities. ~~The description may consist of a reference to the capital~~  
15 ~~plan for the territory in the district that is approved by the district~~  
16 ~~board, as amended from time to time.~~

17 (C) A financing section that shall contain all of the following:

18 (i) A provision that specifies the maximum portion of the  
19 incremental tax revenue of Oakland and of any affected taxing  
20 entity proposed to be committed to the district, and affirms that  
21 the plan will not allocate any portion of the incremental tax revenue  
22 of the local educational agencies to the district. *The portion need*  
23 *not be the same for all affected taxing entities. The portion may*  
24 *change over time.*

25 (ii) Limitations on the use of levied taxes allocated to and  
26 collected by the district that provide that incremental tax revenues  
27 allocated to a district must be used ~~within the district~~ for purposes  
28 authorized under this section.

29 (iii) A projection of the amount of incremental tax revenues  
30 expected to be received by the district, assuming a district receives  
31 incremental tax revenues for a period no later than 45 years after  
32 Oakland projects that the district will have received one hundred  
33 thousand dollars (\$100,000) in incremental tax revenues under  
34 this chapter. In the event that the district board divides the district  
35 into multiple project areas, the projection of the amount of  
36 incremental tax revenues expected to be received by the district  
37 shall be calculated separately for each project area.

38 (iv) Projected sources of financing for the public facilities to be  
39 assisted by the district, including debt to be repaid with incremental  
40 tax revenues, projected revenues from future leases, sales, or other

1 transfers of any interest in land within the district, and any other  
2 legally available sources of funds. ~~The projection of sources of~~  
3 ~~financing may refer to the capital plan for the territory in the district~~  
4 ~~that is approved by the district board, as amended.~~

5 (v) A limitation on the aggregate number of dollars of levied  
6 taxes that may be divided and allocated to the district. Taxes shall  
7 not be divided or be allocated to the district beyond this limitation,  
8 except by amendment of the infrastructure financing plan pursuant  
9 to the procedures in this subdivision. If the district board divides  
10 the district into multiple project areas, the project areas may share  
11 this limit and the limit may be divided among the project areas or  
12 a separate limit may be established for a project area.

13 (vi) ~~A~~ *For the district, or for each project area of the district*  
14 *if the district board divides the district into multiple project areas,*  
15 *a date on which the infrastructure financing plan will cease to be*  
16 *in effect and all tax allocations to the district will end and a date*  
17 *on which the district's authority to repay indebtedness with*  
18 *incremental tax revenues received under this chapter will end, not*  
19 *to exceed 45 years from the date the district or the applicable*  
20 *project area has actually received one hundred thousand dollars*  
21 *(\$100,000) in incremental tax revenues under this chapter. After*  
22 *the time limits established under this subparagraph, a district or*  
23 *project area shall not receive incremental tax revenues under this*  
24 *chapter. If the district board divides the district into multiple project*  
25 *areas, the district board may establish a separate and unique time*  
26 *limit applicable to each project area that is shorter than the time*  
27 *limit on the infrastructure financing plan pursuant to this clause.*  
28 *does not exceed 45 years from the date the district has actually*  
29 *received one hundred thousand dollars (\$100,000) in incremental*  
30 *tax revenues under this chapter from that project area.*

31 (vii) An analysis of the costs to Oakland for providing facilities  
32 and services to the district while the district is being developed  
33 and after the district is developed, and of the taxes, fees, charges,  
34 and other revenues expected to be received by Oakland as a result  
35 of expected development in the district.

36 (viii) An analysis of the projected fiscal impact of the district  
37 and ~~the any~~ associated development upon any affected taxing  
38 entity. ~~If there are no affected taxing entities exist within the~~  
39 ~~district~~ because the plan does not provide for collection by the  
40 district of any portion of property tax revenues allocated to any

1 taxing entity other than Oakland, the district has no obligation to  
2 any other taxing entity under this subdivision.

3 *(ix) Estimated administrative expenses to be paid with*  
4 *incremental tax revenues allocated to the district.*

5 ~~(ix)~~

6 (x) A statement that the district will maintain accounting  
7 procedures in accordance, and otherwise comply, with Section  
8 6306 of the Public Resources Code for the term of the plan.

9 (D) A provision that meets the requirements of Section 53396  
10 providing for the division of taxes, if any, levied upon taxable  
11 property within the district and the allocation of a portion of the  
12 incremental tax revenue of Oakland and other designated affected  
13 taxing entities to the district.

14 (5) *This chapter shall not be construed to prevent a district that*  
15 *is formed pursuant to this section from utilizing revenues from any*  
16 *of the following sources to support its activities, provided that the*  
17 *applicable voter approval has been obtained, and the infrastructure*  
18 *financing plan has been approved in accordance with this section:*

19 (A) *The Improvement Act of 1911 (Division 7 (commencing with*  
20 *Section 5000) of the Streets and Highways Code).*

21 (B) *The Municipal Improvement Act of 1913 (Division 12*  
22 *(commencing with Section 10000) of the Streets and Highways*  
23 *Code).*

24 (C) *The Improvement Bond Act of 1915 (Division 10*  
25 *(commencing with Section 8500) of the Streets and Highways*  
26 *Code).*

27 (D) *The Landscaping and Lighting Act of 1972 (Part 2*  
28 *(commencing with Section 22500) of Division 15 of the Streets*  
29 *and Highways Code).*

30 (E) *The Vehicle Parking District Law of 1943 (Part 1*  
31 *(commencing with Section 31500) of Division 18 of the Streets*  
32 *and Highways Code).*

33 (F) *The Parking District Law of 1951 (Part 4 (commencing with*  
34 *Section 35100) of Division 18 of the Streets and Highways Code).*

35 (G) *The Park and Playground Act of 1909 (Chapter 7*  
36 *(commencing with Section 38000) of Part 2 of Division 3 of Title*  
37 *4).*

38 (H) *The Mello-Roos Community Facilities Act of 1982 (Chapter*  
39 *2.5 (commencing with Section 53311)).*

1 (I) *The Benefit Assessment Act of 1982 (Chapter 6.4*  
2 *(commencing with Section 54703)).*

3 (4)

4 (6) The proposed infrastructure financing plan shall be mailed  
5 to each affected taxing entity for review, together with, to the  
6 extent available, any report required by the California  
7 Environmental Quality Act (Division 13 (commencing with Section  
8 21000) of the Public Resources Code) that pertains to the proposed  
9 public facilities and any proposed development project for which  
10 the public facilities are needed, and shall be made available for  
11 public inspection. The report also shall be sent to the Oakland  
12 Planning Department and the city council.

13 (5)

14 (7) The city council shall not enact a resolution proposing  
15 formation of a district and providing for the division of taxes of  
16 any affected taxing entities for use in the district as set forth in the  
17 proposed infrastructure financing plan unless the governing body  
18 of each affected taxing entity adopts a resolution approving the  
19 plan, and that resolution has been filed with the city council at or  
20 before the time of the hearing. A resolution approving the plan  
21 adopted by the governing body of an affected taxing entity shall  
22 be deemed the affected taxing entity's agreement to participate in  
23 the plan for the purposes of this section.

24 (6)

25 (8) If the governing body of an affected taxing entity has not  
26 approved the infrastructure financing plan before the city council  
27 considers the plan, the city council may amend the infrastructure  
28 financing plan to remove the allocation of the tax revenues of the  
29 nonconsenting affected taxing entity.

30 (7)

31 (9) (A) The district board shall consider adoption of the  
32 infrastructure financing plan at three public hearings that shall take  
33 place at least 30 days apart. Notice of each public hearing shall be  
34 given in accordance with paragraph ~~(15)~~. (17).

35 (B) At the first public hearing, the district board shall hear all  
36 written and oral comments, but take no action.

37 (C) At the second public hearing, the district board shall consider  
38 any additional written and oral comments and take action to modify  
39 or reject the infrastructure financing plan. If the infrastructure  
40 financing plan is not rejected at the second public hearing, then

1 the district board shall conduct a protest proceeding at the third  
2 public hearing to consider whether the landowners and residents  
3 within the infrastructure financing plan area wish to present oral  
4 or written protests against the adoption of the infrastructure  
5 financing plan.

6 ~~(8)~~

7 (10) The draft infrastructure financing plan shall be made  
8 available to the public and to each landowner within the area at a  
9 meeting held at least 30 days prior to the notice given for the first  
10 public hearing. The purposes of the meeting shall be to allow the  
11 staff of the district board to present the draft infrastructure  
12 financing plan, answer questions about the infrastructure financing  
13 plan, and consider comments about the infrastructure financing  
14 plan.

15 ~~(9)~~

16 (11) (A) Notice of the meeting required by paragraph ~~(8)~~ (10)  
17 and the public hearings required by paragraph ~~(7)~~ (9) shall be given  
18 in accordance with paragraph ~~(15)~~ (17). The notice shall do the  
19 following, as applicable:

20 (i) Describe specifically the boundaries of the proposed area.

21 (ii) Describe the purpose of the infrastructure financing plan.

22 (iii) State the day, hour, and place when and where any and all  
23 persons having any comments on the proposed infrastructure  
24 financing plan may appear to provide written or oral comments to  
25 the infrastructure financing district.

26 (iv) Notice of the second public hearing shall include a summary  
27 of the changes made to the infrastructure financing plan as a result  
28 of the oral and written testimony received at or before the public  
29 hearing and shall identify a location accessible to the public where  
30 the infrastructure financing plan proposed to be presented at the  
31 second public hearing can be reviewed.

32 (v) Notice of the third public hearing to consider any written or  
33 oral protests shall contain a copy of the infrastructure financing  
34 plan, and shall inform each landowner and resident of their right  
35 to submit an oral or written protest before the close of the public  
36 hearing. The protest may state that the landowner or resident  
37 objects to the district board taking action to implement the  
38 infrastructure financing plan.

39 (B) At the third public hearing, the district board shall consider  
40 all written and oral protests received prior to the close of the public

1 hearing along with the recommendations, if any, of affected taxing  
2 entities, and shall terminate the proceedings or adopt the  
3 infrastructure financing plan subject to confirmation by the voters  
4 at an election called for that purpose. The district board shall  
5 terminate the proceedings if there is a majority protest. A majority  
6 protest exists if protests have been filed representing over 50  
7 percent of the combined number of landowners and residents in  
8 the area who are at least 18 years of age. An election shall be called  
9 if between 25 percent and 50 percent of the combined number of  
10 landowners and residents in the area who are at least 18 years of  
11 age file a protest.

12 ~~(10)~~

13 (12) An election required pursuant to subparagraph (B) of  
14 paragraph ~~(9)~~ (11) shall be held within 90 days of the public  
15 hearing and may be held by mail-in ballot. The district board shall  
16 adopt, at a duly noticed public hearing, procedures for this election.

17 ~~(11)~~

18 (13) If a majority of the landowners and residents vote against  
19 the infrastructure financing plan, then the district board shall not  
20 take any further action to implement the proposed infrastructure  
21 financing plan. The district board shall not propose a new or revised  
22 infrastructure financing plan to the affected landowners and  
23 residents for at least one year following the date of an election in  
24 which the infrastructure financing plan was rejected.

25 ~~(12)~~

26 (14) At the hour set in the notices required by paragraph ~~(7)~~;  
27 (9), the district board shall consider all written and oral comments.

28 ~~(13)~~

29 (15) If less than 25 percent of the combined number of  
30 landowners and residents in the area who are at least 18 years of  
31 age file a protest, the district board may adopt the infrastructure  
32 financing plan at the conclusion of the third public hearing by  
33 ordinance. The ordinance adopting the infrastructure financing  
34 plan shall be subject to referendum as prescribed by law.

35 ~~(14)~~

36 (16) The district board shall consider and adopt an amendment  
37 or amendments to an infrastructure financing plan in accordance  
38 with the provisions of this section.

39 ~~(15)~~



1 (17) The district board shall post notice of each meeting or  
2 public hearing required by this section in an easily identifiable and  
3 accessible location on the district's internet website and shall mail  
4 a written notice of the meeting or public hearing to each resident  
5 and each taxing entity at least 10 days prior to the meeting or public  
6 hearing.

7 (A) Notice of the first public hearing shall also be published  
8 not less than once a week for four successive weeks prior to the  
9 first public hearing in a newspaper of general circulation published  
10 in the County of Alameda. The notice shall state that the district  
11 will be used to finance public facilities or development, briefly  
12 describe the public facilities or development, briefly describe the  
13 proposed financial arrangements, including the proposed  
14 commitment of incremental tax revenue, describe the boundaries  
15 of the proposed district, and state the day, hour, and place when  
16 and where any persons having any objections to the proposed  
17 infrastructure financing plan, or the regularity of any of the prior  
18 proceedings, may appear before the district board and object to  
19 the adoption of the proposed plan by the district board.

20 (B) Notice of the second public hearing shall also be published  
21 not less than 10 days prior to the second public hearing in a  
22 newspaper of general circulation in the County of Alameda. The  
23 notice shall state that the district will be used to finance public  
24 facilities or development, briefly describe the public facilities or  
25 development, briefly describe the proposed financial arrangements,  
26 describe the boundaries of the proposed district, and state the day,  
27 hour, and place when and where any persons having any objections  
28 to the proposed infrastructure financing plan, or the regularity of  
29 any of the prior proceedings, may appear before the district board  
30 and object to the adoption of the proposed plan by the district  
31 board.

32 (C) Notice of the third public hearing shall also be published  
33 not less than 10 days prior to the third public hearing in a  
34 newspaper of general circulation in the County of Alameda. The  
35 notice shall state that the district will be used to finance public  
36 facilities or development, briefly describe the public facilities or  
37 development, briefly describe the proposed financial arrangements,  
38 describe the boundaries of the proposed district, and state the day,  
39 hour, and place when and where any persons having any objections  
40 to the proposed infrastructure financing plan, or the regularity of

1 any of the prior proceedings, may appear before the district board  
2 and object to the adoption of the proposed plan by the district  
3 board.

4 ~~(16)~~

5 (18) (A) The district board shall review the infrastructure  
6 financing plan at least annually and make any amendments that  
7 are necessary and appropriate and shall require the preparation of  
8 an annual independent financial audit paid for from revenues of  
9 the infrastructure financing district.

10 (B) The district board shall adopt an annual report on or before  
11 June 30 of each year after holding a public hearing. Written copies  
12 of the draft report shall be made available to the public 30 days  
13 prior to the public hearing. The district board shall cause the draft  
14 report to be posted in an easily identifiable and accessible location  
15 on the district's internet website and shall mail a written notice of  
16 the availability of the draft report on the internet website to each  
17 landowner and each resident within the area covered by the  
18 infrastructure financing plan and to each affected taxing entity that  
19 has adopted a resolution pursuant to paragraph ~~(5)~~; (7). The notice  
20 shall be mailed by first-class mail, but may be addressed to  
21 "occupant."

22 (C) The annual report shall contain all of the following:

23 (i) A description of the projects undertaken in the fiscal year,  
24 including any rehabilitation of structures, and a comparison of the  
25 progress expected to be made on those projects compared to the  
26 actual progress.

27 (ii) A chart comparing the actual revenues and expenses,  
28 including administrative costs, of the district board to the budgeted  
29 revenues and expenses.

30 (iii) The amount of tax increment revenues received.

31 (iv) An assessment of the status regarding completion of the  
32 district's projects.

33 ~~(D)~~

34 (v) The amount of revenues expended to assist private  
35 businesses.

36 ~~(E)~~

37 (D) If the district board fails to provide the annual report  
38 required by subparagraph (B), the district board shall not spend  
39 any funds received pursuant to a resolution adopted pursuant to  
40 this section until the district board has provided the report.

(17)

(19) The ordinance creating a district and adopting or amending an infrastructure financing plan shall establish the base year for the district. The district board may amend an infrastructure financing plan by ordinance for any purpose, including, but not limited to, the following:

(A) Dividing an established district into one or more project areas.

(B) Reducing the district area.

(C) Expanding the district area.

(18)

(20) Oakland may enter into an agreement for the construction of discrete portions or phases of public facilities within the district. The agreement may include any provisions that Oakland determines are necessary or convenient, but shall do all of the following:

(A) Identify the specific public facilities or discrete portions or phases of public facilities to be constructed and purchased. Oakland may agree to purchase discrete portions or phases of public facilities if the portions or phases are capable of serviceable use as determined by Oakland.

(B) Identify procedures to ensure that the public facilities are constructed pursuant to plans, standards, specifications, and other requirements as determined by Oakland.

(C) Specify a price or a method to determine a price for each public facility or discrete portion or phase of a public facility.

(D) Specify procedures for final inspection and approval of public facilities or discrete portions or phases of public facilities, for approval of payment and for acceptance and conveyance.

(f) Notwithstanding Sections 53397.1 to 53397.11, inclusive, the district board may approve and issue bonds for the ~~Oakland revitalization~~ district according to the procedures in this section.

(1) The district board may, by resolution adopted at the time of the formation of the district, authorize the issuance of bonds in one or more series by determining the aggregate principal amount of bonds that may be issued in the district. The district board may undertake the proceedings and actions described in this subdivision with respect to the district as a whole, or separately with respect to one or more project areas. If the district board undertakes the proceedings for the district as a whole, it may thereafter, by

1 resolution, allocate the principal amount of the authorized bond  
2 issuance to one or more project areas within the district. The district  
3 board may increase the principal amount of bonds that may be  
4 issued for the district or a project area within the district by  
5 undertaking the proceedings in this subdivision with respect to  
6 that increased amount. The bonds may be sold at a negotiated sale  
7 subject to the notice requirements of paragraph (5).

8 (2) At any time after formation of the ~~district~~, *district and*  
9 *adoption of the resolution described in paragraph (1)*, the  
10 ~~legislative body~~ *district board* may, by a majority vote of its  
11 members, issue tax-exempt or taxable bonds in one or more series.  
12 Bonds shall be issued following adoption of a resolution containing  
13 all of the following information:

14 (A) A description of the facilities to be financed with the  
15 proceeds of the proposed bond issue.

16 (B) The estimated cost of the facilities, the estimated cost of  
17 preparing and issuing the bonds, and the principal amount of the  
18 proposed bond issuance.

19 (C) The maximum interest rate and discount on the proposed  
20 bond issuance.

21 (D) A determination of the amount of tax revenue available or  
22 estimated to be available, for the payment of the principal of, and  
23 interest on, the bonds.

24 (E) A finding that the amount necessary to pay the principal of,  
25 and interest on, the proposed bond issuance will be less than, or  
26 equal to, the amount determined pursuant to subparagraph (D).

27 (F) The issuance of the bonds in one or more series.

28 (G) The date the bonds will bear.

29 (H) The date of maturity of the bonds.

30 (I) The denomination of the bonds.

31 (J) The form of the bonds.

32 (K) The manner of execution of the bonds.

33 (L) The medium of payment in which the bonds are payable.

34 (M) The place or manner of payment and any requirements for  
35 registration of the bonds.

36 (N) The terms of call or redemption, with or without premium.

37 (3) The district board may, by majority vote of the members of  
38 the district board, provide for refunding of bonds issued pursuant  
39 to this subdivision. However, refunding bonds shall not be issued  
40 if the total net interest cost to maturity on the refunding bonds plus

1 the principal amount of the refunding bonds exceeds the total net  
2 interest cost to maturity on the bonds to be refunded. The district  
3 board shall not extend the time to maturity of the bonds being  
4 refunded.

5 (4) The district ~~board~~ *board, the city council*, or any person  
6 executing the bonds shall not be personally liable on the bonds by  
7 reason of their issuance. The bonds and other obligations of a  
8 district issued pursuant to this chapter are not a debt of the city or  
9 of any of its political subdivisions, other than the district, and none  
10 of those entities, other than the district, shall be liable on the bonds  
11 and the bonds or obligations shall be payable exclusively from  
12 funds or properties of the district. The bonds shall contain a  
13 statement to this effect on their face. The bonds do not constitute  
14 an indebtedness within the meaning of any constitutional or  
15 statutory debt limitation.

16 (5) Bonds may be sold at a negotiated ~~sale~~ *sale or a competitive*  
17 *sale*. At least five days before ~~the sale~~ *a competitive sale of bonds*,  
18 the district board shall publish notice of the sale, pursuant to  
19 Section 6061, in a newspaper of general circulation and in a  
20 financial newspaper published in the City of Oakland and in the  
21 City of Los Angeles. ~~The bonds may be sold at not less than par~~  
22 ~~to the federal government at private sale without any public~~  
23 ~~advertisement.~~

24 (6) If any member of the district board whose signature appears  
25 on bonds ceases to be a member of the district board before  
26 delivery of the bonds, that member's signature is as effective with  
27 respect to those bonds as if the member had remained in office at  
28 the time of delivery of those bonds.

29 (7) Bonds issued pursuant to this subdivision are fully  
30 negotiable.

31 SEC. 3. The Legislature finds and declares that a special statute  
32 is necessary and that a general statute cannot be made applicable  
33 within the meaning of Section 16 of Article IV of the California  
34 Constitution because of the unique circumstances, described in  
35 Section 1 of this act, in the City of Oakland.

O

## AGENDA REPORT

**Resolution:** Approve and Authorize the Executive Director to Execute an Exclusive Negotiation Term Sheet with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, for a Term of Four Years for an Initial Payment of \$100,000 for Property Located at 1 Market Street, Oakland (Not a Project under the California Environmental Quality Act [CEQA]) **(CRE)**

**MEETING DATE:** 5/13/2019

**AMOUNT:** \$100,000 FY18-19  
Revenue

**PARTIES INVOLVED:** Athletics Investment Group LLC,  
dba the Oakland Athletics  
Dave Kaval, President

**SUBMITTED BY:** Pamela Kershaw, Director of Commercial Real Estate

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

This matter is a request for approval of an Exclusive Negotiation Term Sheet ("Term Sheet") with the Athletics Investment Group, LLC, dba the Oakland Athletics, a California Limited Liability Company ("Oakland A's") for property located at 1 Market Street, also known as the Howard Terminal site. The purpose of the Term Sheet is to establish a framework for further negotiations between the A's and the Port of Oakland with regard to potential real estate transactions between parties, including a time period to allow the Oakland A's adequate time to pursue necessary land use entitlements and conduct an environmental review under CEQA and other regulatory and public review for the potential development of a Stadium Mixed Use Project on the Howard Terminal site, as well as to continue on site soil and groundwater testing and inspection, and review Port property reports and other site due diligence information. The Term Sheet memorializes certain *non-binding* financial terms of potential real estate transaction documents with the Port of Oakland and development principles resulting from preliminary negotiations between the parties that will guide and be considered during further real estate negotiations and the environmental and regulatory review process. The Stadium Mixed Use Project will not be considered for approval and proceed unless and until the Board of Port Commissioners has reviewed and considered information produced from the environment review process under CEQA and the parties have negotiated, executed, and delivered mutually acceptable agreements based upon such information.

## **BACKGROUND**

The Port owns an approximately 50-acre property located at 1 Market Street, which is commonly referred to as Howard Terminal. Container and ro-ro operations continued at Howard Terminal into 2013, and were closed for vessel loading/unloading in early 2014. The terminal was closed for this purpose as part of a larger, complex consolidation of marine terminals at the Port of Oakland – which involved three other terminals in addition to Howard Terminal – stemming from financial pressure on ocean carriers (and their marine affiliates) serving the US West Coast. Howard Terminal remains suitable for vessel loading/unloading activities given its deep-water berths (-42 MLLW), access to a wide and deep water federal navigation channel, and relatively square geometric configuration. However, because of its relatively small size (50.3 acres) relative to other modern container terminals, older container gantry cranes, and limited room for expansion (i.e. 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. Therefore, without changes to one or more of these current physical limitations, Howard Terminal is better suited to the following types of marine uses: container operations for smaller vessel services that currently call other terminals; bulk operations; break-bulk operations; and ro-ro operations.

Since 2013, the Port identified and engaged with interested parties for potential long-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. As a result, 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. A site plan of the Howard Terminal property is attached to this report for reference.

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:

- **July 2013:** The Port approves early termination of the container terminal lease with SSA Terminals, LLC (SSAT) for Howard Terminal;
- **October 2013:** The Port issues a Request for Proposals (“RFP”) to solicit maritime use proposals for Howard Terminal;
- **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);

- **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;
- **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;
- **November 2014:** Oakland Waterfront Ballpark, LLC requests early termination of the Exclusive Negotiating Agreement with the Port;
- **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;
- **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);
- **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;
- **April 26, 2018:** The Port approves a one-year ENA with the Oakland A's for the Howard Terminal site.

## **ANALYSIS**

Since execution of the ENA in April of 2018, the Port and the Oakland A's have been negotiating the provisions of the Term Sheet proposed for Board consideration and approval. The Term Sheet would establish a framework for further negotiations between the A's and the Port with regard to potential real estate transactions between parties, including a time period to allow for the conduct of environmental review under CEQA and other regulatory and public review for the potential development of a Stadium Mixed Use Project on the Howard Terminal site, as well as to continue on site soil and groundwater testing and inspection, and review Port property reports and other site due diligence information.

The Term Sheet memorializes certain *non-binding* financial terms and development principles resulting from preliminary negotiations between the parties that will guide and be considered during further real estate negotiations and environmental and regulatory review processes. The Stadium Mixed Use Project will not be considered for approval and will not proceed unless and until the Board of Port Commissioners have reviewed and considered information produced from the environmental review under CEQA and the parties have negotiated, executed, and delivered mutually acceptable agreements based upon such information.



The proposed Stadium Mixed Use Project is a multi-faceted project on a site subject to numerous physical, regulatory, and use constraints, surrounded by various residential and business communities, Port operations, and other industrial/commercial uses. The Board's adoption of the Term Sheet will establish the preliminary framework for environmental review, community and stakeholder engagement, and consideration of numerous required public agency permits and approvals in the months ahead. The impending regulatory agency reviews include, but are not limited to, those required pursuant to:

- Approval of an Environmental Impact Report by the City of Oakland ("City"), as the Lead Agency for the Oakland Waterfront Ballpark District Project for purposes of compliance with the California Environmental Quality Act ("CEQA");
- Adoption of a General Plan amendment for the site by the City of Oakland to allow non-industrial/transportation uses on the site in addition to the current Port and maritime uses, as well as other potential City land use permit approvals;
- Approval of a Tidelands Trust Exchange Agreement by the State Lands Commission to address Tidelands Trust issues and the Port's obligations as trustee of state tidelands;
- Approval of a Major Permit and Seaport Plan/Bay Plan amendments by the San Francisco Bay Conservation and Development Commission ("BCDC") due to the location of the site adjacent to the Oakland Estuary;
- Approval by the State Department of Toxic Substances Control ("DTSC") to amend the current Covenant to Restrict the Use of the Property recorded on the property and approve any required investigation, remediation, and monitoring program for the site.

While the Oakland A's have already commenced many of these efforts concurrently during ENA negotiations with the Port, the A's, the Port, and the City of Oakland anticipate continuing engagement with surrounding communities, Port maritime tenants and industry stakeholders, and the public generally as part of the environmental review and planning process to ensure compatibility of uses between the proposed Stadium Mixed Use Project, surrounding communities, and current and future maritime port operations and transportation corridors. Additionally, the Term Sheet anticipates the development of a community benefits plan through a process of stakeholder engagement. Thus, the Term Sheet provides for a time frame and process by which an environmental impact report will be completed and regulatory and planning requirements are met, and establishes the financial and development principles for the specific negotiation of real estate transaction documents between the Oakland A's and the Port for the use of the property.

While the actual proposed Term Sheet with all attachments is included with this Agenda Report, a high-level summary of the key business terms included in the Term Sheet is provided below (where differences in language between the summary below and the actual proposed Term Sheet exist, the specific language contained within the proposed Term Sheet attached to this Agenda Report shall apply):

Premises	50+/- acres of land on Howard Terminal site as defined on illustrative exhibit (the "Master Premises"). The Master Premises do not include any open water areas, submerged lands, nor do they include any berthing, docking, wharfage, water use, or navigation rights.
Term	Commences from the date of Board approval of the Term Sheet ("Commencement Date") and terminates at the earlier of the execution of the Option Agreement (or such similar agreement granting A's rights to the Master Premises) or 4 years from the Commencement Date. If the Option Agreement has not been executed within 4 years of the Commencement Date, the Term Sheet shall terminate and all rights thereunder to negotiate lease or purchase all or any portion of the Master Premises shall expire.
Parties	Port and the Athletics Investment Group LLC dba the Oakland Athletics ("A's"); no assignment rights of Term Sheet without Board consent.
Payment to Port Under Term Sheet	<ul style="list-style-type: none"> <li>a. \$100,000 due within 10 days of the Commencement Date.</li> <li>b. An additional \$150,000 due to Port on the date that is one year after the Commencement Date if the Option has not been executed as of such date.</li> <li>c. An additional \$200,000 due to the Port on the date that is two years after the Commencement Date if the Option has not been executed as of such date.</li> <li>d. An additional \$250,000 due to the Port on the date that is three years after the Commencement Date if the Option has not been executed as of such date.</li> </ul>
Purpose of Term Sheet	<p>During the Term of the Term Sheet:</p> <ul style="list-style-type: none"> <li>a. A's shall pursue any and all land use entitlements, at A's sole cost and expense, for potential development of a new stadium mixed use development project ("Stadium Mixed Use Project") on the Master Premises (including, without limitation, City of Oakland General Plan amendment, CEQA environmental review, City of Oakland Development Agreement, SLC Tidelands Trust compliance/resolution process with Port, BCDC design review permits and Seaport Plan amendment, DTSC remediation obligations, Port Master Building Permit, etc.) (collectively, the "Entitlements");</li> <li>b. A's to have the right to conduct on site soil and groundwater testing and inspection and investigation of Master Premises (subject to Port review/approval of workplan, release and any other necessary permits/approvals, including a Port Temporary License Agreement, for such inspection/investigation) and review Port property reports and information related to the Master Premises and perform ongoing site due diligence, consistent with all adopted Port policies and law; and</li> <li>c. Port and A's to diligently and in good faith negotiate a mutually agreeable form of Option Agreement, including as</li> </ul>

	<p>exhibits mutually agreeable forms of documents to implement transactions contemplated herein, which may consist of the Master Lease, Ballpark Lease, Vertical Development Phase Lease and Purchase and Sale Agreement (collectively, the "Transaction Documents"). It is the intent of the parties to finalize the mutually agreeable proposed forms of Transaction Documents for Board consideration concurrently with consideration of the EIR by the Board.</p>
Site Control	<p>If and until the Port approves the Option Agreement, subject to consideration of the Final EIR, Port to retain site control and possession of the Master Premises during the term of the Term Sheet. Port to retain all tenant leasing rights and tenant revenues from use of the Master Premises during the term of the Term Sheet. Commencing on the Commencement Date, the Port shall negotiate exclusively with the Oakland A's for any sale of or for any tenancy agreements having a term that expires after November 30, 2020 for any portion of the Master Premises, provided that such agreements shall be terminable upon six (6) months or shorter notice.</p>
No Port Financial Contribution	<p>No Port obligation to spend any Port funds on any aspect of site preparation or improvements (horizontal or vertical) to support the proposed Stadium Mixed Use Project or Term Sheet. Other than to devote appropriate internal Port staff resources to land use entitlements and mitigation monitoring for the Stadium Mixed Use Project, Port shall not be obligated to spend Port funds on any land use or regulatory entitlements for Stadium Mixed Use Project or on mitigations or regulatory conditions for 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 A's shall pay a deposit for the payment of such consultant costs.</p>
Port CEQA Determination	<p>The approval and execution of the Term Sheet 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 under the provisions of CEQA 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.</p>
Approval of Proposed Project	<p>After the City has certified and adopted the final EIR, its general plan amendment and associated land use regulations for the Stadium Mixed</p>

	<p>Use Project, the Port will review and consider the environmental effects of the Project as shown in the Final EIR and will consider approval of a Port Building Permit, as such term is described in the Charter of the City of Oakland. The A's contemplate that the first application of the Port Building Permit will be submitted to the Port for consideration concurrently with the consideration of the Transaction Documents and Final EIR, and will cover the Stadium Mixed Use Project as described in the preliminary development plan approved by the City of Oakland (the "Project-Wide Port Building Permit"). For the purpose of considering and issuing the Project-Wide Port Building Permit, the Port will review the permit application for compliance with or adoption of (a) the Board's CEQA findings including consideration of all feasible alternatives and mitigation measures within its powers that would lessen or avoid significant impacts, (b) the City's General Plan designation and Project - specific land-use regulations, (c) the Port's general regulations, and (d) measures to ensure that the application does not impact or interfere with the 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.</p> <p>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 Oakland A's may submit subsequent Port Building Permits as the Project development progresses for aspects of the Project, material amendments thereto, or specific buildings that have not been specifically approved under the Project-Wide Building Port Building Permit.</p>
Indemnity to Port Against Challenge	<p>A's shall indemnify, defend, and hold harmless the Port against and from any claims, liability, costs (including attorneys' fees and court costs) arising from third-party claims/challenges/litigation related to, caused by or arising from any Port approval of the Stadium Mixed Use Project, including but not limited to the review, determination, or approval under CEQA, of a Port Building Permit, or the Term Sheet, any lease or sale and purchase, or the obtaining of any regulatory approval.</p>
Reservation of Port Land and Berthing Rights for Maritime Purposes	<p>The Port is currently undertaking further studies of the need for and feasibility of expanding or reconfiguring the Inner Harbor Turning Basin of the Oakland Estuary. It is anticipated that the Port will request a feasibility and scoping study by the U.S. Army Corps of Engineers which may indicate the public necessity, if feasible, for a turning basin larger or smaller than that size provided for by the Maritime Reservation Lands, Reacquisition Lands, and Variant Lands. Therefore, it is currently contemplated that the following terms will be included in the Transaction Documents being negotiated, subject to review under CEQA.</p>

	<p>For 10 years after the Commencement Date, the Port shall have the right to elect to use any or all portions of the Maritime Reservation Lands or Reacquisition Lands (as defined below) for uses necessary to prepare for, construct, and operate an expansion or reconfiguration of the Inner Harbor Turning Basin, in which event (i) any rights of the A's to acquire and/or develop such Lands the Port has so elected shall be extinguished and (ii) the A's shall waive any claims to payments of compensation from the Port for its election except for a pro rata reduction of the fixed guaranteed minimum rent (but not any form of participation rent) payable under the Master Lease (if any).</p> <p>For 5 years after the Commencement Date, the Port shall have the right to elect to use any or all portions of the Variant Lands (as defined below) for uses necessary to prepare for, construct, and operate an expansion or reconfiguration of the Inner Harbor Turning Basin, in which event (i) any rights of the A's to acquire and/or develop such Lands the Port has so elected shall be extinguished and (ii) the A's shall waive any claims to payments of compensation from the Port for its election except for a pro rata reduction of the fixed guaranteed minimum rent (but not any form of participation rent) payable under the Master Lease (if any).</p> <p>For the Reacquisition Lands and Variant Lands, the Port's election to reserve shall also require the Port to reimburse the 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 portions so elected.</p> <p>During the five or ten years during which the Port may elect to use the Variant Lands or Reservation or Reacquisition Lands, respectively, the Port shall retain the right to berth tugboats and similarly small watercraft (but not cargo vessels) in the water area outside of an adjacent to the Maritime Reservation Lands. The A's shall have the right to develop any portion of the Lands on which the Port has not yet elected such use, subject to the terms of the Option Agreement or Master Lease.</p> <p>The "Maritime Reservation Lands", "Reacquisition Lands", and "Variant Lands" means the portion of the Master Premises located generally within the southwestern corner of the site, adjacent to the Estuary, as more particularly depicted in Attachment A to the Term Sheet.</p>
Legal Effect of Term Sheet	<p>The purpose of the Term Sheet is to memorialize the <i>preliminary</i> terms that have been negotiated among the parties, and to inform the public regarding the goals and principles identified by the Port staff and Board of Port Commissioners that will guide the proposal to develop the Stadium Mixed-Use Project throughout the public review process. The Term Sheet is intended to provide a general framework for the subsequent negotiation of definitive agreements regarding the development and operation of the Stadium Mixed-Use 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. A transaction of this type involves many essential terms and conditions that have not yet been agreed upon, and it is expressly contemplated by the parties that, in order to effectuate the Stadium Mixed-Use Project, binding agreements will have to be negotiated, agreed to by the parties and ultimately submitted to the Board of Commissioners for approval. The Stadium Mixed-Use Project shall not proceed unless and until the parties have negotiated,</p>

	executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes and subject to all applicable governmental approvals.
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The Term Sheet also includes as an attachment, a “Key Business Terms and Principles” exhibit, a copy of which is attached to and included as part of this Agenda Report, which forms the framework of a financial structure for a possible future Option Agreement, Master Lease Agreement, Vertical Development Lease(s), and Purchase and Sale Agreement(s). This Key Business Terms and Principles exhibit, while non-binding, will inform more detailed deliberations between the Port and the A’s during the term of the Term Sheet with the intention that the parties will negotiate in good faith to achieve terms materially consistent with the financial parameters of the Key Business Terms and Principles.

It is important to note that execution of the proposed Term Sheet is in no way intended to bind or commit either the Oakland A’s or the Port to a definitive course of future action, and any proposal to authorize execution of an Option Agreement or other real estate transaction agreements for the property requires the preparation and consideration of the Final EIR, as discussed previously, and will require future consideration and approval by the Board of Port Commissioners at a subsequent public meeting following all required legal procedures.

Based on the terms and conditions of the proposed Term Sheet described above and the analysis contained within this Agenda Report and attachments, staff believes that the request to enter into this Term Sheet with the Oakland A’s is appropriate and recommends approval of this matter.

## **BUDGET & STAFFING**

The proposed Term Sheet includes a payment to the Port in the amount of \$100,000 during the current FY18-19, which represents additional revenue for the Port above what was included in the FY18-19 adopted budget. Future payments will be incorporated into subsequent operating budgets developed for FY 19-20 and beyond. In addition, during the term of the Term Sheet the Port will retain site control and possession of the premises, and will continue to receive all revenues from any Port tenants located on the site.

There is no staffing impact from approval of the proposed Term Sheet as the property is currently managed by existing Port staff.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to the approval of the Term Sheet. However, as noted in this agenda report and the Key Business Terms and Principles exhibit, it is anticipated that a Community Benefits Agreement, which incorporates workforce provisions as well as other community benefits, will

be negotiated during the timeframe of the Term Sheet, City CEQA review and land use entitlement process, and incorporated into future real estate transaction documents.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Grow Net Revenues
- Goal: Serve Our Community

## **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations. However, as noted in this agenda report and the Key Business Terms and Principles exhibit, it is anticipated that a Community Benefits Agreement, which incorporates workforce provisions as well as other community benefits, will be negotiated during the timeframe of the Term Sheet, City CEQA review and land use entitlement process, and incorporated into future real estate transaction documents.

## **SUSTAINABILITY**

While the approval of the proposed Term Sheet itself does not provide opportunities for incorporation of sustainable practices, it is anticipated that sustainable environmental design features, practices, and policies will be incorporated during the land use entitlement and regulatory agency permitting and review processes of the proposed Stadium Mixed Use Project.

## **ENVIRONMENTAL**

### **CEQA Determination**

The proposed approval of the Term Sheet has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15378(a), in that the approval of the Term Sheet is not a project, because the approval of a Term Sheet simply commits the Port and the Oakland A's to a limited period of continued exclusive negotiations regarding the property, and does not bind or commit either party to a future course of action nor include the approval of any project for the site nor any change in land use pattern for the site. As required by CEQA Guidelines

Section 15004(b)(4), this pre-approval agreement does not grant any vested development entitlements and, as described in this Agenda Report:

- Conditions the agreement on compliance with CEQA;
- Does not bind or commit the Port or the A's to any definite course of action prior to CEQA compliance;
- Specifically allows the Port to consider all feasible mitigation measures and alternatives, including the 'no project' alternative; and
- Allows the Port to deny the project.

## **GENERAL PLAN**

Approval of the Term Sheet does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required for approval of the Term Sheet. However, as mentioned previously within this Agenda Report, the City of Oakland will need to consider and approve a General Plan amendment for the site in order for the proposed Stadium Mixed Use Project to proceed.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

## **OPTIONS**

- Approve and authorize the execution of an Exclusive Negotiation Term Sheet with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, subject to the terms and conditions described within this agenda report. This is the recommended action.
- Do not approve or authorize the execution of an Exclusive Negotiation Term Sheet with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company.
- Approve and authorize the execution of an Exclusive Negotiation Term Sheet with Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, subject to terms and conditions different than those described within this agenda report, which depending on the nature of any changes to terms and conditions, may not be acceptable to the Oakland A's.

## **RECOMMENDATION**

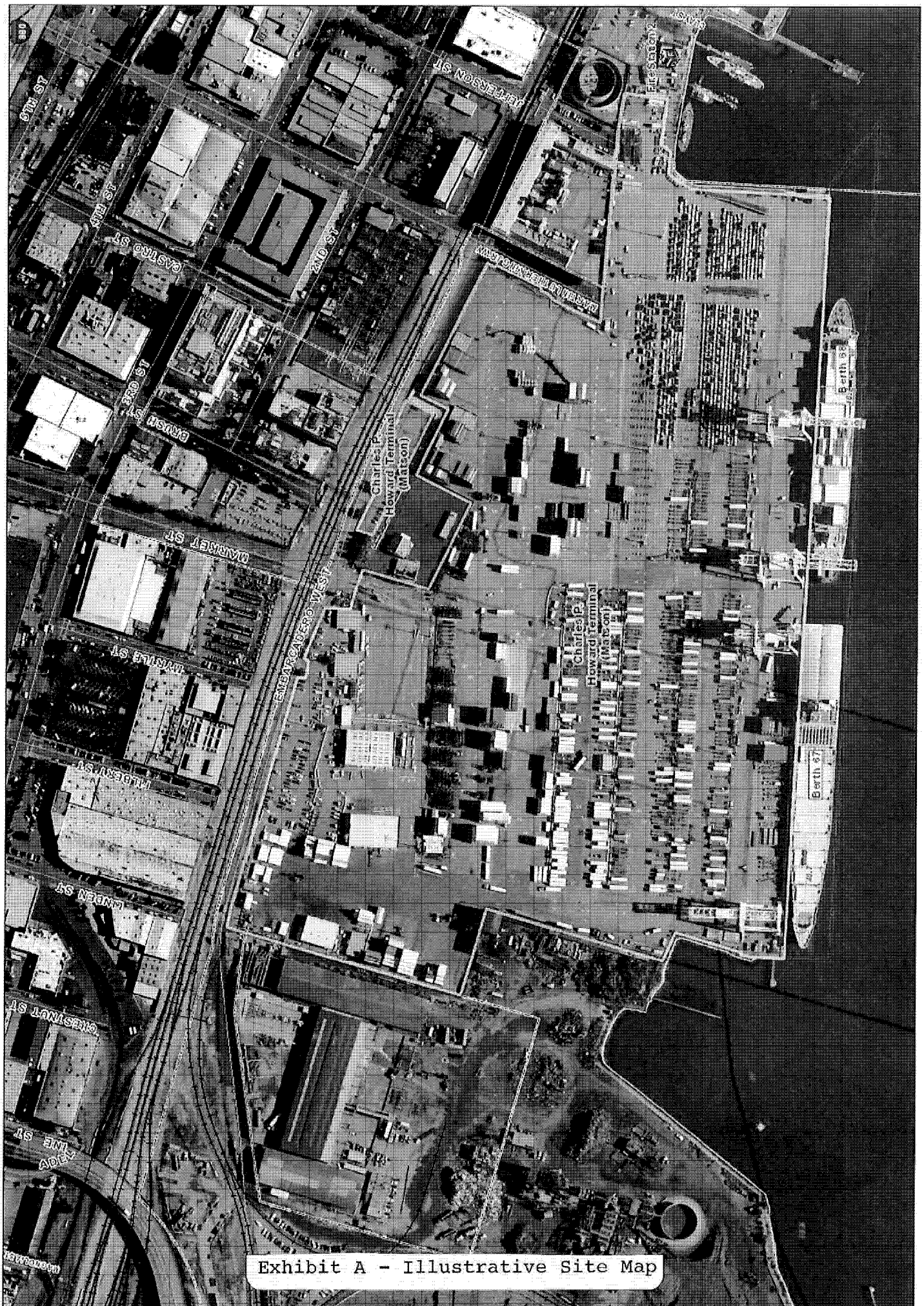
It is recommended that the Board adopt a resolution to approve and authorize the Executive Director to execute an Exclusive Negotiation Term Sheet with the Athletics Investment Group LLC, dba the Oakland Athletics, a California Limited Liability Company, for a term of four years for an initial payment amount of \$100,000, which increases thereafter each year, for



property located at 1 Market Street, as further described in this Agenda Report and subject to approval as to form and legality by the Port Attorney. It is further recommended that if the subject Exclusive Negotiation Term Sheet is not fully executed within 30 days after Board approval then the subject approval shall be null and void, unless extended by the Executive Director, in his sole and absolute discretion.

Attachments: Attachment 1 – Site Map of Property

Attachment 2 – Exclusive Negotiation Term Sheet with Attachments



**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.

<b><i>If to the Port:</i></b>  Christopher Lytle Executive Director Port of Oakland 530 Water Street Oakland, CA 94607  <b><i>with copies to:</i></b>  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	<b><i>If to the Oakland A's:</i></b>  Dave Kaval President Oakland Athletics 7000 Coliseum Way Oakland, CA 94621  <b><i>with copies to:</i></b>  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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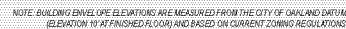
**Attachment A**

**Project Illustration**

*(see attached maps)*



Exhibit A - Illustrative Site Map



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**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.