

## OPTION TO MASTER LEASE PROPERTY

THIS OPTION TO MASTER LEASE PROPERTY (“**Option Agreement**”) is made and entered into as of \_\_\_\_\_, 200\_ (“**Effective Date**”), by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (“**Optionor**” or “**Port**”) and \_\_\_\_\_, a \_\_\_\_\_ (“**Optionee**”). **Section 8.1** defines all initially capitalized terms used in this Option Agreement.

### RECITALS

**A.** Optionor is the owner of certain property, the beneficiary of certain easements, and is the landlord under certain Existing Occupancy Agreements (defined below) comprising approximately 168 acres located in part on a portion of the former Oakland Army Base (“**OAB**”) and other lands in the City of Oakland, Alameda County, California, as more specifically described in **Section 2**.

**B.** Optionor is vested with the power, and it is Optionor’s duty for and on behalf of the City of Oakland, to make provisions for the development, maintenance, operation, or promotion of the Port, as set forth in Article VII of the Charter of the City of Oakland, including, without limitation, enhancing the needs of commerce, navigation, and fishery or incidents thereof in connection with the Port, and in the exercise of such power and fulfillment of such duty, to enter into any option agreement, master lease agreement, or ground lease of Optionor-owned (or easement) properties upon such terms and conditions as the Board of Port Commissioners (the “**Board**”) shall prescribe, which terms and conditions shall include control over the rates, charges and practices of Optionee to the extent permitted by applicable Laws.

**C.** On May 8, 2009, Optionor issued a Request for Qualifications - Port - Oakland Army Base (“**RfQ**”). The purpose of the RfQ was to solicit qualifications and responses for the master lease and redevelopment of the Property. On or before June 12, 2009, Optionee, along with other proposers, submitted a response to the RfQ (“**RfQ Response**”). Optionee was selected by Optionor as the winning proposer on \_\_\_\_\_, 2009. Following Optionor’s selection by the Board, Optionor and Optionee entered into an Exclusive Negotiating Agreement (“**ENA**”) for a period of approximately one hundred eighty (180) days, during which period, the parties further negotiated agreements for the master lease and redevelopment of the Property, and Optionee was given the opportunity to conduct its own due diligence on the Property (including the review of the material documents related to the Property listed in the RfQ).

**D.** Optionor and Optionee now desire to enter into this Option Agreement to provide Optionee the option to enter into a long-term master lease agreement substantially in the form and content as **Exhibit A** (the “**Master Lease Agreement**”), together with the documents listed in **Section 1.2(b)**, pursuant to the terms of this Option Agreement, relating to the master operation, maintenance, design, construction, finance, and lease of facilities on the Property, all of which shall service and enhance the uses of the Property and the Port Area (as defined in the Charter) for purposes of commerce, navigation, and fishery or incidents thereof (the “**Project**”).

THEREFORE, for better promotion of commerce, navigation, and fishery and the development, master operation, or promotion of the Port, and for and in consideration of the

faithful performance by Optionor and Optionee of the terms, covenants and conditions in this Option Agreement, Optionor and Optionee hereby agree as set forth in this Option Agreement.

## **1. Grant of Option; Exercise of Option.**

**1.1 Grant of Option.** Subject to the provisions of this Option Agreement, Optionor grants to Optionee the exclusive option to lease the Property (pursuant to the Master Lease Agreement) in accordance with the provisions of this Option Agreement (the **“Option”**).

**1.2 Method of Exercising Option.** Subject to the satisfaction of the Conditions Precedent, the Option shall be exercised by Optionee by performing all of the following:

(a) giving written notice and certification to Optionor during the Option Term that (i) all representations and warranties made by Optionee to Optionor, including, without limitation, those set forth in **Section 4.5(b)**, are true and correct as of the date of the Exercise Notice, and (ii) Optionee believes it has satisfied all the Conditions Precedent to exercise the Option and elects in writing to exercise the Option (the **“Exercise Notice”**); and

(b) delivering to Optionor with the Exercise Notice (collectively, the **“Exercise Notice Deliverables”**):

(i) five (5) executed originals of (1) the Master Lease Agreement in the form and content of **Exhibit A**, (2) the assignment agreements required to transfer all of Optionor’s rights and obligations in the Existing Occupancy Agreements, in a form reasonably acceptable to Optionor, (3) the Letter of Assent in the form and content of **Exhibit B**, and (4) any additional documents reasonably necessary to consummate the transaction contemplated herein, each in a form reasonably acceptable to Optionor (the **“Exercise Documents”**);

(ii) the first installment of Monthly Rent;

(iii) an additional payment for bond defeasance, and costs related thereto (which amounts Optionor may use at anytime after receipt thereof to defease certain outstanding bonds related to the Property), plus an additional amount proposed by Optionee pursuant to its RfQ submittal, in an aggregate amount of \$\_\_\_\_\_ (in U.S. Dollars), less the amount of any Option Consideration paid by Optionee to Optionor (collectively, the **“Upfront Fee”**);

(iv) the Guaranty Funds by posting a Letter of Credit;

(v) the Optionee’s Legal Opinion; and

(vi) a proforma (the **“Proforma”**) 2006 ALTA Owner’s Policy of title insurance (the **“Title Policy”**) from First American Title Insurance Company (the **“Title Company”**), at Optionee’s sole cost, to be issued immediately upon the Option Closing Date, insuring its leasehold interest in the Master Lease Agreement, with reasonable insurance coverage and subject to all matters of record and printed exceptions and exclusions set forth in the Title Company’s Standard Leasehold Owners’ Policy.

In Optionor's reasonable judgment, if Optionee delivers an Exercise Notice without first satisfying all the Conditions Precedent set forth herein, or if Optionee fails to deliver any of the Exercise Notice Deliverables, then Optionor shall deliver to Optionee, within ninety (90) days of receipt of the Exercise Notice, a list of conditions, terms, information, or deliverables that Optionee has failed to deliver or satisfy completely. In such instance, the delivered Exercise Notice shall be deemed invalid. If the Option is not effectively exercised on or before the termination of this Option Agreement, this Option Agreement shall terminate, and the parties shall have no further rights and obligations under this Option Agreement, except for any rights and obligations that are expressly stated in this Option Agreement to survive termination (the "**Surviving Obligations**").

The provisions of this **Section 1** to the contrary notwithstanding, Optionee shall have the election to terminate this Option Agreement at any time during the Option Term upon fifteen (15) days' written notice to Optionor, in which event the parties shall have no further rights and obligations under this Option Agreement, except for the Surviving Obligations.

**2. Description of Property.** As used in this Option Agreement, "**Property**" refers to all of Optionor's right, title, and interest in and to that certain improved and unimproved Property located in the City of Oakland, Alameda County, California, more particularly described on **Exhibit C** and shown on the map attached hereto as **Exhibit D**, together with all improvements thereon and all Existing Occupancy Agreements. A schedule of the Existing Occupancy Agreements and Tenant Deposits as of the Effective Date will be attached as an exhibit to the Master Lease Agreement on or prior to the MLA Effective Date.

**3. Option Term; Option Consideration; Conditions to Optionee's Right to Exercise the Option; Option Closing.**

**3.1 Option Term.** The "**Option Term**" is that period of time commencing on the Effective Date and expiring at 5:00 p.m. on the earlier of (a) the Option Closing Date, or (b) April 1, 2013, unless earlier terminated as provided in this Option Agreement (the "**Option Expiration Date**").

**3.2 Option Consideration.** Optionee shall pay to Optionor the following non-refundable (except as otherwise set forth in **Section 7.2**) sums as earned consideration for the grant of the Option: (a) Four Hundred Thousand Dollars (\$400,000) concurrently with the execution hereof; plus (b) \$100,000 on January 1, 2011, and each January 1<sup>st</sup> of every year thereafter that the Option Agreement remains in effect (collectively, the "**Option Consideration**"). The Option Consideration is non-refundable and shall be retained by Optionor in all circumstances except as set forth in **Section 7.2**.

\_\_\_\_\_ Optionee's Initials

**3.3 Conditions to Optionee's Right to Exercise the Option.**

(a) The following conditions shall be conditions precedent to Optionee's Right to deliver an Exercise Notice to exercise the Option (the "**Conditions Precedent**"):

(i) Optionee shall have fully performed each of the performance milestones set forth on the attached **Exhibit E** within the time frames shown on such **Exhibit E**.

(ii) Optionee hereby understands and shall have acknowledged in writing in the Exercise Notice that Optionor shall have the unilateral right, in its sole and absolute discretion, to: (a) undertake any level of environmental review necessary to adequately evaluate the potential environmental impacts of the Project, including the execution of the Master Lease Agreement, as the lead agency under the California Environmental Quality Act (“CEQA”)<sup>1</sup> and make findings (including a finding(s) or statement(s) of overriding considerations); (b) adopt feasible measures to mitigate significant adverse environmental impacts of the Project to a less than significant level and/or select feasible alternatives which avoid any significant adverse environmental impacts of the Project; or (c) deny the Project and terminate this Option Agreement in the event Optionor, pursuant to CEQA, including applicable CEQA guidelines and applicable case law, determines, after balancing the applicable economic, legal, social, technological, or other benefits of the Project against any unavoidable or unmitigable environmental risks, that the benefits of the Project do not outweigh or substantially lessen such adverse environmental effects of the Project, and therefore are not considered acceptable.

(iii) Optionee hereby understands and shall have acknowledged in the Exercise Notice that, notwithstanding any other provision of this Option Agreement, Optionor shall not be obligated to take any action that could (a) breach any provision or covenant of or constitute an event of default, or with the passage of time would constitute an event of default, under Optionor’s Master Trust Indenture for its Revenue Bonds, Intermediate Lien Master Trust Indenture, or its Indenture for Commercial Paper Notes, or any agreements related to such bond indenture(s), or (b) adversely affect the exclusion of interest on Optionor’s Revenue Bonds, Intermediate Lien Bonds or Commercial Paper Notes from gross income taxes for federal income tax purposes, in each case as determined in the sole reasonable discretion of Optionor. Optionor may rely upon an opinion or opinions of its bond counsel in making such determinations. The parties agree that any sale, lease, transfer or other encumbrance of the Property shall be subject to the approving opinion provided to Optionor by its bond counsel that the proposed lease, transfer, other encumbrance or change in use will not violate or constitute a breach of, or default under, Optionor’s bond indenture(s), or, if applicable, have an adverse affect on the exclusion of interest on Optionor’s bonds or notes from gross income taxes for federal purposes. The opinion of bond counsel shall be obtained at least forty-five (45) days before the MLA Effective Date.

(iv) Optionee shall have kept, observed, performed, satisfied, and complied with all material terms, covenants, conditions, agreements, requirements, restrictions, and provisions required by this Option Agreement to be kept, observed, performed, satisfied, or complied with by Optionee on or before the exercise of this Option.

(v) Concurrently with the delivery of the Exercise Notice, Optionee shall have delivered the Exercise Notice Deliverables to Optionor.

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<sup>1</sup> To the extent applicable to the Project, all references to CEQA contained in this Option Agreement, including any Exhibit attached hereto, shall include any equivalent process or procedure required under NEPA.

(vi) Optionee shall have complied with all applicable Laws at its sole cost and expense with respect to any pre-development (including entitlement) and development activities.

(vii) The Title Company shall be prepared to issue the Title Policy effective as of the MLA Effective Date substantially in the form of the Proforma.

(viii) All of Optionee's representations and warranties contained herein shall be true and correct in all material respects on and as of the Effective Date and at all times during the Option Term.

(ix) The Appraiser has determined the fair market value of the Property and provided a written Appraisal to the parties.

(b) **Failure to Satisfy Conditions Precedent.** In the event any Condition Precedent is not satisfied by the end of the Option Term, then this Option Agreement shall terminate, unless such Condition Precedent is expressly waived in writing by Optionor, and the parties shall be relieved of further rights and obligations under this Option Agreement, except the Surviving Obligations.

(c) **Indemnification.** In connection with the terms of **Section 3.3(a)**, Optionee shall protect, defend (with counsel acceptable to Optionor), indemnify, and hold harmless Optionor from any and all Losses arising from or related to any environmental document or environmental determination made for CEQA Determination purposes pursuant to the approval or disapproval of the Project, including, without limitation, the actual costs of preparing the Administrative Record and any award of attorneys' fees to the prevailing party (if applicable). To provide for an efficient defense, to the extent legally permissible and agreed to by the parties, Optionor and Optionee shall cooperate in any challenge to the Project approval by pursuing a joint and common defense against any such challenging action. This cooperation includes, without limitation, the preparation or certification by Optionor of the Administrative Record required under California Public Recourses Code Section 21167.6(b) (1) & (2); the development of legal strategies; attendance at settlement conferences; and the review of all pleadings before they are filed. Notwithstanding the foregoing, each of Optionor and Optionee reserves the right to obtain its own counsel and pursue its own defense of an action. Optionee shall indemnify and pay or reimburse Optionor, within thirty (30) days of invoice, for the costs and fees Optionor incurs (including, without limitation, its in-house and outside counsel fees and costs) in the defense of any such action.

The obligations of Optionee under this **Section 3.3(c)** shall survive termination of this Option Agreement. For purposes of this **Section 3.3(c)**, "Optionor" shall include the Board and each of its Commissioners, and Optionor's Authorized Representatives.

### **3.4 Option Closing Conditions.**

(a) If Optionee has satisfied all the Conditions Precedent pursuant to **Section 3.3(a)**, the Optionor shall, within one hundred thirty five (135) days after receipt of the Exercise Notice, send a notice (the "**Notice of Closing**") to Optionee (1) indicating that Optionor is prepared to execute and deliver the Master Lease on the Option Closing Date, provided the Option

Closing Conditions have been fully satisfied, and (2) setting forth the closing date (the “**Option Closing Date**”), which shall not be later than fifteen (15) days from the date of the Notice of Closing.

(b) The Optionee shall cause the following conditions to be satisfied prior to the Option Closing Date, and the following conditions shall be for the benefit of Optionor and may only be waived by Optionor (collectively, the “**Option Closing Conditions**”):

(i) all representations and warranties of the Optionee herein shall be true and correct in all material respects on and as of the Option Closing Date; and

(ii) the Optionee shall not be in breach in any material respect of any covenant on its part contained in this Option Agreement.

If Optionee has satisfied all the Option Closing Conditions (prior to the Option Closing Date), on the Option Closing Date, the Optionor, as master lessor, shall deliver two (2) fully executed originals of the Master Lease Agreement to the Optionee and the Master Lease Agreement shall become effective immediately upon such delivery (the “**MLA Effective Date**”). If Optionee fails to timely satisfy all the Option Closing Conditions, this Option Agreement shall terminate, and the parties shall have no further rights and obligations hereunder, except for Surviving Obligations.

#### **4. Actions During the Option Term.**

##### **4.1 Optionee’s Right of Entry to Property.**

(a) **Scope of Optionee’s Right of Entry.** Subject to the provisions of this **Section 4.1**, from and after the Effective Date through the earlier of the Option Expiration Date or the Option Closing Date, upon at least five (5) business days’ prior written notice to Optionor and Optionor’s prior written approval (not to be unreasonably withheld, conditioned or delayed), Optionee and its Authorized Representatives shall have the right to enter the Property solely for the purposes of conducting such investigations, inspections, and tests (exclusive of environmental subsurface investigation or tests) of the Property as Optionee deems necessary in order to determine the condition and suitability of the Property for Optionee’s development of the Project. Optionee’s notice to Optionor shall include any applicable written development plans pursuant to **Section 4.1(d)** and Optionee shall provide Optionor with such other reasonable documentation and information as Optionor may request. Optionee shall provide to Optionor drafts of all written plans, reports or other documents relating to any proposed investigation or the results of any investigation, inspection, or test of the Property for review and comment, and Optionee shall use commercially reasonable efforts to incorporate and address Optionor’s comments into any such plans, reports, and documents. Any such final plans, reports, or documents shall be approved by Optionor in writing prior to submission to any third party or governmental agency, which approval shall not be unreasonably withheld, conditioned, or delayed.

The provisions of the preceding paragraph to the contrary notwithstanding, Optionee shall not have the right to enter upon those portions of the Property that are leased to third parties without the written consent of Optionor in its sole and absolute discretion, provided, however, to the extent that Optionor has the right to enter in accordance with the terms of the

Existing Occupancy Agreements or at Law, Optionor shall exercise such rights on behalf of Optionee upon Optionee's request; provided further, however, that Optionee shall comply with all obligations binding on Optionor under such Existing Occupancy Agreements or at Law in connection with any such entry. Optionee may not conduct any environmental subsurface investigation or test without first (i) providing Optionor with a detailed work plan of the proposed investigation or testing and (ii) obtaining Optionor's written consent, in Optionor's sole discretion.

**(b) Indemnification.** Optionee shall protect, defend (with counsel acceptable to Optionor), indemnify and hold Optionor harmless from and against all Losses for any injury or death to any person, or any physical damage to any property, including the person or property of Optionor or of Optionee, their Authorized Representatives or invitees (collectively, "**Claims**"), or the violation of any Laws and Environmental Laws arising from or related to Optionee's (and its Authorized Representatives' and invitees) activities or presence on the Property during the Option Term. The indemnity obligations of Optionee under the preceding sentence shall not apply to or include any Claims to the extent caused by the gross negligence or the willful misconduct of Optionor or its Authorized Representatives or the mere discovery of any condition existing on or affecting the Property.

The obligations of Optionee under this **Section 4.1(b)** shall survive termination of this Option Agreement. For purposes of this **Section 4.1(b)**, **Section 4.1(c)**, and **Section 4.1(d)**, "Optionor" shall include the Board and each of its Commissioners, and Optionor's Authorized Representatives.

The foregoing provisions of this **Section 4.1(b)** are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Optionor otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Optionee under this Option Agreement.

**(c) Insurance Required of Optionee.** In addition to any insurance required pursuant to any agreement related to the transaction contemplated herein, Optionee shall maintain in force during the Option Term, from carriers Financially Acceptable to the Optionor, commercial general liability insurance insuring bodily injury and property damage liability on an occurrence basis, including premises and operations; owned, non-owned, and hired automobiles; product and completed operations; blanket contractual liability; broad form property damage (including completed operations); personal injury (deleting contractual and employee exclusions); and independent contractors coverage. Such insurance shall be in an amount not less than Ten Million Dollars (\$10,000,000), per occurrence and aggregate for all coverage, except business automobile liability, which shall be not less than Five Million Dollars (\$5,000,000) for all owned, non-owned and hired automobiles. Optionee agrees that during the Option Term, Optionor and Optionor's Authorized Representatives shall be named as an additional insured, by endorsement, under such liability insurance policy or policies. All insurance policies shall provide that they are primary and shall not call upon any contribution by any insurance (including self insurance) carried by Optionor or the City of Oakland. Optionee shall also provide to Optionor evidence of statutory worker compensation coverage pursuant to California law, if applicable; coverage required pursuant to the United States Longshore & Harborworkers Act ("**USL&H**"), if applicable; and employer's liability coverage for no less than One Million Dollars (\$1,000,000), if

applicable. Each automobile, workers' compensation, and USL&H insurance policy required under this **Section 4.1(c)** shall include a waiver of subrogation provision in favor of Optionor and the City of Oakland.

All such policies shall be endorsed with a severability of interest, or cross liability endorsement, reading generally as follows:

Cross Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase Underwriters' limit of liability.

Optionee shall also maintain or require any of its Authorized Representatives to maintain during any period when investigation, inspection or testing is being performed on the Property Contractor's Pollution Legal Liability ("**CPL**") insurance with limits of at least Five Million Dollars (\$5,000,000) each loss and aggregate, naming Optionor and the City as additional insureds.

The foregoing required insurance coverage shall be primary insurance as respects Optionor. Any insurance or self-insurance maintained by Optionor, its Authorized Representatives, or volunteers shall be in excess of such insurance and shall not contribute with it.

Except with respect to CPL insurance (to which this requirement will not apply until thirty (30) days prior to the commencement of an investigation, inspection or testing on the Property), a certificate clearly evidencing such insurance coverage, along with a copy of the applicable additional insured endorsement, issued by the insurance company shall be filed with the Port's Risk Manager prior to the commencement of the Option Term, and such certificate shall provide that such insurance coverage will not be canceled or materially changed without at least thirty (30) days' prior written notice to the Port's Risk Manager. At least thirty (30) days prior to the expiration of any such policy, a certificate or endorsement showing that such insurance coverage has been renewed or extended shall be filed with the Port's Risk Manager. If such coverage is canceled or reduced, Optionee shall, within fifteen (15) days after receipt of written notice from Optionor of such cancellation or reduction of coverage, but in no event later than the date of such cancellation or reduction, file with the Port's Risk Manager a certificate or endorsement showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate or endorsement, Optionor may terminate this Option Agreement in which event the parties shall be relieved of further rights and obligations, except the Surviving Obligations.

At Optionor's request, Optionee agrees promptly to provide Optionor a full and complete copy of each policy required to be maintained under this Option Agreement. Each policy shall be subject to the approval of Optionor, which approval shall not unreasonably be withheld.

All insurance policies required hereunder shall contain an endorsement that the proceeds of any loss shall be made payable to Optionor. Optionor may, but shall not be required to, use such insurance proceeds to restore, reconstruct, or replace the lost or damaged property.

In the event Optionor carries insurance concerning any property owned by Optionor, either real or personal, Optionee acknowledges and agrees that Optionee shall not have the benefit of any such insurance and Optionee explicitly waives the right to any such benefit.

**(d) Optionee's Obligations.** Optionee, at no cost or expense to Optionor, shall (i) take all actions necessary to obey all applicable Laws with respect to its actions related to the Property and to protect Optionee's personnel, representatives, invitees, and other persons, and property from damages or injuries resulting from Optionee's activities on the Property, (ii) upon termination of this Option Agreement, without Optionee exercising the Option, immediately remove itself and all of its personnel, machinery, and equipment which are on the Property as a result of Optionee's entry and/or other activities on the Property, (iii) immediately repair any physical damage or injury to the Property caused by Optionee and its Authorized Representatives and upon termination of this Option Agreement, without Optionee exercising the Option, immediately restore any changes to the Property resulting from Optionee's or its Authorized Representatives, activities on the Property, and (iv) timely pay in full prior to delinquency for all contractors or consultants who perform labor upon or in connection with the Property, or provide materials for use on the Property, in each case at the request or for the benefit of Optionee. Optionee shall not permit or suffer any mechanics' or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished or in connection therewith thereon by or at the request or for the benefit of Optionee and Optionee agrees to protect, indemnify, hold harmless and defend (with counsel acceptable to Optionor) Optionor and the Property, from and against any and all such Claims of whatsoever nature in any way resulting from Optionee's failure to timely pay for such work done, labor performed, or materials furnished by or at the request of Optionee. If any mechanics' or materialman's lien is filed or recorded against the Property, Optionee shall immediately upon notice thereof, cause each such lien to be removed or post a bond in an amount sufficient to fully discharge such lien. Nothing herein shall require Optionor to permit any encumbrance of its interests in the Property.

The obligations of Optionee under this **Section 4.1(d)** arising by reason of any occurrence taking place during the Option Term shall survive termination of this Option Agreement.

**4.2 Property Information.** Materials described in this **Section 4.2** shall be made available to Optionee, upon reasonable written notice from Optionee to Optionor and during normal business hours (collectively, the "**Due Diligence Materials**").

**(a) Requested Materials.** Following the Effective Date and subject to **Section 4.2(c)**, Optionor shall make available to Optionee and Optionee's Authorized Representatives, the following:

- (i) the Existing Occupancy Agreements; and

(ii) such other commercially reasonable information as Optionee may reasonably request, provided that it is in the possession of, or reasonably accessible to, Optionor (at no material expense to Optionor).

(b) **Property Files.** Subject to **Section 4.2(c)**, Optionor shall make available to Optionee and Optionee's Authorized Representatives, all material files reasonably accessible to Optionor (at no material expense to Optionor) relating to the ownership, operation, construction, use, or occupancy of the Property or any portion of the Property.

(c) **Proprietary Documents.** The provisions of this **Section 4.2** to the contrary notwithstanding, Optionor shall have no duty to make available to Optionee any "Proprietary Documents". As used herein, "**Proprietary Documents**" means documents subject to the attorney client privilege or attorney work product privilege, contracts and communications between Optionor and Optionor's Authorized Representatives, financial feasibility analyses, business plans, third-party offers to purchase or ground or master lease the Property, and similar proprietary data and documents, all of which Optionee acknowledges Optionor had and has no obligation to disclose or deliver to Optionee. Optionee acknowledges that except as set forth in this Option Agreement, Optionor has not made and will not make any representation or warranty regarding the accuracy or completeness of the Due Diligence Materials or the sources thereof. Optionor has not undertaken any independent investigation as to the accuracy or completeness of the Due Diligence Materials, and Optionee has been provided with access to the Due Diligence Materials solely as an accommodation to Optionee.

(d) **Appraised Fair Market Value of the Property; Determination of Monthly Rent.** During the term of the ENA, the parties selected and agreed on, in order of preference, three (3) independent third-party appraisers that are nationally recognized in appraising assets similar to the Property (each, an "**Appraiser**"). Within twenty eight (28) months after the Effective Date, Optionee shall engage the first selected Appraiser (or the second selected Appraiser, if the first selected Appraiser is not available, or the third selected Appraiser if neither the first or second selected Appraisers is available) to conduct an appraisal of the Property to determine its value in accordance with the Uniform Standards of Professional Appraisal Practices (the "**Appraisal**"). In conducting the Appraisal, the Appraiser should assume that all entitlements, including CEQA Certification have been obtained, whether or not all such entitlements have actually been obtained by the Optionee. Optionee shall direct the Appraiser to (1) complete the Appraisal within sixty (60) days after the Appraiser is engaged, and (2) deliver a copy of all drafts and the final written Appraisal to Optionor at the time that the Appraiser delivers the same to Optionee. Optionee shall pay all costs incurred in connection with obtaining the Appraisal.

Within ten (10) days of receipt of the Appraiser's written Appraisal, Optionor shall determine the greatest of (i) the amount of Optionee's annual rental amount bid (as set forth in Optionee's RfQ submittal), (ii) the appraised fair market value of the Property as determined by the Appraisal, and (iii) the total rent received from the Property during the 12-month period immediately prior to the date of the final Appraisal, which amount shall be used to determine the Monthly Rent for the first Master Lease Year. Following such determination, Optionor shall provide written notice to Optionee of the amount of the Monthly Rent for the first Master Lease

Year to allow Optionee to make the first payment of Monthly Rent concurrent with its delivery of the Exercise Notice.

**4.3 Environmental Provisions.** During the Option Term, Optionee shall comply with the environmental provisions attached as an exhibit to the Master Lease Agreement titled “Environmental Responsibilities”.

**4.4 Representations and Warranties.**

**(a) Optionor.** Optionor represents and warrants as of the Effective Date and as of the Option Closing Date as follows:

**(i) Established.** Optionor is, and will be, validly established and existing under Article VII of the Charter of the City of Oakland;

**(ii) Power and Authority.** The Board has, and will continue to have during the term of the Master Lease Agreement (if entered into), the power and authority to direct the Executive Director to execute and deliver, on behalf of Optionor, all documents required to perform Optionor’s obligations thereunder;

**(iii) Enforceability.** This Option Agreement has been duly authorized, executed, and delivered by Optionor and, assuming the due execution and delivery by Optionee, constitutes a valid and legally binding obligation of Optionor, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency, and similar Laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

**(iv) Consents; Authorizations.** No consent or authorization is required to be obtained by Optionor from, and no notice or filing is required to be given by Optionor to or made by Optionor with, any person (including, without limitation, any Governmental Authority) in connection with the execution and delivery by Optionor of this Option Agreement or the consummation of the transactions contemplated thereby, except for such consents that have been obtained and notices of filings that have been given as of the Effective Date or such other consents that are not required to be obtained as of the Effective Date and shall be obtained following the Effective Date;

**(v) Disclosure.** To Optionor’s actual knowledge, Optionor has disclosed to Optionee all information concerning the Property that Optionor reasonably believes is material to the transaction contemplated by this Option Agreement (subject to the applicable provisions of this Option Agreement) and to which Optionor has access and, to Optionor’s actual knowledge, there are no commitments or agreements materially affecting the Property that have not been disclosed by Optionor to Optionee; and

**(vi) No Suits or Actions.** Except as otherwise provided herein, there are not currently any actions, suits, or proceedings pending or, to Optionor’s actual knowledge, threatened against or affecting the Property, the interest of Optionor in the Property or its use or that would affect Optionor’s ability to consummate the transaction contemplated in this Option Agreement. Further, there are not any outstanding and unpaid arbitration awards or judgments

affecting title to any portion of the Property, and Optionor shall promptly notify Optionee of any of these matters arising in the future.

The representations and warranties made to the actual knowledge of Optionor in this Option Agreement or in any certificate or document executed by Optionor and delivered pursuant hereto are limited to the actual current knowledge of Lawrence Dunnigan and such representations and warranties do not encompass any imputed or constructive knowledge. Optionor makes no representation or warranty to Optionee regarding the scope or accuracy of, or possible omissions in, any survey, report, inspection or other analysis or test performed by any person other than Optionor and delivered by or on behalf of Optionor to Optionee, and Optionee acknowledges and agrees that Optionee shall be responsible for conducting its own independent investigation as to the condition of the Property and the accuracy and scope of such items which may be delivered by Optionor to Optionee, and Optionee further acknowledges that Optionor is supplying such items to Optionee for informational purposes only and not as a substitute for Optionee's conducting its own independent due diligence with regard to the Property.

**(b) Optionee.** Optionee represents and warrants as of the Effective Date, the date of each Exercise Notice, and the Option Closing Date as follows:

**(i) Organization.** Optionee is, and will continue to be, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to conduct business in the State of California;

**(ii) Power and Authority.** Optionee has, and will continue to have during the Option Term, the power and authority to execute and deliver the Exercise Notice and all other documents as are required hereunder and to perform its obligations thereunder;

**(iii) Enforceability.** This Option Agreement has been duly authorized, executed and delivered by Optionee and, assuming due execution and delivery by Optionor, constitutes a valid and legally binding obligation of Optionee, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

**(iv) No Conflicts.** The execution and delivery of the Option Agreement by Optionee, the consummation of the transactions contemplated thereby, and the performance by Optionee of the terms, conditions, and provisions thereof have not, as of the Effective Date, and will not during the Option Term, contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of Optionee under (A) any applicable Law (including, without limitation, California Government Code §§ 1090 et. seq. and California Government Code §§ 87100 et. seq.), (B) any material agreement, instrument or document to which Optionee is a party or by which it is bound, or (C) the articles, bylaws or governing documents of Optionee. Optionee hereby represents and acknowledges that it has read and is familiar with (1) Section 87100 et. seq. of the California Government Code, which provides that no member, official, employee, or consultant of Optionor may have any personal interest, direct or indirect, in this Option Agreement nor shall any such member, official, or employee participate in any decision relating to this Option

Agreement that affects her or his personal interest or the interests of any corporation, partnership, or association in which she or he is interested directly or indirectly, and (2) Section 1090 et. seq. of the California Government Code, which prohibits public officials of Optionor from being financially interested in a contract made by them or by the Board of which they are members. For purposes of this Option Agreement, the term “financially interested” shall not include the salaries or other compensation that such Optionor officials receive from Optionor. As to the provisions referred to in clauses (1) and (2), Optionee represents that it does not know of any facts that constitute a violation of such provisions;

(v) *Consents; Authorizations.* No consent or authorization is required to be obtained by Optionee from, and no notice or filing is required to be given by Optionee to or made by Optionee with, any person (including, without limitation, any Governmental Authority) in connection with the execution and delivery by Optionee of this Option Agreement or the consummation of the transactions contemplated hereby, except for such consents that have been obtained and notices of filings that have been given as of the Effective Date or such other consents that are not required to be obtained as of the Effective Date and shall be obtained following the Effective Date;

(vi) *Compliance with Law; Litigation.* As and from the Effective Date, Optionee is in compliance with all Laws applicable to it and Optionee has received no notice of non-compliance with any Law and does not know of or have reasonable grounds to know of any acts, matters or things which would, or may, give rise to a notice of non-compliance with any Law being issued concerning any Optionee Operations or proposed activities, businesses or operations conducted or to be conducted on the Property. In addition, as of the Effective Date, Optionee has at no time been prosecuted to conviction for an offense of non-compliance with any Environmental Law or other Law relevant to the Property or Optionee Operations conducted, or to be conducted, thereat, nor settled any such prosecution short of conviction. As of the Effective Date, neither Optionee nor any Affiliate of Optionee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors (each of the following as defined by the appropriate foregoing government agency): the Specially Designated Nationals List; the Denied Persons List; the Unverified List; the Entity List; the Debarred List; or any other list of Persons with which Optionor may not do business under applicable Law. As of the Effective Date, there is no action pending, at law or in equity, or before or by any Governmental Authority that has been properly served on Optionee or its Affiliates, nor to the best of Optionee’s knowledge, threatened against Optionee that would have a material adverse effect on (A) the transactions contemplated by this Option Agreement, (B) the validity or enforceability of this Option Agreement, or (C) Optionee’s ability to operate the Property;

(vii) *Determination of Suitability.* Optionee acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Property and all documentation provided by or on behalf of Optionor in respect thereof and to carry out such audits, investigations, tests (exclusive of environmental subsurface investigation or tests) and surveys as it considers reasonably necessary to ascertain the suitability of the Property for use by Optionee and Optionee has independently made all such inspections, audits, investigations, tests

(exclusive of environmental subsurface investigation or tests) and surveys as it regards as being necessary for the above purposes;

**(viii) Disclosure.** None of (A) the information in the RfQ submittal or subsequent written disclosures delivered by, or on behalf of, Optionee to Optionor in connection with the transaction contemplated herein, and (B) the representations and warranties of Optionee set forth in this **Section 4.4(b)**, is false or misleading in any material respect, or contains any misstatement of fact or omits to state any facts required to be stated to make such information, representations, and warranties not misleading in any material respect;

**(ix) Foreign Corrupt Practices Act.** To Optionee's knowledge: (A) neither a Governmental Authority nor any other person has notified Optionee or any of its Affiliates in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act; (B) none of Optionee or any of its Affiliates has undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records relating to compliance with the Foreign Corrupt Practices Act, nor is there any basis for any such audit, review, inspection, investigation, survey or examination of records; (C) Optionee and its Affiliates have not been and are not now under any administrative, civil or criminal investigation or indictment and are not party to any litigation involving alleged false statements, false claims or other improprieties relating to compliance by Optionee and its Affiliates with the Foreign Corrupt Practices Act, nor is there any basis for such investigation or indictment; and (D) there are no situations with respect to the business of Optionee that involved or involves (1) the use of any corporate funds or unlawful contributions, gifts, entertainment or other unlawful expenses related to political activity, (2) the making of any direct or indirect unlawful payments to government officials or others from corporate funds or the establishment or maintenance of any unlawful or unrecorded funds, (3) the violation of any of the provisions of the Foreign Corrupt Practices Act (or any rules or regulations promulgated thereunder), or (4) the receipt of any illegal discounts or rebates or any other violation of the antitrust laws; and

**(x) No Representations in Documents.** Optionee acknowledges that Optionor has made no representations in any documents made available to Optionee prior to the Effective Date, including, without limitation, those documents delivered to Optionee, or posted on any document site, or available on the Port's website in connection with the RfQ process.

**(c) Non-Waiver.** No investigations made by or on behalf of Optionor at any time shall have the effect of waiving, diminishing the scope of, or otherwise affecting any representation or warranty made by Optionee in this Option Agreement or pursuant to this Option Agreement. No waiver by Optionor of any condition, in whole or in part, shall operate as a waiver of any other condition herein.

**(d) Survival.** The representations and warranties of Optionor contained in **Section 4.4(a)** shall survive and continue in full force and effect for the benefit of Optionee throughout the Option Term. The representations and warranties of Optionee contained in **Section 4.4(b)** shall survive and continue in full force and effect for the benefit of Optionor throughout the Option Term.

(e) **True as of Closing.** If, after the Effective Date, but prior to the date Optionee exercises the Option pursuant to this Option Agreement, either party becomes aware that any of the representations and warranties set forth herein are no longer true and correct, then such party shall provide the other party with written notice stating that such party believes that certain representations and warranties are no longer true and explaining in detail how such representations are no longer true and when such representations ceased being true. Within ten (10) business days after receipt of such notice, the party receiving notice shall either: (i) terminate this Option Agreement, and the parties hereto shall be relieved of all liabilities and obligations hereunder, except for the Surviving Obligations; or (ii) waive its rights on such account not to consummate the transaction herein contemplated, in which case such party shall be deemed to have waived all rights and remedies with respect to those matters specifically set forth in such notice; provided, however, if the noticed party fails to respond within the ten (10) business day period after receipt of notice, such failure to respond shall be deemed a waiver as provided in clause (ii) above. Notwithstanding the foregoing, nothing in **Section 4.4(d)** shall limit either party's rights and remedies if the representation or warranty was materially inaccurate or untrue as of the Effective Date.

(f) **Survival of Warranties.** Subject to the provisions of this **Section 4.4**, Optionee and Optionor agree that each representation and warranty contained in this Option Agreement shall survive for a period of two (2) years after Optionee exercises the Option. Any claim by a party of a breach of such representation and warranty (a "**Warranty Claim**") shall be asserted, if at all, by delivery of written notice asserting such breach and stating the grounds for the Warranty Claim in reasonably specific detail to the breaching party within the two (2) year period. Notwithstanding anything in this **Section 4.4** to the contrary, so long as written notice of such Warranty Claim is given in accordance with the terms hereof within the two (2) year period, the injured party shall have not more than twelve (12) months following delivery of the Warranty Claim within which to exercise its rights and/or remedies on such Warranty Claim. Any action on such Warranty Claim shall be limited to an action for damages and Optionee hereby waives any right to seek rescission of this transaction.

**4.5 Processing of Entitlements and Permits for Non-Toxic Materials Related Activities.** Optionee shall serve as the applicant for the Project and shall be responsible for: filing project applications; working cooperatively with the lead agency in conducting preliminary reviews, public notices, initial studies, and in preparing, processing, circulating, responding to comments on, and finalizing necessary environmental review documents for CEQA purposes; processing all Entitlements and Permits for the Project; and paying all of the costs associated with the development for the Project, including the costs associated with securing the Entitlements and Permits and complying with any and all mitigation measures related to those Entitlements and Permits. Subject to the applicable provisions of this Option Agreement and the Master Lease Agreement, Optionor shall: (a) join in executing all applications for government Approvals for the Project; (b) cooperate with Optionee in the processing of all Entitlements and Permits, and Tideland's Trust issues in connection with the Project; and (c) appoint a representative(s) who shall, upon receipt of adequate notice, attend all meetings and public hearings as Optionee shall reasonably request in support of the Project; provided, Optionor shall not incur any third party out-of-pocket costs, liabilities, and/or other obligations in fulfilling its obligations as provided in this **Section 4.5**; and provided further that such Entitlements and Permits are limited so, to the extent such Entitlements and Permits would have a material adverse

impact on the marketability and use of the Property (assuming the MLA Effective Date should fail to close, the legal status of the Property shall not change before the MLA Effective Date. Optionor initially appoints Mr. Dunnigan as Optionor's representative. Optionee and Optionor shall hold regular meetings to review the progress of Optionee's development plan, construction budget, and construction schedule, and the status of the Entitlements and Permits, and other environmental review documents or related matters. Optionee shall have the authority to meet with the appropriate regulatory agency staff and to disclose information regarding the Property necessary to process and obtain the Entitlements and Permits.

**4.6 Indemnification.** In connection with the terms of **Section 4.5**, Optionee shall protect, defend (with counsel acceptable to Optionor), indemnify, and hold harmless Optionor from any and all Losses arising from or related to obtaining all Entitlements and Permits (including the costs thereof) and the approval or disapproval of the Project, including, without limitation, attorneys' fees to the prevailing party (if applicable). The obligations of Optionee under this **Section 4.6** shall survive termination of this Option Agreement. For purposes of this **Section 4.6**, "Optionor" shall include the Board and each of its Commissioners, and Optionor's Authorized Representatives.

## **5. Condemnation; Destruction of Improvements.**

**5.1 Condemnation.** If, prior to expiration of the Option Term, any portion of the Property is taken by any entity by condemnation or with the power of eminent domain, or if the access to the Property is reduced or restricted thereby (or is the subject of a pending taking which has not yet been consummated), Optionor shall immediately notify Optionee of such fact. In such event, Optionee shall have the right to terminate this Option Agreement upon written notice to Optionor not later than fifteen (15) days after receipt of Optionor's notice if Optionee reasonably determines that such condemnation shall have a material adverse impact on the Project. If this Option Agreement is terminated, the parties shall be relieved of further rights and obligations of this Option Agreement, except for Surviving Obligations.

If this Option Agreement is not terminated as provided in the preceding paragraph, the condemnation shall have no effect on this Option Agreement and the Master Lease Agreement, including the Rents as provided in the Master Lease Agreement, except that portion of the Property that is condemned shall not be included within the Property and the Property pursuant to the Master Lease Agreement.

**5.2 Destruction of Improvements.** If there is any damage or destruction to the improvements that comprise part of the Property during the Option Term, such damage or destruction shall have no effect on this Option Agreement and the Master Lease Agreement, including the Rents as provided in the Master Lease Agreement. Unless required pursuant to the terms of any Lease or other agreement, Optionor shall have no obligation to reconstruct any damaged or destroyed improvements, but shall take such steps and otherwise put in place such temporary protections as may be mandated by applicable Laws or otherwise reasonably prudent (as determined in Optionor's sole discretion) to protect the improvements from further damage or loss and/or to prevent any further injury to persons or property.

**6. Brokers.** Each party represents and warrants to the other party that it has not hired or engaged any broker or finder in connection with the transaction contemplated herein. Each party (the “**Indemnifying Party**”) agrees to protect, indemnify, defend (with counsel acceptable to the party being indemnified) and hold the other party harmless against any loss, liability, damage, cost, claim or expense (including reasonable attorneys’ fees in connection therewith or to enforce this indemnity provision) incurred by reason of any brokerage fee, commission, or finder’s fee which is payable or alleged to be payable to any broker or finder by or on the basis of any alleged acts by the Indemnifying Party and its Authorized Representatives. The representations, warranties, indemnities and agreements contained in this **Section 6** shall survive termination of this Option Agreement.

**7. Default Remedies.**

**7.1 Optionee Default.** Upon the occurrence of, and during the continuance of, an Optionee Default, Optionor may, by written notice to Optionee, declare an Optionee Default and may do any or all of the following as Optionor, in its sole discretion:

(a) terminate this Option Agreement (without the need for reentry or any other action on behalf of Optionor) by giving thirty (30) calendar days’ prior written notice, or such other applicable cure period as expressly provided in this Option Agreement, to Optionee;

(b) without waiving or releasing Optionee from its obligations under this Option Agreement, observe and perform the covenant or covenants of which Optionee has defaulted (but in no event shall Optionor be obliged to do so), and in that event may pay such monies as may be required or as Optionor may reasonably deem expedient, and Optionor shall thereupon charge all monies to Optionee together with interest thereon at an annual rate equal to the Prime Rate plus 4% percent, from the date on which Optionor paid the monies. Optionee covenants and agrees with Optionor to repay such monies to Optionor, together with the interest, forthwith on demand;

(c) seek specific performance, injunction or other equitable remedies, it being acknowledged that damages may be an inadequate remedy for certain Optionee Defaults;

(d) seek to recover its Losses arising from such Optionee Default and any amounts due and payable under this Option Agreement and, in connection therewith, exercise any recourse available to any person who is owed damages or a debt; and

(e) exercise any of its other rights and remedies provided for hereunder or at law or equity.

An “**Optionee Default**” shall have occurred if Optionee fails, in any material respect, to comply with, perform or observe any obligation, covenant, agreement, term or condition in this Option Agreement, and such failure continues unremedied for a period of thirty (30) calendar days following notice thereof in all cases, or for such longer period as may be reasonably necessary to cure such failure, but in no event longer than one hundred eighty (180) calendar days, provided Optionee shall proceed with all due diligence to cure or cause to be cured such failure.

**7.2 Optionor Default.** Upon the occurrence and during the continuance of an Optionor Default, Optionee may by notice to Optionor, do one of the following as Optionee's sole remedy:

(a) terminate this Option Agreement by giving thirty (30) calendar days' prior written notice to Optionor and receive from Optionor a refund, to the extent such amounts have been paid to Optionor, of (1) the Option Consideration and the first installment of Monthly Rent within thirty (30) days of the date of termination, and (2) the Upfront Fee within one (1) year of the date of termination if Optionor applied the Upfront Fee to the defeasance of the bonds related to the Property prior to the termination of this Option Agreement, or within thirty (30) days of the date of termination if the Optionor has not applied the Upfront Fee to defease such bonds; or

(b) subject to **Section 3.3(a)(iii)**, seek specific performance (after the opportunity to cure), injunction or other equitable remedies, it being acknowledged that damages may be an inadequate remedy for certain Optionor Defaults.

Optionee shall have no right to recover any Losses for any Optionor Default.

An "**Optionor Default**" shall have occurred if Optionor fails, in any material respect, to comply with, perform or observe any obligation, covenant, agreement, term or condition in this Option Agreement, and such failure continues unremedied for a period of thirty (30) calendar days following notice thereof in all cases, or for such longer period as may be reasonably necessary to cure such failure, but in no event longer than one hundred eighty (180) calendar days, provided Optionor shall proceed with all due diligence to cure or cause to be cured such failure. Any act of or failure to act by Optionee, as lead agency for the proposed Project, in connection with making a CEQA determination or providing CEQA Certification shall not constitute an Optionor Default.

## **8. General Provisions.**

**8.1 Definitions.** Except as otherwise provided in this Option Agreement, the words and phrases in this **Section 8.1** shall have the following meanings.

(a) "**Administrative Record**" means the written record as defined under California Public Resources Code Section 22167.6.

(b) "**Affiliate**" means, when used to indicate a relationship with a specified person, a person that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified person, and a person shall be deemed to be controlled by another person, if controlled in any manner whatsoever that results in control in fact by that other person (or that other person and any person or persons with whom that other person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

(c) "**Appraisal**" shall have the meaning set forth in **Section 4.2(d)**.

(d) "**Appraiser**" shall have the meaning set forth in **Section 4.2(d)**.

(e) **“Authorized Representatives”** refers to the shareholders, members, owners, directors, officers, employees, agents, and contractors, as applicable, of a party.

(f) **“Board”** shall have the meaning set forth in the **Recitals**.

(g) **“CEQA”** shall have the meaning set forth in **Section 3.3(a)(ii)**.

(h) **“CEQA Certification”** shall have the meaning set forth on **Exhibit E**.

(i) **“Charter”** shall mean the Charter of the City of Oakland adopted by the people of the City of Oakland on November 5, 1968, ratified by the Secretary of State of the State of the State of California and in effect January 28, 1969, as amended from time to time.

(j) **“City of Oakland”** is a municipal corporation and chartered City organized and existing under the Constitution of the State of California.

(k) **“Claims”** shall have the meaning set forth in **Section 4.1(b)**.

(l) **“Conditions Precedent”** shall have the meaning set forth in **Section 3.3(a)**.

(m) **“CPL”** shall have the meaning set forth in **Section 4.1(c)**.

(n) **“Due Diligence Materials”** shall have the meaning set forth in **Section 4.2**.

(o) **“Effective Date”** shall have the meaning set forth in the first paragraph.

(p) **“ENA”** shall have the meaning set forth in the **Recitals**.

(q) **“Entitlements and Permits”** shall mean any entitlement, permit or other discretionary approval by any applicable governmental authority.

(r) **“Environmental Laws”** means all Laws issued by any Governmental Authority, including, but not limited to, those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); 42 U.S. Code Section 4321, et seq. (NEPA); H&S Code Section 116270 et seq. (California State Drinking Water Act); H&S Code Section 25100, et seq. (Hazardous Waste Control); H&S Code Section 25300, et seq. (the Hazardous Substance Account Act); H&S Code Section 25404, et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Government Code Sections 66600 et seq. (McAteer Petris Act); H&S Code Section 25531, et seq. (Hazardous Materials Management); H&S Code Section 18901, et seq. (California Building Standards); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); H&S Code Section 25249.5, et seq. (the Safe Drinking Water and Toxic Enforcement Act of 1986); Division 26, of the H&S Code (including H&S Code Section 39000 et seq. and 40200 et seq. among others, (authorizing regulation by CARB and the

BAAQMD); Division 25.5 of the H&S Code (H&S Code section 38500 et seq. - the Global Warming Solutions Act); California Public Resources Code Section 21000 et seq. (CEQA); local fire codes; the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Execution Date, as well as any subsequently enacted federal, California, local and Port of Oakland law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating Optionee's actions on the Property with regard to: (i) Human health, safety and industrial hygiene related to toxic materials; (ii) the environment, pollution or contamination of the environment, structures, or subsurface structures including utility vaults, corridors or conduits, or noise or light pollution; (iii) toxic materials, including, without limitation, the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release, treatment or disposal of any toxic materials, or response actions associated with same; or (iv) global warming or generation of green house gases.

(s) **“Exercise Documents”** shall have the meaning set forth in **Section 1.2(b)**.

(t) **“Exercise Notice”** shall have the meaning set forth in **Section 1.2**.

(u) **“Exercise Notice Deliverables”** shall have the meaning set forth in **Section 1.2(b)**.

(v) **“Existing Occupancy Agreements”** shall mean all written agreements, if any, existing as of the MLA Effective Date, granting any third party the right to use or occupy any portion of the Property, together with any Tenant Deposits.

(w) **“Financially Acceptable”** shall mean A rating of A-VII or higher in the most current available “Best’s Insurance Reports,” or such other ratings or carriers as may be acceptable at the sole discretion of the Optionor; provided, however, that the Optionor may disapprove carriers with an A+VII or higher rating if the Optionor has a reasonable basis for such disapproval.

(x) **“Guaranty Funds”** shall mean an amount equal to three (3) months of Monthly Rent due for the first Master Lease Year guaranteed in the form of a Letter of Credit with a 12-month term that starts on the Option Closing Date. Optionor reserves the right, in the exercise of its reasonable business judgment, to adjust the Guaranty Funds requirement during the term of the Master Lease Agreement based upon Optionee's (as master lessee) payment history and credit history in accordance with the Optionor's adopted collections policy as it now exists or as it may be amended by the Board from time to time.

(y) **“Indemnifying Party”** shall have the meaning set forth in **Section 6**.

(z) **“Intermediate Lien Bonds”** shall have the meaning set forth in Optionor's Intermediate Lien Master Trust Indenture.

(aa) **“JAMS”** shall have the meaning set forth in **Section 8.14(c)**.

(bb) **“Laws”** means any resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, program, permit, statute, code, rule or regulation of, or conditions applicable to the Property or Optionee under any permit, license, concession, authorization or other approval by, or other directives issued by, any governmental authority, including any adopted, promulgated or enacted subsequent to the Effective Date, as the same may be modified, amended, or reissued, and including, but not limited to, the Charter (including, without limitation, Section 728 entitled “Living Wages and Labor Standards at Port-Assisted Businesses” and laws which seek to reduce the risk from, and to mitigate the results of, an act that threatens the safety and security of personnel, Optionor’s facilities, private property and the public, such as the Federal Maritime Transportation Security Act of 2002), the Port’s Tariff, any project labor agreements that the Port or Oakland is a party to, land use restrictions or limitations relating to human or public health, the environment, water, sanitation, safety, security, welfare, the filling of or discharges to the air or water or navigation and use of the Port Area (as defined in the Charter).

(cc) **“Letter of Credit”** shall have the meaning set forth in the Master Lease Agreement.

(dd) **“Loss” or “Losses”** means, with respect to any person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such person (including reasonable attorneys’ fees), but excluding any special, indirect, punitive and consequential damages.

(ee) **“Master Lease Agreement”** shall have the meaning set forth in the **Recitals**.

(ff) **“Master Lease Year”** shall have the meaning set forth in the Master Lease Agreement.

(gg) **“MLA Effective Date”** shall have the meaning set forth in **Section 3.4(b)**.

(hh) **“Monthly Rent”** shall mean, for the first Master Lease Year, the equal monthly installment of the annual rental amount of the greatest of (i) the amount of the Winning Proposer’s annual rental amount bid (or such other higher amount as proposed by Optionee during the term of the ENA), (ii) the appraised fair market value of the Property as determined by the Appraisal, and (iii) the total rent received from the Property during the 12-month period immediately prior to the date of the final Appraisal. Monthly Rent after the first Master Lease Year shall be adjusted in accordance with the Master Lease Agreement.

(ii) **“NEPA”** shall mean the National Environmental Policy Act.

(jj) **“Notice”** shall have the meaning set forth in **Section 8.11**.

(kk) **“Notice of Closing”** shall have the meaning set forth in **Section 3.4(a)**.

(ll) **“OAB”** shall have the meaning set forth in the **Recitals**.

(mm) “OAB RMP” shall have the meaning set forth in the Master Lease Agreement.

(nn) “Option” shall have the meaning set forth in **Section 1.1**.

(oo) “Option Agreement” shall have the meaning set forth in the first paragraph.

(pp) “Option Closing Date” shall have the meaning set forth in **Section 3.4(a)**.

(qq) “Option Consideration” shall have the meaning set forth in **Section 3.2**.

(rr) “Optionee Default” shall have the meaning set forth in **Section 7.2**.

(ss) “Optionee’s Legal Opinion” shall mean a legal opinion of counsel to the Optionee, in substantially the form attached hereto as **Exhibit F**.

(tt) “Option Expiration Date” shall have the meaning set forth in **Section 3.1**

(uu) “Option Term” shall have the meaning set forth in **Section 3.1**.

(vv) “Optionee” shall have the meaning set forth in the first paragraph.

(ww) “Optionor Default” shall have the meaning set forth in **Section 7.2**.

(xx) “Optionor” or “Port” shall have the meaning set forth in the preamble for this Option Agreement.

(yy) “Proforma” shall have the meaning set forth in **Section 1.2(b)(vi)**.

(zz) “Project” shall have the meaning set forth in the **Recitals**.

(aaa) “Project Documents” shall have the meaning set forth in **Section 8.12**.

(bbb) “Proprietary Documents” shall have the meaning set forth in **Section 4.2(c)**.

(ccc) “Property” shall have the meaning set forth in **Section 2**.

(ddd) “Rents” shall have the meaning set forth in the Master Lease Agreement.

(eee) “Revenue Bonds” shall have the meaning set forth in Optionor’s Master Trust Indenture.

(fff) “RfQ” shall have the meaning set forth in the **Recitals**.

(ggg) “RfQ Response” shall have the meaning set forth in the **Recitals**.

(hhh) “Surviving Obligations” shall have the meaning set forth in **Section 1.2**.

(iii) “**Tenant Deposits**” shall mean any security deposits held by or under the control of Optionor in connection with the Existing Occupancy Agreements as of the MLA Effective Date.

(jjj) “**Tideland’s Trust**” shall have the meaning set forth in the Master Lease Agreement.

(kkk) “**Title Company**” shall have the meaning set forth in **Section 1.2(b)(vi)**.

(lll) “**Title Policy**” shall have the meaning set forth in **Section 1.2(b)(vi)**.

(mmm) “**USL&H**” shall have the meaning set forth in **Section 4.1(c)**.

(nnn) “**Warranty Claim**” shall have the meaning set forth in **Section 4.4(f)**.

**8.2 Counterparts; Facsimile Signatures.** This Option Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. A signed copy of this Option Agreement transmitted via facsimile to the other parties shall be binding on the signatory thereto.

**8.3 Entire Agreement.** This Option Agreement, together with all Exhibits (and Exhibits to the Exhibits), constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements. This Option Agreement may be modified only by a writing signed by both parties. All Exhibits to which reference is made in this Option Agreement are deemed incorporated in this Option Agreement whether or not actually attached.

**8.4 Partial Invalidity.** If any provision of this Option Agreement is held by an arbitrator or by a court of competent jurisdiction to be invalid or unenforceable for any reason, that provision shall be deleted from this Option Agreement and the remainder of this Option Agreement shall continue in full force and effect and shall in no way be impaired or invalidated; provided, however, that if, in the reasonable business judgment of either party, such invalidated provision materially impacts the feasibility of the transaction contemplated herein, then such party may elect to terminate this Option Agreement upon fifteen (15) days’ written notice to the other party. If the Option Agreement is terminated pursuant to this **Section 8.4**, the parties shall have no further rights and obligations under this Option Agreement, except for any Surviving Obligations.

**8.5 Choice of Law.** This Option Agreement and each and every related document are to be governed by, and construed in accordance with, the Laws of the State of California.

**8.6 Waiver of Covenants, Conditions or Remedies.** The waiver by one party of the performance of any covenant, condition, or promise, or of the time for performing any act, under this Option Agreement shall not invalidate this Option Agreement, nor shall it be considered a waiver by such party of any other covenant, condition, or promise, or of the time for performing any other act required, under this Option Agreement.

**8.7 Legal Advice.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Option Agreement and the meaning of the provisions hereof. The provisions of this Option Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

**8.8 Time of the Essence.** Time shall be of the essence as to all dates and times of performance.

**8.9 Attorneys' Fees.** In the event that any party hereto institutes an action or proceeding (including arbitration) for a declaration of the rights of the parties under this Option Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of this Option Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred in addition to any other damages or relief awarded.

**8.10 Assignment.** Subject to the following paragraphs, Optionee may not assign this Option Agreement and its rights and obligations hereunder without first obtaining Optionor's written approval of such assignment, which approval may be granted or withheld in Optionor's sole discretion. Optionor's approval of a proposed assignment shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit, and capability to successfully carry out the development and construction of the Project to completion.

Subject to the preceding paragraphs, this Option Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Option Agreement.

**8.11 Notices.** Each notice, request, demand, instruction or other document required, or permitted to be given hereunder ("**Notice**") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by depositing the same with the United States Postal Service, certified or registered mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth below and marked to the designated individual's attention. Each Notice shall be effective upon receipt and the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of actual receipt of the Notice by the addressee thereof. Rejection of the acceptance of a Notice, refusal by the addressee to accept a Notice, or the inability of any messenger, courier or the United States Postal Service to deliver a Notice because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Either party shall have the right from time-to-time to change the address to which a Notice to it shall be sent to another address in the continental United States (but not a post office box) by giving Notice to the other party of the changed address at least ten (10) days prior to such changes.

Initial addresses of the parties are:

If to Optionor: Port of Oakland  
530 Water Street  
Oakland, California 94607  
Attention: Director of Maritime  
Telephone: (510) 627-1243

With a copy to: Port Attorney's Office  
530 Water Street  
Oakland, California 94607  
Attention: Deputy Port Attorney (Maritime)  
Telephone: (510) 627-1344  
Facsimile: (510) 444-2093

With an additional copy to: O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, California 90071  
Attention: Anita Sabine, Esq.  
Telephone: (213) 430-7251  
Facsimile: (213) 430-6407

If applicable, with a copy to Port's Risk Manager: Port of Oakland  
530 Water Street  
Oakland, California 94607  
Attention: Risk Manager  
Telephone: (510) 627-1535

If to Optionee:

With a copy to:

**8.12 Optionee's Documents Concerning the Property.** If Optionee does not exercise the Option, Optionee shall, at Optionor's election, assign to Optionor all entitlements and approvals obtained by Optionee with respect to the Property and all related studies, documents and engineering work for the Property (collectively, the "**Project Documents**"), excluding any information proprietary to Optionee, and subject to proprietary rights of any engineer or other consultant preparing the same and any limitations on use imposed by them.

Optionor acknowledges that Optionee shall make no warranties or representations regarding the adequacy of the Project Documents.

**8.13 No Partnership or Joint Venture.** Optionor and Optionee shall not, by virtue of this Option Agreement, or any action performed pursuant to this Option Agreement, in any way or for any reason be deemed to be or have become a partner of the other in the conduct of its business or otherwise, or a joint venturer.

**8.14 Dispute Resolution.**

(a) **Scope.** Any dispute arising out of, relating to or in connection with this Option Agreement, including any question as to whether such dispute is subject to the dispute resolution procedures set forth below, which the parties have been unable to resolve by the informal dispute resolution procedures described in **Section 8.14(b)**, shall first be submitted to non-binding mediation under the mediation procedures described in **Section 8.14(c)**, and if the matter is not resolved through such mediation procedures, then any party may thereafter elect to pursue such dispute in any State court of competent jurisdiction sitting in the County of Alameda, State of California, or by the United States District Court for the Northern District of California.

(b) **Informal Dispute Resolution Procedures.** The parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Option Agreement. The parties shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the dispute. Statements made by representatives of the parties during the dispute resolution mechanisms set forth in this **Section 8.14(b)** and documents specifically created for such dispute resolution mechanisms shall be considered part of the settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual written consent of the parties.

(c) **Mediation.** Mediation of a dispute under this Option Agreement may not be commenced until the earlier of: (a) such time as both of the parties, after following the procedures set forth in **Section 8.14(b)**, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (b) fifteen (15) calendar days after the date a party sends notice of the dispute to the other party. If, after such time period, the dispute remains unresolved, the parties shall attempt to resolve the dispute through non-binding mediation administered by the Judicial Arbitration Mediation Services (“**JAMS**”), or such other association as may be mutually agreed to by the parties. The parties will cooperate with each other in selecting the mediator from the panel of neutral mediators knowledgeable in port operations from the JAMS, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the parties, such selection and scheduling shall be completed within forty-five (45) calendar days after the date of the notice referring the dispute to the parties. Unless otherwise agreed to by the parties, the mediation shall not be scheduled for a date that is greater than 120 calendar days from the date of the notice referring the dispute to a party. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each party’s individual attorneys’ fees and costs related to the party’s participation in the mediation, which fees and costs shall be borne by such party). Statements made by the parties (or their representatives) during the mediation procedures set forth in this

**Section 8.14(c)** and documents specifically created for such mediation procedures shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the parties.

**(d) Provisional Remedies.** Notwithstanding anything to the contrary in this **Section 8.14**, no party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Option Agreement.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE **SECTION 8.14** TO MEDIATION AS SET FORTH HEREIN.

Optionor's Initials: \_\_\_\_\_

Optionee's Initials: \_\_\_\_\_

**8.15 Further Assurances.** On or before Optionee exercises the Option, Optionor and Optionee agree that they shall at the request of the other make, execute, acknowledge, and deliver or obtain and deliver all such affidavits, deeds, certificates, and other instruments and documents, and shall do or cause to be done all such acts or things, which either party may reasonably require in order to complete the consummation of the transactions contemplated by this Option Agreement.

**8.16 Optionor Regulatory Authority.** Optionee acknowledges and understands that Optionee shall be required to seek approvals of Optionor, acting in its regulatory capacity as a governmental authority with regulatory jurisdiction over the Property, with regard to the Project as set forth in this Option Agreement and the Master Lease Agreement. Nothing in this Option Agreement shall fetter, modify or otherwise interfere with the right and authority of the (a) Optionor to enact, administer, apply and enforce any Law, and (b) Optionor in providing its approvals when acting in its regulatory, quasi-regulatory, legislative or quasi-legislative role or authority. Unless compensation or other relief is otherwise available or provided for pursuant to applicable Law or this Option Agreement, Optionee shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application, or enforcement of any Law by Optionor, or in connection with the failure of Optionor to grant approvals when acting in its regulatory, quasi-regulatory, legislative or quasi-legislative role or authority.

**8.17 Third Party Rights.** Nothing in this Option Agreement, express or implied, is intended to confer on any person and/or entity, other than the parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Option Agreement.

**8.18 Headings.** All headings and captions appearing in this Option Agreement have been inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Option Agreement or any provision thereof.

**8.19 No Representations.** The making, execution, and delivery of this Option Agreement by the parties have not been induced by any representations, statements, warranties, or agreements other than those expressly set forth herein.

**8.20 Prevailing Wage Standards; Living Wage and Labor Standards; Non-Discrimination and Small Business Utilization Policies; and Maritime and Aviation Project Labor Agreements.** Optionee shall comply with all of the requirements set forth in the Master Lease Agreement regarding prevailing wage standards, living wage and labor standards, non-discrimination and small business utilization policies, the Maritime and Aviation Project Labor Agreements and other Port policies adopted by the Board during the Option Term, to the extent applicable.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

Executed as of the Effective Date.

**OPTIONOR:**

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

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Omar R. Benjamin, Executive Director

THIS OPTION 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 \_\_\_\_\_, 20\_\_

DAVID L. ALEXANDER  
Port Attorney

By: \_\_\_\_\_  
Deputy Port Attorney

Port Ordinance No. \_\_\_\_\_

**OPTIONEE:**

\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

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

**EXHIBIT A**

**MASTER LEASE AGREEMENT**

**[See form attached as Appendix 4 the RfQ]**

**EXHIBIT B**

**FORM OF LETTER OF ASSENT**

\_\_\_\_\_, 200\_\_

David L. Alexander  
Port Attorney  
530 Water Street, 4<sup>th</sup> Floor  
Oakland, CA 94607

Subject: PORT OF OAKLAND MARITIME AND AVIATION PROJECT LABOR AGREEMENT

Dear Mr. Alexander:

The undersigned party confirms that it agrees to be a party to and bound by the Project Labor Agreement (the "Labor Agreement" or "MAPLA") as entered into and by and between Davillier-Sloan, Inc./Parsons Constructors Inc. ("DSI/PCI") on behalf of the Port of Oakland, its successors or assigns, and the Building and Construction Trades Department, AFL-CIO, the Building and Construction Trades Council of Alameda County, AFL-CIO, and their affiliated unions, dated March 21, 2000, as such Labor Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

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

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

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

California State License Number: \_\_\_\_\_

Name and Signature of  
Authorized Person:

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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

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

cc: Ed Manning  
1100 Airport Road, 3<sup>rd</sup> Floor

Oakland, CA 94621

**EXHIBIT C**  
**LEGAL DESCRIPTION OF THE LAND**  
**[To come]**

**EXHIBIT D**  
**SITE MAP OF THE LAND**  
**[See Appendix 7 to the RfQ]**

**EXHIBIT E**

**PERFORMANCE MILESTONES**

<u>Milestone</u>	<u>Performance Time</u>
<p>1. Optionee shall submit a business plan, development plan, construction budget, and construction schedule to the Port Maritime Division consistent with the overall goals of the Port, including seaport and long-term maritime development objectives, as set forth in the RfQ.</p> <p>The development plan (the “Development Plan”) must include (i) a site plan showing the location of all proposed buildings and other improvements proposed to be developed on the Property, (ii) the square footages of such buildings and other improvements, (iii) a description of all proposed land uses for the Property, (iv) a description of all rail and other infrastructure improvements to be developed in connection with the proposed development of the Property, (v) a description of all existing, in-place utilities that will have to be relocated or otherwise protected during the proposed development of the Property, (vi) a general description of all construction activities, including any excavation or grading work and related OAB RMP compliance activities, to be performed in connection with the proposed development, (vii) a construction budget, (viii) a construction schedule, (viii) a traffic circulation plan and (ix) adequate incorporation of opportunities for funding through the California Trade Corridor Improvement Fund.</p>	<p>Within 90 days from Effective Date of the Option Agreement</p>
<p>2. Informational presentation of the Development Plan to the Port Maritime Committee of the Board.</p>	<p>Within 120 days from Effective Date of the Option Agreement</p>
<p>3. Optionee shall host its first community information and outreach meeting for the public.</p>	<p>Within 135 days from Effective Date of the Option Agreement</p>
<p>4. Optionee shall submit a project description (the “Project Description”) that is (i) consistent with the Development Plan presented to Maritime Committee and responsive to any comments received from Port staff and Board members at Maritime Committee, and (ii) sufficient in scope and detail for review under the California Environmental Quality Act (“CEQA”), as determined by the Port.</p>	<p>Within 150 days from Effective Date of the Option Agreement</p>
<p>5. Optionee shall obtain authorization to proceed with environmental review of the Development Plan and Project description from the Director of Maritime.</p>	<p>Within 165 days from Effective Date of the Option Agreement</p>
<p>6. Optionee shall submit an “Application for Environmental Review” to Port Permit Coordinator for the</p>	<p>Within 180 days from Effective Date of the Option Agreement</p>

development of the Property.	or 30 days from date of approval of Project Description by Director of Maritime, whichever occurs first
7. Optionee shall host its second community information and outreach meeting for the public.	Within 12 months from Effective Date of the Option Agreement
8. Optionee shall host its third community information and outreach meeting for the public.	Within 18 months from Effective Date of the Option Agreement
9. Optionee shall host its fourth community information and outreach meeting for the public.	Within 24 months from Effective Date of the Option Agreement
10. Optionee shall engage the Appraiser.	Within 28 months from Effective Date of the Option Agreement
11. Optionee shall obtain final Appraisal from the Appraiser.	Within 60 days from the date the Optionee engages the Appraiser
12. Optionee shall host its fifth community information and outreach meeting for the public.	Within 30 months from Effective Date of the Option Agreement
13. Optionee shall obtain certification of CEQA Environmental Review Documents by the lead agency for the proposed Project (“CEQA Certification”).	Within 32 months from Effective Date of the Option Agreement
14. Optionee shall submit a proposed construction and phasing schedule for proposed development and a revised budget (if necessary).	Within 32 months from Effective Date of the Option Agreement
15. Optionee shall submit evidence of financing (with any combination of debt and equity), including commitments, with reasonable conditions to closing, for development of Phase I of the proposed development.	Within 32 months from Effective Date of the Option Agreement

**EXHIBIT F**

**OPTIONEE'S LEGAL OPINION**

[Letterhead of Counsel to the Optionee]

[Execution Date]

Board of Port Commissioners of the City of Oakland  
530 Water Street  
Oakland, CA 94607

Ladies of Gentleman:

We have acted as special counsel to [\_\_\_\_\_], a [\_\_\_\_\_] (the "Master Lessee"), in connection with the long-term lease by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Board") relating to the master operation, maintenance, design, construction, finance, and lease of facilities on a portion of the former Oakland Army Base ("OAB") and other lands owned by the Port or subject to certain easements for the benefit of the Port pursuant to the Master Lease Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Master Lease"), by and between the Board and the Master Lessee. This opinion is being delivered to you pursuant to Section 3.4(b)(iv) of the Option Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Master Lease Agreement.

In our capacity as such counsel, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true copies of the originals, of (i) the Master Lease and (ii) such corporate and other records and documents we considered appropriate as the basis for the opinions set forth below.

For purposes of this opinion, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies.

[Counsel to insert appropriate caveats based on timing of transaction and delivery of this Opinion Letter.]

On the basis of such examination and subject to the qualifications and limitations in this opinion, we are of the opinion that:

1. The Master Lessee is a [\_\_\_\_\_] duly incorporated and validly existing in good standing under the laws of [\_\_\_\_\_], with corporate power to enter into the Master Lease, and to perform its obligations under the Master Lease.

2. The execution, delivery and performance of the Master Lease have been duly authorized by all necessary corporate action on the part of the Master Lessee, and the Master Lease has been duly executed and delivered by the Master Lessee.

3. The Master Lease constitutes the legally valid and binding obligation of the Master Lessee, enforceable against the Master Lessee in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

The laws covered by this opinion are limited to the present federal law of the United States and the present laws of the State of California. We express no opinion as to the law of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations, or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is furnished by us as special counsel to the Master Lessee and may be relied upon by you only in connection with the Master Lease. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent.

Respectfully submitted,

[Counsel to the Master Lessee]

**OPTION TO MASTER  
LEASE PROPERTY**

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

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

**(Optionor)**

**And**

\_\_\_\_\_  
\_\_\_\_\_

**(Optionee)**

## TABLE OF CONTENTS

	<b>PAGE</b>
1. Grant of Option; Exercise of Option.....	2
1.1 Grant of Option.....	2
1.2 Method of Exercising Option.....	2
2. Description of Property.....	3
3. Option Term; Option Consideration; Conditions to Optionee’s Right to Exercise the Option; Option Closing.....	3
3.1 Option Term.....	3
3.2 Option Consideration.....	3
3.3 Conditions to Optionee’s Right to Exercise the Option.....	3
3.4 Option Closing Conditions.....	5
4. Actions During the Option Term.....	6
4.1 Optionee’s Right of Entry to Property.....	6
4.2 Property Information.....	9
4.3 Environmental Provisions.....	11
4.4 Representations and Warranties.....	11
4.5 Processing of Entitlements and Permits for Non-Toxic Materials Related Activities.....	15
4.6 Indemnification.....	16
5. Condemnation; Destruction of Improvements.....	16
5.1 Condemnation.....	16
5.2 Destruction of Improvements.....	16
6. Brokers.....	17
7. Default Remedies.....	17
7.1 Optionee Default.....	17
7.2 Optionor Default.....	18
8. General Provisions.....	18
8.1 Definitions.....	18
8.2 Counterparts; Facsimile Signatures.....	23
8.3 Entire Agreement.....	23
8.4 Partial Invalidity.....	23
8.5 Choice of Law.....	23
8.6 Waiver of Covenants, Conditions or Remedies.....	23
8.7 Legal Advice.....	24
8.8 Time of the Essence.....	24
8.9 Attorneys’ Fees.....	24
8.10 Assignment.....	24
8.11 Notices.....	24
8.12 Optionee’s Documents Concerning the Property.....	25
8.13 No Partnership or Joint Venture.....	26
8.14 Dispute Resolution.....	26

**TABLE OF CONTENTS**

(continued)

	<b>PAGE</b>
8.15 Further Assurances.....	27
8.16 Optionor Regulatory Authority.....	27
8.17 Third Party Rights.....	27
8.18 Headings .....	27
8.19 No Representations .....	27
8.20 Prevailing Wage Standards; Living Wage and Labor Standards; Non-Discrimination and Small Business Utilization Policies; and Maritime and Aviation Project Labor Agreements .....	28

**Exhibits**

- EXHIBIT A - Master Lease Agreement
- EXHIBIT B - Form of Letter of Assent
- EXHIBIT C - Description of the Land
- EXHIBIT D - Site Map of the Land
- EXHIBIT E - Performance Milestones
- EXHIBIT F - Form of Optionee’s Legal Opinion