



**CITY AND COUNTY OF SAN FRANCISCO  
EDWIN LEE, MAYOR**

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**TERM SHEET FOR PIER 70 WATERFRONT SITE**

**BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO,  
ACTING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION**

**AND**

**FOREST CITY DEVELOPMENT CALIFORNIA, INC.,  
A CALIFORNIA CORPORATION**

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**MONIQUE MOYER, EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**DOREEN WOO HO, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
WILLIE ADAMS, COMMISSIONER  
LESLIE KATZ, COMMISSIONER  
MEL MURPHY, COMMISSIONER**

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# TERM SHEET FOR PROPOSED PROJECT AT PIER 70 WATERFRONT SITE

## INTRODUCTION

This Term Sheet, dated for reference purposes only as of \_\_\_\_\_, 2013, is the “**Term Sheet**” referred to in the Performance Benchmarks in the Exclusive Negotiation Agreement dated as of July 12, 2011, between the City and County of San Francisco (the “**City**”), acting by and through its Port Commission (the “**Port**”), and Forest City Development California, Inc., a California corporation (“**Master Developer**”) (the “**ENA**”), and sets forth the basic terms on which the Port and Master Developer (the “**Parties**”) will negotiate further agreements for the development of an approximately 28-acre portion of the approximately 69-acre Pier 70 area (“**Pier 70**”) (the “**Waterfront Site**”) depicted in **Exhibit A** (Site Description) as a mixed-use project as further described below (the “**Project**”). This Term Sheet is intended to provide for development that will be consistent with the Port’s obligations under the Burton Act (stats. 1968, ch. 1333), as amended including amendments effected by Assembly Bill 418 (stats. 2011, ch. 447) (“**AB 418**”), and the public trust for commerce, navigation, and fisheries (collectively, the “**public trust**”). All attached exhibits are incorporated into this Term Sheet by reference.

This Term Sheet summarizes negotiations regarding the Project, has been informed by the ongoing public review process for the Project, and is subject to endorsement by the Port Commission and the Board of Supervisors (the “**Board**”), each in its respective sole discretion. The Parties have negotiated this Term Sheet to satisfy the requirements of Section 4.3 of the ENA.

After Port Commission and Board endorsement, the Parties will continue to negotiate and amplify the terms (including all defined terms) in this Term Sheet and incorporate them into a Disposition and Development Agreement (the “**DDA**”) and related transaction documents between the Port and Master Developer (collectively, the “**Transaction Documents**”). The Conceptual Land Use Plan for the Project attached as **Exhibit B**, applicable provisions of this Term Sheet, and a proposed Special Use District (“**SUD**”) will be used as the basis for the preparation of a land use plan for the land within the SUD including the Waterfront Site (the “**Prop D Land Use Plan**”) that will be submitted to the Board for approval concurrently with the Transaction Documents under San Francisco Charter section B.7.310(h). In addition, the Parties anticipate that Master Developer will assist the Port in preparing a financing plan for the remainder of Pier 70 as authorized under Charter section B3.710 (the “**Pier 70 Financing Plan**”), though none of the funds allocated to the Port under the Pier 70 Financing Plan will be used to fund ~~Waterfront Site~~ Project improvements except to the extent (if any) approved by the Board ~~of Supervisors~~.

The Project is subject to environmental review under the California Environmental Quality Act (“**CEQA**”) and certification of the final environmental impact report for the Project (the “**EIR**”), adoption of a mitigation monitoring and reporting program (“**MMRP**”) if necessary, and approval of the Project and the Transaction Documents (collectively,

the “**Project Approval**”). Along with any attached or underlying documents, this Term Sheet outlines certain basic terms contemplated for the Transaction Documents but is not intended to be, and will not become, contractually binding on any Party except to the extent the City, including its Port, and Master Developer execute and deliver the DDA and other Transaction Documents incorporating the Term Sheet provisions and any other conditions to the Project Approval (the “**DDA Effective Date**”). The Parties will agree before the DDA Effective Date on the timing of the Port’s submittal of the Pier 70 Financing Plan to the Board for consideration.

## **OVERVIEW**

### **A. The Waterfront Site and the Port’s Objectives for Development**

The Waterfront Site is an approximately 28-acre site located in the southeast corner of Pier 70. The Waterfront Site currently contains a mix of heavy commercial and light industrial buildings and uses, including warehousing, contractor and construction storage, and, until June 2013, the City’s towed car impound facility.

The Port acquired portions of the Waterfront Site and the rest of Pier 70 from the State, the federal government, and private parties. Portions of Pier 70 are historic uplands that were never submerged tidelands subject to the public trust, and several parcels have been in and out of private and federal ownership, creating a patchwork of parcels subject to public trust restrictions. To address the land use restrictions and title uncertainties related to the public trust, AB 418 delegates to the State Lands Commission (sometimes, “**State Lands**”) the authority to enter into trust exchange agreements that reorient these lands to further benefit the trust. Reorientation of the public trust on Pier 70, including the Waterfront Site, would allow the development of cultural, institutional, office, biotech, other commercial, and residential uses in areas that are least suitable for public trust uses, fulfilling the potential of the Waterfront Site to generate the revenues needed to revitalize Pier 70 as a whole and meet the City’s and the Port’s overarching goals.

Given its size, location, and history, the Waterfront Site is one of the Port’s most desirable development sites but also one of the most challenging. From 2007 to 2010, Port staff lead a community planning process to develop a planning document in the context of existing policies for the Eastern Neighborhoods-Central Waterfront Plan to help guide potential development partners at Pier 70. On May 11, 2010, by Resolution No. 10-27, the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Preferred Master Plan (the “**Master Plan**”). The Master Plan creates a strong policy framework that also sets forth flexible strategies for Port development offerings and implementation initiatives. As expressed in the Master Plan, the Port’s vision for Pier 70 is to:

*Create a vibrant and authentic historic district that re-establishes the historic activity level, activates new waterfront open spaces, creates a center for innovative industries, and integrates ongoing ship repair operations.*

The Master Plan provides a framework for Pier 70 that serves to:

- Allocate land between parks, ship repair, historic rehabilitation, and new development sites in a manner to frame developer solicitations.
- Establish infill design guidelines to protect the integrity of the historic district as substantial new development occurs.
- Prioritize investment in the most significant historic buildings.
- Recognize the environmental remediation needed to reuse Pier 70.
- Establish a basis to work with the State Lands staff to define and secure legislation to rectify the public trust at Pier 70.
- Coalesce community support for a revitalized Pier 70, including substantial new development.

Through the Pier 70 planning and developer solicitation processes, the Port identified the following objectives for the Waterfront Site:

- Serve as the catalyst project for Pier 70 to support the sitewide goals established in the Master Plan, in particular, securing the necessary entitlements and approvals for public financing to fund sitewide public benefits.
- Create a first class jobs center at Pier 70 that complements existing ship repair operations and reestablishes Pier 70 as a major economic hub for San Francisco. At build-out, the Port expects the Waterfront Site to represent a significant employment center with jobs well-matched to San Francisco's workforce.
- Generate land value, tax revenues, and investment needed to support the infrastructure, parks, and historic rehabilitation investments to realize the Master Plan.
- Design and development of new buildings that enhance and respect the site's historic resources and overall the historic district.
- Open the eastern shore of the site to the public with a major new waterfront park.
- Create business and employment opportunities for local workers and businesses during the design, construction, and operation phases of the project.
- Strive for a "carbon-neutral" development program minimizing the reliance on the private automobile and enhancing the pedestrian experience of this historic site and the bayshore.

- Integrate Pier 70 into the eastern neighborhoods of San Francisco through new street networks and destinations that bring people to the Bay's edge.
- Encourage on-site alternative energy generation and conservation systems, and reduction of vehicle usage, emissions, and vehicle miles traveled to reduce carbon footprint impacts of new development, consistent with the Port's Climate Action Plan.
- Establish a street system within Pier 70 that connects with the street grid from the Dogpatch and Potrero Hill neighborhoods.

Using its Master Plan for Pier 70, together with development objectives and criteria for the Waterfront Site developed in the public planning process, the Port initiated in August 2010 a public solicitation process by a Request for Developer Qualifications (the "RFQ") to select a private developer partner for the development of the Waterfront Site. The RFQ called for the Waterfront Site developer to aid the Port in advancing the Master Plan vision, including the following efforts:

- Further the vision for the entire Pier 70 area (with the Port and stakeholders) and develop site plans with private sector expertise.
- Develop an infrastructure plan for new streets and extensions of existing streets, utilities, and other infrastructure that includes the full 69 acres and off-site needs.
- Identify the development program for the Waterfront Site.
- In collaboration with the Port, secure entitlements for the entire Pier 70 area that meet the Waterfront Site project needs and establish the framework for the area as a whole.
- Working with the Port, secure public finance and other approvals from Board using mechanisms authorized by Proposition D (described below).

Port staff, aided by consultants, an evaluation panel, and taking into consideration public comments made at a community workshop, evaluated the submittals for the Port Commission's consideration. After considering the staff memorandum presenting the evaluation and public comments at its hearings, the Port Commission in April 2011 selected Master Developer for exclusive negotiations for development of the Waterfront Site. The Parties entered into the ENA in July 2011. This Term Sheet is a result of the exclusive negotiations process.

## **B. General Project Description**

The Waterfront Site will be a new mixed-use innovation district created on a site now used principally for City tow operations and other industrial uses. Master Developer's Waterfront Site concept plan comprises the following three primary building uses that all



work interdependently and support each other: (1) Commercial Office and Retail; (2) Innovation, Retail and Arts (described below); and (3) residential.

Residential use will be crucial to creating a mixed-use neighborhood that reflects the best of San Francisco and echoes the truly mixed-use character of the adjacent Dogpatch neighborhood. Residential/mixed-use will create more housing to meet the demand driven by job growth in San Francisco’s eastern neighborhoods, reduce commuting times and traffic, support the retail and community spaces at Pier 70, and increase the density of people on the site, making it an active, vibrant, and safer place. The housing will be located primarily in the mixed-use core of the Waterfront Site that includes a combination of small scale local production, arts and cultural uses, small business incubator uses, retail and innovation retail, and other publicly-accessible and activating uses (collectively, “**Innovation, Retail and Arts**”), much in rehabilitated historic structures. These uses, which will permeate the street level, are essential to placemaking, to creating community, and to making Pier 70 a distinct part of the San Francisco waterfront. Consistent with the Master Plan, Master Developer’s concept plan includes commercial/office space placed to frame the core of mixed-use residential and creative uses occupied by office knowledge economy office companies that desire the eclectic, creative district supported by the Innovation, Retail and Arts and residential uses.

At build-out, the Project would include approximately 3.25 million gross leasable square feet (“**gsf**”) of vertical development with additional above-grade and below-grade parking uses, and would create approximately 7 acres of new and expanded parks and shoreline access. The Conceptual Land Use Plan for the Project is attached as **Exhibit B**.

Based on current conceptual plans, the Waterfront Site would be divided into approximately 20-25 buildable parcels (each, a “**Development Parcel**”), which would be developed in up to four major phases (each, a “**Phase**”) as a mix of commercial/office, Innovation, Retail and Arts, and market rate and affordable residential uses. The precise combination of uses would be determined in response to market demands as the Project moves forward. Conceptual plans currently call for three of the parcels – Parcels C-1A, C-1B, and C-2 - to hold structured parking (collectively, the “**District Parking Facilities**”) to serve the new development. Master Developer would also rehabilitate Buildings 2, 12, and 21, which have been classified as historically or architecturally significant historic resources within the proposed Pier 70 National Register Historic District and would be adaptively rehabilitated for reuse in compliance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (the “**Secretary’s Standards**”) (collectively, the “**Historic Improvements**”).

## **C. Description of Development**

### **1. Land Use/Vertical Development**

At final build-out of the Waterfront Site, the Project is proposed to include up to 3.25 million gsf of above-grade construction (“**vertical development**”) by Master Developer,

or its affiliates or joint ventures, or third parties (each, a “**Vertical Developer**”) in new buildings and the Historic Improvements, not including square footage allocated to accessory and district parking, as shown in **Exhibit B** (Conceptual Land Use Plan). The currently estimated amounts of primary land uses at build-out are listed below.<sup>1</sup> The DDA will identify flexible zoning controls that will permit certain parcels to be developed for either commercial or residential uses to allow for development that responds to market conditions. The Parties anticipate that the Project will continue to evolve throughout the CEQA analysis, the public review process under CEQA, and the Project Approval process.

a. Residential: 950 units in approximately 800,000 gsf, which may increase under the flexible zoning described under Site Zoning below. Approximately 110,000 gsf of residential development (approximately 120 units) will be included in Building 2, which is one of the Historic Improvements.

b. Commercial Office, including Class A office and research and development space: up to 2.25 million gsf. Approximately 60,000 gsf of commercial development will be included in Building 12, which is one of the Historic Improvements. Commercial Office uses within flex zones will provide the opportunity to replace commercial uses with residential uses subject to a sitewide maximum of 3.25 million gsf, excluding parking.

c. Innovation, Retail and Arts: up to 400,000 gsf, including up to 120,000 gsf of Innovation, Retail and Arts space located within Buildings E-1A and E-1B, approximately 115,000 gsf within Buildings 12 and 21, which are Historic Improvements, and the remainder located within ground floors of commercial and residential parcels.

d. Open Space and Recreation: Approximately 7 acres

e. Parking: Maximum parking ratios permitted will be as follows, to be located within structured parking facilities and individual buildings, as described in **Section 5** (Phasing):

- Residential Condominium Units: one space per unit
- Residential Rental Units: 0.5 space per unit
- Commercial (including office, restaurant, retail, Innovation, Retail and Arts, and all other uses): 0.9 spaces per 1,000 gsf of floor area

## 2. Horizontal Development

The term “**horizontal development**” generally means the activities that Master Developer is obligated to construct, as described immediately below. The preliminary

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<sup>1</sup> Actual square footages and unit counts may be lower or higher based on final uses built under flexible zoning, subject to a maximum sitewide square footage that will be analyzed in the Project EIR.

definition of “**Horizontal Development Costs**,” in **Section 9** (Sources and Uses) means the costs Master Developer reasonably incurs for horizontal development including:

- a. predevelopment activities, including all preliminary planning and design work, environmental review under CEQA, negotiation of the financial and other terms of the Transaction Documents and other documents leading up to Project Approval, and any incremental costs of including the Third-Party Parcels (see **Section 15** (20<sup>th</sup>/Illinois and Third-Party Parcels)), or any other property within or adjacent to Pier 70 at the Port’s or the City’s request, in the SUD and CEQA review (“**Entitlement**”);
- b. site preparation, including removal of contaminated soils, grading, soil compaction and stabilization, construction and installation of water, sanitary sewer, storm drainage, and utility infrastructure, and subsurface improvements to mitigate seismic conditions (“**Infrastructure**”); and
- c. construction of streets and walkways, maritime facilities, shoreline improvements, public access, and parks (“**Public Facilities**”).

3. Open Spaces, Parks, and Recreation.

The Project will create a significant new 7-acre waterfront open space network that will: (a) complement Pier 70 waterfront improvements outside of the Waterfront Site that include the new Crane Cove Park; (b) extend the Blue Greenway and Bay Trail through the southern half of Pier 70; (c) celebrate the industrial history of the site; and (d) establish a unique, urban waterfront with a local character that is activated by the uses in the buildings adjacent to the open spaces. Key zones of the open space program include:

a. Market Square will be an approximately 0.6-acre courtyard-type open space bounded by two of the Waterfront Site’s historic resources, Building 2 and Building 12. Market Square will be the most urban part of the Waterfront Site. The space will open up from the market hall that will be located on the ground floor of Building 12 and will be a natural location for a farmers market, outdoor movies, and other events.

b. Slipways Commons will be a 3.9-acre zone of open space that connects the Waterfront Site’s historic resources to the waterfront and will comprise three unique spaces. First, at its northernmost point adjacent to historic Building 6 (which is outside the Waterfront Site), the area will be a quieter zone of landscaping conducive to picnicking, throwing a Frisbee®, or viewing the majestic ships in drydock at the BAE Systems facility. The central portion of the park will be a unique space flanked on both sides by buildings that on the ground level contain Innovation, Retail and Arts uses that can spill out onto the park without a vehicular roadway in between, such as an indoor/outdoor performance venue, beer garden, art galleries and studios, cultural uses, or small scale local producers. The Point will be a shoreline open space

that connects with an extended 20<sup>th</sup> Street to the north and Slipways Common to the south and offer views to the ship repair operations and city skyline. The Blue Greenway will be aligned through this open space. Slipways Promenade along the southernmost portion of the waterfront will create a generous shoreline promenade with a pedestrian and bicycle pathway, flanked on one side by restaurants and cafes below residential uses and on the other by iconic finger piers of the historic craneway structures that offer opportunities for fishing or pausing out over the Bay waters.

c. The concept plan includes approximately 1.7 acres of useable open space on the rooftops of the district parking structures. Uses may consist of recreation/sports fields/courts, urban agriculture, or other publicly-accessible uses. The spaces will be designed to be easily accessible from various locations on the Waterfront Site.

As shown in **Exhibit C** (Illustrative Phasing Plan), the development of these parks and open spaces will be fairly distributed among the Project Phases to assure that they are completed in coordination with the adjacent Development Parcels.

Parks and open spaces will be owned by and remain under the jurisdiction and control of the Port, and will be programmed by Master Developer subject to Port approval and conditions of the San Francisco Bay Conservation and Development Commission (“**BCDC**”) through a major permit applicable to the Waterfront Site. Maintenance of the parks and open spaces will be funded by special taxes imposed on privately-owned and occupied land and buildings in a community facilities district (“**CFD**”) formed on the Waterfront Site under the Mello-Roos Community Facilities Act of 1982 (Cal. Gov. Code §§ 53311-53368.3) or the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. 10) (in either case, “**CFD Law**”).

#### 4. Flexible Zoning Scheme

A key element of the conceptual land use program is the flexibility to respond to future market demands. As shown in **Exhibit B** (Conceptual Land Use Plan), certain parcels will be residential with ground floor Innovation, Retail and Arts uses and others will be commercial. During the Project Entitlement process, Master Developer will work with the City and the Port to identify Development Parcels that will be zoned flexibly to allow either product type and that would provide the opportunity to replace commercial with residential uses, subject to the sitewide maximum of 3.25 million gsf.<sup>2</sup>

As illustrated on **Exhibit E** (Conceptual Height Map), the land use program has been designed to retain lower-scale buildings around the historic structures, fronting on the open space and along the waterfront while also incorporating the density necessary to support required infrastructure costs, project feasibility, and the foot traffic needed to

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<sup>2</sup> Master Developer and the Port will examine different flexible zoning arrangements during the Project Entitlement phase, including Project variants with up to 2,000 residential units and corresponding reductions in commercial space within the sitewide maximum development envelope of 3.25 million gsf of space. These Project variants will be subject to environmental and public review during the Entitlement process.

support the Innovation, Retail and Arts uses on the street level. To retain that required density, a limited number of structures of up to 230 feet in height could be located on the Waterfront Site. The specific numbers and locations of these buildings would be within zones identified in the adopted design guidelines, with final locations to be defined during the build-out of the Project in accordance with the adopted design guidelines.

The flexible zoning will include the ability to replace the use of one of the District Parking Facilities parcels with another residential or commercial use, with corresponding adjustments to sitewide maximums for residential and commercial uses. This will allow the land use plan and program area to be adjusted in the future should Master Developer determine that Waterfront Site parking needs during Project build-out are less than currently projected for reasons that may include increased transit service to the Waterfront Site by the San Francisco Municipal Transportation Agency (“**SFMTA**”), other transit demand management measures that reduce the need for parking, or other reasons.

## 5. Parking

The Project will contain parking within the District Parking Facilities and within individual buildings. The District Parking Facilities will be constructed as necessary to support the demands of the Project. Based on the current conceptual phasing plan, the District Parking Facilities are projected to be constructed in Phases 3 and 4, although one or more could be constructed as part of an early Phase of the Project. District Parking Facilities will provide parking primarily for Waterfront Site commercial uses and Historic Improvements consistent with applicable maximum parking ratios described in Land Use/Vertical Development above, but will also include some residential parking. If the Port is able to secure sufficient additional funding sources to pay for the incremental cost, the District Parking Facilities may be designed also to serve demand for other Pier 70 users, subject to appropriate shared-use agreements.

The Port and Master Developer may agree in the course of development to move a District Parking Facility to another location at or adjacent to Pier 70, in which case the Development Parcel would be available for development for either residential or commercial use, subject to the sitewide maximum of 3.25 million gsf.

The Parties will re-examine parking needs and consider reduced parking ratios in later Phases, in light of improvements in regional and local transit service to Pier 70.

## **D. Affordable Housing**

New housing built for the Project will meet City inclusionary housing requirements under Planning Code sections 415.1-415.9, which allows for onsite or off-site affordable units or fees in-lieu of affordable housing. With respect to rental housing, the Parties will explore the feasibility of producing 80/20 tax credit projects in which individual buildings will include 20% onsite affordable housing meeting applicable affordability requirements and restrictions. Master Developer and the City through the Mayor’s Office of Housing

(“**MOH**”), the Office of Economic and Workforce Development (“**OEWD**”), and the Port’s Planning Division may investigate alternative potential ways to meet current requirements. These alternatives may include a sliding scale that specifies a higher percentage of units affordable to households at higher levels of income or delivery of a portion of the affordable units in buildings in which 100% of the units are income-restricted. Affordable housing will be delivered in a balanced manner throughout the phasing of the Project.

Subject to further consultation with MOH, residential condominiums, if built, may or may not include inclusionary units. If affordable condominium units are not included onsite, the Vertical Developer will pay in lieu fees for the Development Parcel.

### **E. Transportation Demand Management Plan**

Master Developer will implement a Transportation Demand Management Plan (“**TDMP**”) in coordination with other Port Pier 70 tenants that will provide a comprehensive strategy to manage the transportation demands created by the Project. The mixed-use nature of the Project’s land use program, the transit options in the Central Waterfront, and the Waterfront Site’s proximity to San Francisco’s resources and services mandate that single-occupancy vehicle trips be reduced. The transportation strategy for the Project is based on reducing vehicle miles traveled by fostering multiple modes of sustainable transportation, emphasizing pedestrian, bicycle, and public transit options. The land use plan is oriented to create a dense, urban neighborhood clustered near accessible transit with streets and paths that favor walking and bicycling. Market-based pricing strategies for parking will be supported by innovative programs to reduce automobile dependence and promote the use of public transit. A district parking strategy enables delivery of parking as needed to meet actual future demands as development proceeds. Parking for the site will be managed to maximize availability of on-street parking within Pier 70 and to maximize shared use of available parking by different users at different times of the day or week, so long as the use of the parking at the applicable parking ratios for the Project buildings and uses is assured.

The TDMP will incorporate smart and sustainable transportation planning principles to address the transportation needs of the Project, consistent with the City’s Transit First, Better Streets, Climate Action, and Transportation Sustainability Plans and Policies. Consistent with the CEQA investigation, the TDMP will outline a series of implementation strategies intended to manage effectively the transportation demands created by the Project. The goal of these strategies will be to minimize the Project’s dependence on the automobile and to optimize the inclusion of non-auto travel modes providing access to the Project.

The Parties will work with SFMTA to explore the feasibility of bringing bus service into the Waterfront Site and SFMTA’s extension of the Central Subway turnaround loop to 20<sup>th</sup> Street to better serve the growth of the Dogpatch neighborhood and Pier 70.

## F. Sustainability

Delivering a sustainable vision for the Project will be a collaborative effort involving many public, private, and, potentially, nonprofit partners. From the Department of the Environment (“**DOE**”) to the San Francisco Public Utilities Commission (“**SFPUC**”) to SFMTA to private industry to the future Pier 70 residents and visitors and more, many partners will need to contribute to realizing the long-term goals for the reuse of the Waterfront Site.

Master Developer will implement, with appropriate and necessary partners, a Sustainability Plan that will provide a comprehensive approach to achieve the Project goal of becoming a model of sustainability by exhibiting the concepts and practices of sustainable community development throughout the life span of the Project. Master Developer will collaborate with the Port and the City, specifically, DOE, the Planning Department, the Port Planning Division, and SFPUC, to develop the Sustainability Plan. Master Developer and the City will pursue status for the Project as a Type I Eco-District to help meet the City’s and Master Developer’s environmental goals. A Type 1 Eco-District is characterized by a large amount of undeveloped land typically owned by a single property owner. In general, Type 1 Eco-Districts enable horizontal infrastructure development to be implemented in advance of vertical development to help optimize Eco-District goals. This type of Eco-District maximizes efficiencies in the delivery of goods provided by infrastructure through district-scale systems. The Planning Department has identified the following potential Type 1 Eco-Districts in San Francisco: the Transbay Transit Center District Plan Area, Pier 70, and Mission Rock at Seawall Lot 337.

After the Port Commission and the Board have endorsed the Term Sheet, the Project team will study the technical and financial feasibility of elements of an Eco-District Plan in the course of infrastructure planning, drafting development standards and controls and design guidelines, and environmental review to allow one or more of the strategies below to be analyzed in the Project EIR. Master Developer and the City will develop an integrated Eco-District Plan that identifies measurable goals, standards, and performance metrics that are within the reasonable control of Master Developer. This Eco-District Plan will be included in the DDA.

Multiple sustainable site approaches will be considered from the outset of horizontal development, to enable vertical development design proposals to exceed compliance with Port Building Code requirements and achieve Project goals for integrated sustainable design and a low carbon community.

The following have been investigated and will continue to be analyzed for potential inclusion into the Project, in addition to future ideas and technological advances:

1. centralized energy, potentially utilizing co- or tri-generation systems
2. Bay source cooling
3. renewable energy technologies such as photovoltaics and solar thermal

4. wind power
5. low-impact development (LID) stormwater treatment/water-sensitive urban design
6. recycled water sharing system
7. rainwater harvesting (for reuse)
8. centralized/pneumatic waste collection system
9. reduction of vehicle miles traveled

Regardless of which of the above approaches are implemented at the Waterfront Site, Master Developer and the Port will strive to be leaders in the realm of long-term sustainability planning and design. The final strategies to be implemented at the Waterfront Site will follow the direction of Master Developer's investigation as noted above, including the goals of an Eco-District Plan.

#### **G. Jobs and Equal Opportunity**

The build-out of the Project is anticipated to create thousands of construction and permanent jobs, and the planning, design, and construction work will provide substantial contracting opportunities for local contractors and professional service firms as well as countless businesses, employers, and organizations. Master Developer will implement a Jobs and Equal Opportunity Program designed to assure that a portion of the jobs and contracting opportunities generated by the Project be directed, to the extent possible based on the type of work required and consistent with collective bargaining agreements, to local, small, and economically-disadvantaged companies and individuals.

#### **H. Statutory, Regulatory, and Plan Amendments**

##### **1. Site Zoning**

The Waterfront Site is currently zoned M-2. Master Developer will work with the Planning Department and Port staff to draft a proposed SUD that would rezone and establish development and design standards and controls applicable to the Waterfront Site, the parcel located along Illinois Street at 20<sup>th</sup> Street (the "**20<sup>th</sup>/Illinois Parcel**"), the PG&E-owned Hoe Down Yard at Illinois Street and 22<sup>nd</sup> Street (subject to written agreement with PG&E), and, to the extent agreed, some or all of the [other](#) parcels identified as "Third-Party Parcels" on **Exhibit F** (Third Party Parcels) and certain other parcels along Illinois Street that are not part of the Project. If approved, as appropriate, by the Port Commission, the Planning Commission, and the Board, the SUD would be incorporated into the City's Planning Code, and the Waterfront Land Use Plan would be amended to incorporate the SUD and set forth other development requirements, such as the design review body and process.



## 2. BCDC

After a multi-year cooperative process, the Port and BCDC adopted the *San Francisco Waterfront Special Area Plan* for the San Francisco waterfront. The *Special Area Plan* applies the requirements of the McAteer-Petris Act (Gov. Code §§ 66600-66694) and BCDC's *San Francisco Bay Plan*. BCDC and the Metropolitan Transportation Commission jointly published the *San Francisco Bay Area Seaport Plan*, which calls for preservation of a 16-acre area for ship repair, which the Port incorporated into the Pier 70 Master Plan. Consistent with its mission, BCDC will require maximum feasible public access as a requirement to issue a major permit for that portion of the Project located within 100 feet of the shoreline. In addition to the process required for the major permit, the Port and Master Developer will consult with BCDC regarding the approach to realigning the San Francisco Bay Trail/Blue Greenway through Pier 70 as the area is developed.

## 3. State Lands

AB 418 authorizes the State Lands Commission to effect a public trust exchange within the Pier 70 area to rationalize the configuration of trust and nontrust property, subject to certain required State Lands Commission findings and conditions, including the Port Commission's and the Board's prior approval. Nontrust property along the water's edge would be impressed with the public trust to promote maritime uses and public access, and, to further trust purposes the trust would be terminated on inland trust property not needed for trust purposes.

The Port and Master Developer have initiated preliminary discussions with State Lands staff about a proposed trust exchange under AB 418. **Exhibit D** (Illustrative Public Trust Map) shows the proposed future trust configuration for the Waterfront Site after the trust exchange, should the Port Commission, the Board, and the State Lands Commission authorize the exchange. Under this anticipated configuration, all Development Parcels in the Project would be nontrust parcels that the Port would hold as trust assets.

After trust parcels are removed from the public trust, the Port may sell or ground lease the nontrust parcels without public trust limitations on use, sale, or length of ground lease term, but under AB 418, all revenues and proceeds of these parcels must be deposited into the Harbor Fund and used for trust purposes. The Port anticipates that it will sell nontrust parcels designated for residential condominiums. The Port would ground lease historic Buildings 2, 12, and 21, but the master tenant would own the Historic Improvements during the term of the applicable Ground Lease.

## 4. Proposition D

Proposition D is a Charter amendment (codified primarily at sections B7.310-B7.320) authored by Supervisor Maxwell and adopted by voters in 2008 (68-32%). The November 2008 Voter Pamphlet provides the following description of Proposition D:

Proposition D is a Charter Amendment that would provide City funds to develop Pier 70 if the Board approves a financial and land use plan for Pier 70 (Pier 70 Plan).

The Pier 70 Plan would determine the geographic boundaries for development, improvements, and financing. At the time the plan is submitted, the City would calculate the amount of payroll tax revenues collected from the Pier 70 Plan area and estimate the new hotel and payroll tax revenues the City would collect over the next 20 years if the proposed development occurs. If the Board approves the Pier 70 Plan, the City would provide funds for historic preservation and the development of infrastructure such as parks and utilities in an amount up to 75% of projected new Pier 70 hotel and payroll tax revenues.<sup>3</sup>

The Board's approval of the Pier 70 Plan would also authorize long-term Port leases in the area without any further Board approval.

The Mayor may also submit to the Board agreements to facilitate the transfer of funds between City agencies and the Port. If the Board approves such agreements, the City would be required to provide the necessary funding.

The Conceptual Land Use Plan for the Project attached as **Exhibit B**, applicable provisions of this Term Sheet, and the proposed SUD will be used as the basis for the proposed Prop D Land Use Plan that the Parties will submit to the Board for approval concurrently with the Transaction Documents.

In addition, Master Developer will assist the Port in preparing a Pier 70 Financing Plan. The Parties will agree on whether the Port will submit the Pier 70 Financing Plan to the Board for consideration concurrently with or after the Transaction Documents. If the Port does so, the Port would use all funds allocated under an approved Pier 70 Financing Plan solely for improvements to Pier 70 areas outside of the Waterfront Site except to the extent (if any) authorized in the approved Pier 70 Financing Plan. Before the Parties complete the Prop D Land Use Plan, the Port will determine the need for a Pier 70 Financing Plan for Pier 70 public benefits outside the Waterfront Site, which may include open space, historic rehabilitation, or transit serving Pier 70.

#### **I. Assumptions Underlying Term Sheet.**

The Parties acknowledge that the goal of this Term Sheet is to achieve a balance between the public policy objectives of the Project (as set forth in the RFQ, the ENA, and this Term Sheet) and Master Developer's need for a reasonable market return on its investment. After execution of this Term Sheet and during the remaining term of the ENA, the Parties will negotiate in good faith to complete final Transaction Documents and a final development program that provides a level of public benefits substantially

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<sup>3</sup> Under Proposition E, passed by San Francisco voters on November 6, 2012, the City payroll tax will be phased out and replaced by a gross receipts tax that will be phased in over a 5-year period beginning in 2014.

consistent with the Term Sheet and achieves Master Developer's required market return. If any of the key assumptions materially changes during negotiations, including market conditions or other key conditions, then the Parties will negotiate in good faith for the remaining term of the ENA to reach a fair and balanced agreement that provides Master Developer with its reasonable market rate return and the City and the Port with an appropriate public benefits package that achieves the public policy objectives for the Project.

## **J. Financial Structure**

The financial structure for the Project is summarized briefly immediately below. See **Section 10** (Developer Return) and **Section 11** (Port Participation in Vertical Development) for more detail.

Master Developer and the Port have created a conceptual framework to take advantage of the lessons learned during the City's recent experience with phased, master planned developments and innovative financing mechanisms for public infrastructure serving new infill projects. The entitlement of a large site and building infrastructure for multiple development opportunities create many risks for both Parties, and the structure under discussion includes several provisions to reduce the normal risks of development. The following concepts serve as the foundation for this public-private partnership and will be implemented through the course of the Project.

The financial structure for the Project is based on and balances two fundamental principles:

- Use Land-Secured Financing Proceeds (defined below) on a tax-exempt basis to the maximum extent permitted by law to pay for public infrastructure and other authorized costs; and
- Maximize trust termination revenues that will be available for the purposes authorized under AB 418 after Master Developer has received a reasonable market rate return on its capital investment.

Except as otherwise agreed, the DDA will obligate Master Developer to undertake all horizontal development, using capital from any sources available to the Master Developer ("**Developer Capital**") to fund Horizontal Development Costs for the Project. Master Developer will be entitled to an 18% cumulative annual return on Developer Capital calculated quarterly at the end of each quarter (including the Cost of Carry (defined below), "**Developer Return**") for the use of its capital.

The DDA will provide flexibility for Master Developer and the Port to agree to shift certain Infrastructure obligations to Vertical Developers, such as back-of-curb improvements, improvements that might be damaged by vertical construction, or otherwise to facilitate efficient delivery of development. And the Port will have the right at any time and in its sole discretion to use any available source of public funds that will be less expensive to the Port than paying Developer Return to Master Developer, such

as land-secured and alternative sources of public funding, subject to negotiating reasonable financial protections in the DDA.

Master Developer will own all Infrastructure and Public Facilities for which it pays until they are delivered to and accepted by the City or the Port, as applicable. The City and the Port will be obligated to acquire qualified Infrastructure and Public Facilities, including related soft costs (“**Qualified Facilities**”), from Master Developer in accordance with a Financing Plan and an Acquisition Agreement in the form to be attached to the DDA (see **Section 9** (Sources and Uses)). Payments under the Acquisition Agreement will repay Master Developer for its use of Developer Capital for Qualified Facilities, including interest on Developer Capital used to fund Qualified Facilities to the extent permitted by IFD Law section 53395.2(a) and CFD Law section 53314.9(a) (the “**Cost of Carry**”). The Summary Pro Forma for the DDA will demonstrate the calculation of the Cost of Carry in relation to the calculation of Developer Return. The DDA will describe how the Parties reconcile the accrual and payment of the Cost of Carry on Qualified Project Costs with the accrual and payment of Developer Return.

Primary sources of acquisition payments for eligible costs of Qualified Facilities and the related Cost of Carry (together, “**Qualified Project Costs**”) and other Horizontal Development Costs will be, in the priority described in **Section 10(b)** (Priorities for Application of Project Sources):

1. “**Land-Secured Financing Proceeds**” (see **Section 12** (Financing Mechanisms)) consisting of:
  - a. pay-as-you-go special taxes under CFD Law and proceeds of CFD bonds; and
  - b. pay-as-you-go tax increment allocated to an infrastructure financing district (“**IFD**”) formed under state law (Cal. Gov. Code §§ 53395-53397.11) (“**IFD Law**”) under the approved IFD financing plan for the Project and proceeds of IFD bonds; and
2. “**Land Proceeds**” (see **Section 14** (Disposition of Development Parcels)) consisting of:
  - a. prepaid rent under Development Parcel Ground Leases;
  - b. proceeds of the sale of any Development Parcel, the 20<sup>th</sup>/Illinois Parcel, and any other Third-Party Parcel that the Port in its sole discretion elects to use for the Project; and
  - c. one-half of unique new interim lease revenues from the Waterfront Site that Master Developer assists the Port in generating (“**Net New Interim Lease Revenues**”).

Under the financial structure for this transaction, the Port will apply Land-Secured Financing Proceeds to pay for Qualified Project Costs to the maximum extent permitted by law, before using Land Proceeds and other Project Sources for that purpose except as specifically provided otherwise. The Parties believe that the Project will generate sufficient proceeds to reimburse Master Developer for all Horizontal Development Costs of the Project.

As required to comply with the Burton Act (as amended by AB 418), the Port will transfer all Development Parcels at fair market value. Most Development Parcels will be conveyed by 99-year ground leases (each, a “**Ground Lease**”), and a limited number will be transferred in fee. The disposition process, including appraisals, for Development Parcels is addressed in **Section 14** (Disposition of Development Parcels).

Subject to **Section 10(b)** (Priorities for Application of Project Sources), Land Proceeds will be used first to pay Developer Return (excluding the Cost of Carry) on unreimbursed Developer Capital. Land Proceeds from the Port’s conveyance of the 20<sup>th</sup>/Illinois Parcel will be designated specifically to pay Developer Return (excluding the Cost of Carry) on Master Developer’s Entitlement costs incurred before the DDA Effective Date. The Port may use any remaining Land Proceeds to repay Developer Capital or pay directly for Horizontal Development Costs in subsequent Project Phases, subject to reimbursement from Land-Secured Financing Proceeds on either a tax-exempt or taxable basis, as permitted by law. This treatment of Land Proceeds will not affect the basic principle of the financial structure that no Project Surplus will be distributed until the Port has paid Master Developer the Developer Return on and repaid Developer Capital (see **Section 10(e)** (Distribution of Project Surplus)). The purpose of applying the Land Proceeds as described in this paragraph would be to minimize the accrual of Developer Return (excluding the Cost of Carry) to meet the spirit of AB 418, which requires the Port to maximize the amount of trust termination revenues that will be available for the purposes authorized under AB 418. Land Proceeds reimbursed with Land-Secured Financing Proceeds will be deposited or deemed deposited in a Project Account for purposes of paying Developer Return and later distribution to the Port and Master Developer after Master Developer receives Developer Return (see **Section 10(c)** (Reinvestment of Surplus Proceeds)). Master Developer will be permitted to use its projected share of Land Proceeds reimbursed by Land-Secured Financing Proceeds and deemed deposited in the Project Account in any manner. Any amount of its share that Master Developer is deemed to have withdrawn from the Project Account will be credited (subject to interest and the time value of money as set forth in the DDA) against a future Horizontal Development Cost on a dollar-for-dollar basis. The Parties, in consultation with bond counsel, will continue to discuss the treatment of Land Proceeds and Land-Secured Financing Proceeds subject to final agreement in the DDA.

Land Proceeds in the Project Account (taking into account any amounts of its share that Master Developer is already deemed to have withdrawn) and future ground rents under Ground Leases will be distributed to the Parties, with the Port receiving 55% and Master Developer receiving or retaining 45% of those amounts, only **after** all of the following have occurred:

1. Master Developer has completed all Qualified Facilities for the Project.
2. The City and the Port have accepted all Qualified Facilities for the Project.
3. The Port has repaid Master Developer an amount equal to Developer Capital invested in Horizontal Development Costs.
4. The Port has paid Master Developer its Developer Return on Developer Capital.

In addition to the Port's participation in Project Surplus, the Port will participate in vertical revenues through the following:

- 1.5% of net proceeds from sales and refinancings of ground leases and associated improvements;
- 1.5% transfer fee payment from all transfers of fee parcels (including residential condominiums) after the first sale;
- 1.5% of modified gross revenues on all buildings (except Buildings 12 and 21, Parcels E-1A, and E-1B, District Parking Facilities, and all residential condominium buildings) beginning in year 30; and
- 2.5% of modified gross revenues on all buildings (except Buildings 12 and 21, Parcels E-1A, and E-1B, District Parking Facilities, and all residential condominium buildings) beginning in year 60.

The Parties have also agreed to continue to explore using Land-Secured Financing, to the maximum extent permitted by law, for the costs (collectively, "**Eligible Vertical Improvement Costs**") of constructing new buildings on Parcels E-1A and E-1B, the Historic Improvements to Buildings 12 and 21, constructing the District Parking Facilities on Parcels C-1A, C-1B, and C-2, and (under conditions to be specified in the DDA) the installation of piles (collectively, "**Eligible Vertical Improvements**"). The DDA will include the Parties' agreement on the use of Land-Secured Financing and any other sources for those purposes.

Section and Title	Basic Terms and Conditions
<p><b>1. Parties</b></p>	<p><u>Port</u>: City and County of San Francisco (the “<b>City</b>”), acting by and through its Port Commission (the “<b>Port</b>”). References to the Port in this Term Sheet also mean staff of the Port acting within their delegated authority.</p> <p><u>Master Developer</u>: Forest City Development California, Inc., a California corporation (“<b>Master Developer</b>”), and its affiliates and joint ventures that become Vertical Developers of Development Parcels for the Project.</p>
<p><b>2. Site Description</b></p>	<ul style="list-style-type: none"> <li>• The Waterfront Site is shown on the map attached as <b>Exhibit A</b> (Site Description).</li> <li>• Certain parcels outside of the Waterfront Site located along Illinois Street (the “<b>Third-Party Parcels</b>”) are shown on <b>Exhibit F</b> (Third-Party Parcels).</li> <li>• Because of its proposed sale to support the Project as described in <b>Section 15(a)</b> (20<sup>th</sup>/Illinois Parcel), the Third-Party Parcel located at Illinois Street from 20<sup>th</sup> Street to just south of 21<sup>st</sup> Street (the “<b>20<sup>th</sup>/Illinois Parcel</b>”) will be included in the SUD and will be considered part of the Project for purposes of environmental review.</li> </ul> <p style="text-align: center;">● —</p> <ul style="list-style-type: none"> <li>• Subject to agreement with PG&amp;E, a parcel owned by PG&amp;E located at the corner of 22<sup>nd</sup> Street and Illinois Street known as the “Hoe Down Yard” will be included in the SUD and considered part of the proposed “project” for environmental review purposes. The City is separately negotiating to acquire the Hoe Down Yard from PG&amp;E and, if the City purchases the Hoe Down Yard, it will be deemed a Third-Party Parcel.</li> <li>• The other Third-Party Parcels would be considered part of the CEQA “project” for environmental review if rezoned by the proposed SUD. Even if included in the CEQA project, however, none of the Third-Party Parcels other than the 20<sup>th</sup>/Illinois Parcel and possibly the Hoe Down Yard (<a href="#">if Master Developer obtains an Option under Section 14(a) (Master Developer Option) as described in Section 15(c) (Hoe Down Yard)</a>) will be</li> </ul>

	included in the <del>Waterfront Site</del> Project.
<p><b>3. Project Description</b></p>	<p>The proposed Project is described above and shown on the Conceptual Land Plan attached as <b>Exhibit B</b>. Master Developer will have no obligations for: (a) work within or that would disturb any submerged lands or improvements outside of the Waterfront Site except to the extent necessary to serve the Waterfront Site (such as mitigation measures identified in the MMRP to address significant impacts of Waterfront Site development); or (b) remediation work arising from activities or conditions related to the lands formerly owned by PG&amp;E (now owned by NRG) and located southeast of the Waterfront Site. With respect to any remediation related to the Project, the Port and Master Developer will develop a plan to complete the remediation of the Waterfront Site in compliance with applicable regulatory requirements.</p> <p>Master Developer will <del>be obligated to</del> assist the Port by providing information to be included if the Port prepares a proposed Pier 70 Financing Plan to provide financing for areas of Pier 70 outside of the Waterfront Site, but no funding allocated to the Port under an approved Pier 70 Financing Plan will be used to fund Waterfront Site Project improvements, <u>except to the extent authorized (if at all) in the approved Pier 70 Financing Plan.</u></p>
<p><b>4. Transaction Documents</b></p>	<p>As soon as practicable after Project Approval, the Port and Master Developer will enter into a Disposition and Development Agreement (the “<b>DDA</b>”), as well as other transaction documents (the “<b>Transaction Documents</b>”), some of which may require additional parties, relating to public financing, construction review and approvals by other City departments, and other matters required to implement the Project. Key elements of the DDA and the form of ground lease for Development Parcels (each, a “<b>Ground Lease</b>), as well as a brief summary of some of the other Transaction Documents are described below:</p> <p>(a) <u>DDA</u>. The DDA will set the terms and conditions for the disposition and development of parcels at the Waterfront Site consistent with this Term Sheet and applicable provisions of Port and other City agreements for phased master planned developments of this scale of horizontal development. Under the DDA, the Port will enter into a Ground Lease with the applicable Vertical Developer for each Development Parcel or will enter into a Purchase and Sale Agreement for Development Parcels to be sold</p>



	<p>in fee to Vertical Developers. In addition to matters covered elsewhere by this Term Sheet, key provisions of the DDA will address the Parties' agreement on:</p> <ul style="list-style-type: none"> <li>i. conditions to Master Developer's exercise of its option with respect to any Development Parcel;</li> <li>ii. Master Developer's obligation to complete horizontal development at no cost to the Port or the City (except to the extent that the Port elects in its sole discretion to apply other funding sources directly to Horizontal Development Costs (as defined in <b>Section 9(b)</b> (Developer Capital)), in accordance with an Infrastructure Plan describing the horizontal development that will be included within each Phase of development (see <b>Section 5</b> (Phasing));</li> <li>iii. a plan that identifies the sources of funds for the Project, the authorized uses of funds, and the conditions for their use, to satisfy the Port's payment obligations (the "<b>Financing Plan</b>"), including prepaid ground rent from any Ground Leases, proceeds of the sale of any Development Parcel, and Land-Secured Financing Proceeds (see <b>Section 9(a)</b> (Sources));</li> <li>iv. an Acquisition Agreement that will survive the termination of the DDA and will establish procedures and conditions for the City's and the Port's use of Land-Secured Financing Proceeds to be used as acquisition payments for eligible costs of Infrastructure and Public Facilities (collectively, "<b>Qualified Facilities</b>") and the related Cost of Carry (as defined in <b>Section 10(a)</b> (Developer Return)) (together, "<b>Qualified Project Costs</b>");</li> <li>v. the extent to which the Port will use and, if so, the priority of use of Land-Secured Financing Proceeds for the costs (collectively, "<b>Eligible Vertical Improvement Costs</b>") of constructing new buildings on Parcels E-1A and E-1B, the Historic Improvements to Buildings 12 and 21, constructing the District Parking Facilities, and (under conditions to be specified in the DDA) the installation of piles (collectively, "<b>Eligible Vertical</b></li> </ul>
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	<p><b>Improvements</b>”(see <b>Section 9(c)</b> (Project Infrastructure and Phase Budgets));</p> <ul style="list-style-type: none"> <li>vi. a form of purchase and sale agreement that will describe the terms, conditions, and procedures for the sale of Development Parcels (each, a <b>“Purchase Agreement”</b>);</li> <li>vii. anticipated phasing of the Project (the <b>“Project Phasing Schedule”</b>) and mechanisms for adjusting the Project Phasing Schedule to address market conditions, force majeure events, and other conditions;</li> <li>viii. a form of Ground Lease and the minimum qualifications for Vertical Developers, such as appropriate financial resources for the scope of development, development experience, and capacity, and providing for Master Developer to assign its rights and obligations under the DDA with respect to the applicable parcel to the Vertical Developer in conjunction with each Ground Lease, subject to the Port’s consent, which the Port will not withhold if Master Developer has satisfied all conditions precedent and the Vertical Developer meets minimum qualifications;</li> <li>ix. conditions that Master Developer must satisfy, including approvals required by the State Lands Commission (sometimes, <b>“State Lands”</b>) in accordance with AB 418;</li> <li>x. Master Developer’s estimate of Horizontal Development Costs and provisions governing Master Developer’s responsibility to complete the horizontal development necessary to the vertical development of the parcel, as determined before the close of escrow for the applicable Ground Lease or Purchase Agreement (in each case, the <b>“Closing”</b>);</li> <li>xi. conditions under which the Port will have the right to offer a Development Parcel to third-party Vertical Developers, such as Master Developer’s failure to exercise an Option (see <b>Section 14(a)</b> (Master Developer Option) or satisfy its DDA</li> </ul>
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	<p>obligations;</p> <ul style="list-style-type: none"> <li>xii. City and Port construction standards that will apply to horizontal and vertical development;</li> <li>xiii. events of default and appropriate remedies for defaults or events that with the passage of time and failure to cure within any applicable cure period would be defaults by a Party;</li> <li>xiv. standards of conduct applicable to the Parties while implementing the DDA and appropriate limitations on the remedies available to either Party following a breach of the DDA;</li> <li>xv. City programs and requirements that will apply to development at the Waterfront Site; and</li> <li>xvi. providing for the DDA to expire after all Development Parcels have been conveyed, all vertical development is complete, all Project Sources have been used to pay Developer Return and repay Developer Capital, and any Project Surplus (other than annual ground rent payments not yet due) has been distributed in accordance with the Financing Plan.</li> </ul> <p>(b) <u>Form of Ground Lease</u>: The DDA will include a form of Ground Lease to be used for the Waterfront Site Development Parcels. At the Closing for each Development Parcel, Master Developer will assign vertical development rights and obligations under the DDA to the selected Vertical Developer, and the Port will enter into a separate Ground Lease with each Vertical Developer consistent with the approved form and its delegated approval. The Ground Lease form will be consistent with this Term Sheet and applicable terms of comparable long-term ground leases between the Port and its development partners, and include or address the following:</p> <ul style="list-style-type: none"> <li>i. a term of 99 years from the date of the Port's transfer to a Vertical Developer, unless otherwise agreed;</li> <li>ii. a ground rent payable annually, prepaid for a specified term (for example, 30 years) or in full at</li> </ul>
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	<p>Closing, as previously determined in connection with the Option or Public Offering process described in <b>Section 14</b> (Disposition of Development Parcels);</p> <ul style="list-style-type: none"> <li>iii. triple net provisions requiring the Vertical Developer to pay all taxes, assessments, and expenses for the parcel, specifically including all special taxes assessed on the premises after the Ground Lease Closing;</li> <li>iv. compliance with the applicable land use and design standards, as described in <b>Section 7</b> (Zoning and Related Actions), subject to additional review and approval by Master Developer to assure quality and coordination among all Development Parcels in the Project;</li> <li>v. covenants to provide information and otherwise cooperate with the City and the Port as necessary for Master Developer to satisfy its disclosure obligations with respect to any public financing;</li> <li>vi. a mechanism by which a Vertical Developer may choose to receive IFD financing of Eligible Vertical Improvements in the priority established in <b>Section 9</b> (Sources and Uses), with a specified procedure by which the appropriate value of the parcel will be adjusted;</li> <li>vii. a provision that all improvements constructed within the applicable Ground Lease premises will be owned by the ground lessee during the term of the Ground Lease to the extent permitted by law;</li> <li>viii. standard provisions such as allowed and prohibited uses; indemnification (including hazardous materials obligations) and insurance; limitations on assignment and subletting; maintenance and repair obligations, including obligations following a casualty; and surrender obligations;</li> <li>ix. reasonable and customary mortgagee protection provisions and mechanisms providing for notice and an opportunity to cure to Master Developer, any mortgagee, and the Port with respect to any</li> </ul>
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	<p>tax or special tax default before foreclosure;</p> <p>x. events of default and cure rights, and providing each Party with appropriate remedies for defaults or events that with the passage of time and failure to cure within any applicable cure period would be defaults by the other Party, including the possibility of early termination; and</p> <p>xi. other terms as necessary to accomplish cost-effective land-secured financing as contemplated in the Financing Plan, which may include provisions to protect the interests of the bond trustee similar to mortgagee protection provisions.</p> <p>(c) <u>Public Trust Exchange Agreement</u>. The Public Trust Exchange Agreement between the Port and State Lands will be the agreement implementing the public trust exchange under AB 418.</p> <p>(d) <u>Development Agreement</u>. The Development Agreement will be a statutory development agreement authorized under Cal. Gov. Code sections 65864-65869.5 and SF Admin. Code chapter 56 under which Master Developer’s rights granted by Project Approval will be vested for the term of the Development Agreement through Project build-out. The City’s consent to the Financing Plan will be included in the Development Agreement or a separate agreement.</p>
<p><b>5. Phasing</b></p>	<p>The Parties anticipate that the Waterfront Site will be developed in phases (each a “<b>Phase</b>”), as shown conceptually in <b>Exhibit C</b> (Illustrative Phasing Plan).</p> <p>(a) <u>Development Phases</u>. The Project Phasing Schedule will be consistent with the Infrastructure Plan and structured to be as efficient as reasonably possible. Master Developer’s obligations to complete horizontal development and Historic Improvements to Buildings 12 and 21 will be allocated among up to four Phases to be identified in a Project Phasing Schedule attached to the DDA. Master Developer will have an option to provide placemaking uses on Parcels E-1A and E-1B, which may include construction of new buildings. Flexible zoning and design guidelines established in connection with the SUD and provisions to be negotiated in the</p>

	<p>DDA will address the use of Parcels E-1A and E-1B if Master Developer elects not to exercise its Option on these parcels. <b>Section 16</b> (District Parking Facilities) describes the Parties' intent with regard to construction of the District Parking Facilities on Parcels C-1A, C-1B, and C-2.</p> <p>Master Developer will retain the ability to modify the scope of each Phase, or to develop Phases in a different order from the Project Phasing Schedule subject to the Port's reasonable approval. The Port will not withhold its approval if the modified Phase would: (i) include a minimum of 400,000 gsf; (ii) deliver a level of public benefits proportional to the applicable square footage and adjacent public improvements in the modified Phase; and (iii) be consistent with the approved Financing Plan.</p> <p>Each Phase will consist of one or more Development Parcels and associated areas for streets and open spaces. The DDA will provide specific requirements for each Phase of the Project, so that delivery of public benefits, including development of parks, will be fairly distributed among Phases, assuring that these benefits are completed in coordination with the completion of associated vertical development of each Phase. The Project Phasing Schedule will take into account the bonding and other financial capacity of each Phase and provide for a construction and completion schedule for horizontal development of each Phase.</p> <p>(b) <u>Schedule of Performance</u>. The DDA will include a schedule of performance applicable to the Project that includes outside dates for the submittal of Phase applications and the commencement and completion of horizontal development within each Phase (the "<b>Horizontal Phase Schedule of Performance</b>").</p> <p>Master Developer will have no obligation to meet a schedule of performance for vertical development. The DDA will set forth reasonable and customary provisions regarding adequate security for construction of improvements within the Waterfront Site, including completion requirements.</p> <p>(c) <u>Pre-Phase Consultation</u>. No less than 60 days before Master Developer submits an application for a Phase,</p>
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	<p>the Parties will meet to consider the anticipated aggregate FMV (as defined in <b>Section 14(a)(ii)</b> (Option Price) of the Development Parcels in the Phase, the Phase Infrastructure Budget, and anticipated CFD bonding capacity for the Phase (see <b>Section 9(c)</b> (Project Infrastructure and Phase Budgets)). At any time during the pre-Phase consultation period or after submittal of a Phase application, either Party may request an appraisal of a specific Development Parcel or other means by which the Parties agree to determine whether or not the dates in the Horizontal Phase Schedule of Performance will be tolled for Down Market Delay as described in <b>Section 5(h)</b> (Down Market Delay).</p> <p>(d) <u>Timing of Vertical Development.</u> At Master Developer’s election, in consultation with the Port, but no earlier than Master Developer’s submittal of a Phase application for the applicable Phase (except as otherwise provided in <b>Section 5(c)</b> (Pre-Phase Consultation)), Master Developer will provide the Port with a written notice for each Development Parcel in the Phase (each, an “<b>Appraisal Trigger Notice</b>”), which will trigger the appraisal and subsequent conveyance of the applicable Development Parcel for vertical development. The Appraisal Trigger Notice will also indicate for any residential parcel whether the parcel should be appraised as a fee or ground lease parcel.</p> <p>A final appraisal of the applicable Development Parcel as described in <b>Section 14(c)</b> (Appraisal Process), including any dispute resolution procedures, must be completed within 180 days after the applicable Appraisal Trigger Notice.</p> <p>Unless a Down Market Delay has occurred, as determined by the procedures to be described in the DDA, Master Developer must exercise its Option under <b>Section 14(a)</b> (Master Developer Option) within 90 days after completion of each appraisal. If Master Developer does not timely exercise its Option, the appraisal will no longer be valid for any exercise by Master Developer of its Option except as provided in <b>Section 14(b)</b> (Public Offerings) following a Public Offering of the Development Parcel.</p> <p>(e) <u>Excusable Delays Generally.</u> Except as provided</p>
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	<p>otherwise, the Project Phasing Schedule, the Horizontal Phase Schedule of Performance, and each Party's other time-sensitive rights and obligations under the DDA will be subject to customary delays, as outlined below. The Parties will meet and confer after any Force Majeure Delay or Down Market Delay that continues for more than one year to discuss whether the transaction could be restructured to allow the Project to continue. The DDA will specify maximum periods of any Force Majeure Delay or Down Market Delay and the conditions to any Party's right to an excusable delay. Port staff will present for Port Commission consideration any other request for a delay, which the Port Commission may grant or deny in its sole discretion.</p> <p>(f) <u>Force Majeure</u>. Customary events of force majeure will include unforeseen labor and material delivery problems, administrative or regulatory processes (excluding those covered by Litigation Force Majeure) (each, a "<b>Force Majeure Delay</b>"). The DDA will provide a complete description of events that will give rise to a Force Majeure Delay, procedures for Master Developer to toll the Horizontal Phase Schedule of Performance for specified periods as of right due to a Force Majeure Delay, and applicable time periods available to a Party claiming a Force Majeure Delay.</p> <p>(g) <u>Litigation Force Majeure</u>. A proceeding before any court, tribunal, or other judicial, adjudicative, or legislative decision-making body, including any administrative appeal that challenges the validity of any City or Port regulatory approval with respect to the Project, including any findings under CEQA, will be an event of "<b>Litigation Force Majeure</b>" if the pendency of the proceeding is reasonably likely to or does prevent the Parties from timely entering into the Transaction Documents. Litigation Force Majeure events will exclude any action or proceeding brought by Master Developer, any of its affiliates or joint ventures, Project consultants, or any other third party assisted directly or indirectly by Master Developer. In general, an event of Litigation Force Majeure will excuse either Party's performance for the duration of the proceeding until finally resolved.</p> <p>(h) <u>Down Market Delay</u>. Recognizing that the cyclical nature of real estate markets creates risks for both</p>
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	<p>Parties and their shared goal to maximize land value, the Project Phasing Schedule, the Horizontal Phase Schedule of Performance, and both Parties' other time-sensitive performance obligations and rights under the DDA will be tolled during periods of "<b>Down Market Delay</b>." The Parties will include in the DDA the procedures applicable to a Down Market Delay.</p> <p>(i) <u>Early Ground Leases in Phases 1 and 2.</u> Master Developer will be obligated to cause a Vertical Developer to enter into a fully prepaid Ground Lease with the Port (or a sublease with Master Developer) for the first Development Parcel scheduled for vertical development in Phase 1 and Phase 2 (each, an "<b>Early Ground Lease</b>"), each at its appraised FMV within two years after the applicable Phase begins. The Vertical Developer will not be required to begin vertical development on the parcel until it believes that market conditions are right for the product type. If the Closing for the Ground Lease (or sublease) does not occur within this 2-year period, the Port will have the right to offer the Development Parcel at a Public Offering at the appraised FMV, which will in no event be less than a minimum price for the applicable Development Parcel that the Parties will establish by the DDA Effective Date. To the extent that Land Proceeds from the disposition of Early Ground Leases are used to pay Developer Return, repay Developer Capital, or pay directly for Horizontal Development Costs, these proceeds will be reimbursed from Land-Secured Financing Proceeds on either a tax-exempt or taxable basis, as permitted by law. Land Proceeds in excess of that required to repay Developer Capital or pay Developer Return will be deposited or deemed deposited in a Project Account for purposes of paying later Horizontal Development Costs or distribution to the Port and Master Developer after Master Developer receives repayment of Developer Capital and Developer Return. This requirement will not be subject to Down Market Delay unless the DDA uses the same minimum prices to determine when a Down Market Delay exists.</p>
<p><b>6. BCDC and State Lands</b></p>	<p>The Port and Master Developer will apply jointly to secure state and regional approvals as necessary.</p> <p>(a) <u>BCDC.</u> Master Developer will integrate its development program with the waterfront, including the Bay Trail and</p>

	<p>the Water Trail, to ensure maximum feasible public access to the waterfront. All development within 100 feet of the shoreline will be subject to BCDC approval. The Port and Master Developer will consult with BCDC regarding the approach to realigning the San Francisco Bay Trail/Blue Greenway through Pier 70 as the area is developed.</p> <p>(b) <u>State Lands</u>. The Port and Master Developer will cooperate in their efforts to obtain State Lands Commission approval of the Pier 70 public trust exchange and any other approvals required by AB 418.</p> <p>(c) <u>Legislation</u>. To the extent necessary and after consultation with staff of State Lands and with Master Developer, the Port may seek technical amendments to the Burton Act and other legislation.</p>
<p><b>7. Zoning and Related Actions</b></p>	<p>(a) <u>Special Use District</u>. The Waterfront Site is currently zoned M-2 and as envisioned in the Conceptual Land Use Plan must be rezoned for the Project to be developed as proposed. Key assumptions of this Term Sheet are that: (i) Master Developer will work with Planning Department and Port Planning staff to develop a proposal for an SUD that would rezone the Waterfront Site, the 20<sup>th</sup>/Illinois Parcel, and the Hoe Down Yard and further the Port’s goals under the Master Plan; (ii) the Port Commission will recommend that the Planning Commission and the Board approve Planning Code amendments to incorporate the SUD and other actions necessary to allow Waterfront Site development to proceed as proposed; (iii) the Planning Commission will recommend the SUD and other Planning Code amendments to the Board and approve a motion substantially as described in <b>Section 7(c)</b> (Proposition M); and (iv) the Board will adopt the SUD and related Planning Code amendments and take all other actions required for Project Approval. The Parties are considering whether it would be appropriate to include in the SUD some or all of the Third-Party Parcels shown on <b>Exhibit F</b> (Third-Party Parcels), <del>which that</del> are not <u>already designated to be or potentially to be</u> part of the Project.</p> <p>(b) <u>Contents of SUD</u>. Master Developer intends to propose that the SUD establish the following for the Waterfront Site, among other controls on development: (i) permitted</p>

	<p>uses, including flexible zoning to permit designated Development Parcels to be developed for either commercial or residential uses to allow for development that responds to market conditions, and to allow Parcels E-1A, E-1B and the District Parking Facilities Parcels C-1A, C-1B, and C-2 to be developed for other uses as allowed by the SUD if they are not developed for their currently anticipated uses; (ii) height limits ranging from 30 feet to 230 feet; (iii) building controls regarding density, massing, and tower separation; and (iv) parking controls consistent with the parking ratios described in the Overview. Master Developer’s preliminary proposal for height limits is reflected in <b>Exhibit E</b> (Conceptual Height Map).</p> <p>(c) <u>Proposition M</u>. The Parties will request that the Planning Commission approve a motion: (i) finding that office development within the Waterfront Site that is consistent with the SUD would be consistent with Planning Code sections 320-325 (“<b>Prop M</b>”); and (ii) establishing that, subject to then-applicable annual limitations under Planning Code section 321 and any pre-existing Prop M priorities for office development (such as priorities for the former Mission Bay, Hunters Point/Candlestick, and Transbay redevelopment project areas), office development in the Waterfront Site that is consistent with the SUD will have priority over office development projects outside of the Waterfront Site that are subject to Prop M.</p> <p>(d) <u>Design Guidelines</u>. Master Developer will also work with Planning and Port staff to develop design guidelines for the Waterfront Site, the 20<sup>th</sup>/Illinois Parcel, and the Hoe Down Yard (subject to PG&amp;E agreement), including the public realm, that will inform design review. Following Planning Commission and Board approval of the SUD and related actions, the Port staff will request Port Commission actions to amend: (i) the Waterfront Land Use Plan to incorporate the SUD’s development controls and limitations and set forth other development requirements; and (ii) the Waterfront Design and Access Element of the Waterfront Land Use Plan to incorporate design and design review guidelines for the developable parcels in the SUD.</p> <p>(e) <u>Development Agreement</u>. Master Developer will seek City approval of a Development Agreement that will: (i)</p>
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	<p>provide Master Developer with assurances that the SUD zoning for the Waterfront Site will remain in effect through Project build-out, unless Master Developer consents to or seeks amendments to the SUD; (ii) specify which citywide impact fees and exactions will apply to the Project; (iii) limit the City’s ability to impose new or higher impact fees or exactions on the Project during the term of the Development Agreement; (iv) approve and incorporate the Planning Commission’s Prop M motion; and (v) other matters. Master Developer will request that the fee schedules in effect on the Project Approval date be fixed for the term of the Development Agreement.</p> <p>The Master Developer will request and the Development Agreement will address the timing of payment of impact fees on terms generally consistent with the current fee deferral program set forth in San Francisco Building Code section 107A.13 (other than program expiration provisions).</p> <p>(f) <u>Limitations on Development Fees.</u> The Parties will request that development fees and exactions be limited to the following:</p> <ul style="list-style-type: none"> <li>i. Transit Impact Development Fee applicable to gsf of applicable non-residential development and excluding square footage within Buildings 12 and 21 and Parcels E1-A and E1-B (collectively, the “<b>Placemaking Parcels</b>”);</li> <li>ii. Jobs/Housing Linkage fee applicable to gsf of applicable development and excluding square footage within the Placemaking Parcels;</li> <li>iii. Child Care In-Lieu Fee applicable to the extent that child care facilities are not provided at the Waterfront Site and excluding square footage within the Placemaking Parcels;</li> <li>iv. School Impact Fees as required under state law;</li> <li>v. SFPUC Wastewater Capacity Charge to the extent applicable;</li> <li>vi. SFPUC Water Capacity Charge to the extent applicable; and</li> </ul>
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	vii. Inclusionary housing requirements under Planning Code sections 415.1-415.9.
<b>8. CEQA</b>	The Parties have agreed that environmental review of the Project under CEQA will include the 20 <sup>th</sup> /Illinois Parcel and the Hoe Down Yard, subject to agreement by PG&E.
<b>9. Sources and Uses</b>	<p>(a) <u>Sources</u>. The Financing Plan will specify anticipated sources and uses of funds for each Project Phase and state, subject to verification, the amount of Master Developer’s Entitlement costs for the Project (and the Third-Party Parcels or other property to the extent Master Developer incurs related costs at the City or the Port’s request) as of the Project Approval date. Sources of funds for the Project (“<b>Project Sources</b>”) include:</p> <ul style="list-style-type: none"> <li>• Capital sources available to and used by the Master Developer (“<b>Developer Capital</b>”) to pay for Horizontal Development Costs</li> <li>• “<b>Land Proceeds</b>” consisting of: proceeds of all sales of, and prepaid Ground Lease rent for, Development Parcels (see <b>Section 14</b> (Disposition of Development Parcels)); proceeds of the lease or sale of the 20<sup>th</sup>/Illinois Parcel (see <b>Section 15(a)</b> (20<sup>th</sup>/Illinois Parcel)); proceeds of sale of any <u>other</u> Third-Party Parcels designated by the Port at the Port’s sole option (see <b>Section 15(b)</b> (Third-Party Parcels)); and one-half of the New Interim Lease Revenues (see <b>Section 18</b> (Interim Leasing));</li> <li>• “<b>Land-Secured Financing Proceeds</b>” consisting of IFD and CFD bond proceeds, pay-as-you-go special taxes, and Net Available Increment, which will be applied to uses in the priorities established in the DDA, corresponding generally to priorities in <b>Section 12</b> (Financing Mechanisms)</li> <li>• funds provided by other entities (see <b>Section 12(d)</b> (Other Financing Sources))</li> <li>• other funds that become available to the Port that the Port elects at any time and at its sole option to apply to Horizontal Development Costs subject to negotiating reasonable financial protections in the DDA</li> </ul> <p>(b) <u>Developer Capital</u>. Generally and except as otherwise provided below or as amplified in the DDA, all</p>

	<p>reasonable costs that Master Developer pays directly for horizontal development (“<b>Horizontal Development Costs</b>”) will be Developer Capital. Developer Capital will include: (i) actual fees of credit enhancement (if any) associated with CFD bonds that Master Developer pays, subject to agreement of the Parties; and (ii) any special taxes that Master Developer pays to finance Qualified Project Costs before the obligation is transferred to a Vertical Developer.</p> <p>The DDA will describe costs associated with Infrastructure improvements that serve non-Waterfront Site parcels in addition to the Waterfront Site for which Master Developer will not be responsible.</p> <p>The following Horizontal Development Costs will not be included as Developer Capital entitled to a Developer Return: (i) costs of Qualified Project Costs that the Port or the City pays directly with Land-Secured Financing Revenues or other sources; (ii) Eligible Vertical Improvement Costs that Master Developer incurs (if any) for construction of Eligible Vertical Improvements; or (iii) other costs Vertical Developers incur for vertical development.</p> <p>(c) <u>Project Infrastructure and Phase Budgets.</u> The DDA will include an Infrastructure Plan approved by the Parties (including review by relevant City agencies) that sets forth the scope of Infrastructure, Public Facilities, and Eligible Vertical Improvements. The DDA will also include a budget (the “<b>Project Budget</b>”) showing Master Developer’s projected Horizontal Development Costs and Eligible Vertical Improvement Costs, and the Horizontal Phase Schedule of Performance for each Phase. In connection with each Phase application, Master Developer will meet and confer with Port and the City to determine the costs anticipated for that Major Phase (the “<b>Phase Infrastructure Budget</b>”), identify any material changes to the approved Infrastructure Plan subject to Port approval, and identify any changes to the applicable Horizontal Phase Schedule of Performance. While the DDA will not impose a hard cap on Horizontal Development Costs, the Port will have the right to timely review each Phase application for consistency with the approved Infrastructure Plan and review costs within each Phase Infrastructure Budget for commercial reasonableness. The DDA will also</p>
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	<p>describe the opportunity for the Parties to meet and confer for the Port to propose value engineering of Infrastructure and Public Facilities proposed in a Phase if it would not delay construction. During each Phase, Master Developer will be required to provide periodic reports on spending sufficient for the Port to meet its reporting obligations under applicable laws, and Port will have the right to audit the costs for each Phase and at the conclusion of the Project.</p>
<p><b>10. Developer Return</b></p>	<p>(a) <u>Developer Return.</u> Master Developer will undertake horizontal development for the Project in accordance with an approved Infrastructure Plan. Master Developer will pay for Horizontal Development Costs with Developer Capital, except to the extent that horizontal obligations are shifted to Vertical Developers or the Port provides direct funding. Master Developer will be entitled to an 18% cumulative annual return on the outstanding balance of Developer Capital calculated quarterly at the end of each quarter (including the Cost of Carry (defined below), “<b>Developer Return</b>”) for the use of its capital. The Port will use Land-Secured Financing Proceeds to pay interest on Qualified Project Costs to the extent permitted by CFD Law section 53314.9(a) and IFD Law section 53395.2(a) (the “<b>Cost of Carry</b>”). The DDA will reconcile the accrual and payment of the Cost of Carry on Qualified Project Costs with the accrual and payment of Developer Return. The Port will pay Master Developer the Developer Return and repay Developer Capital. Within a specified time after the disposition of all Development Parcels within a Phase and completion of all associated Infrastructure and Public Facilities (the “<b>Phase Completion Date</b>”), Master Developer will provide the Port with a “<b>Developer Return Statement</b>” showing the Developer Return for the Project as of the applicable Phase Completion Date.</p> <p>(b) <u>Priorities for Application of Project Sources.</u> The Port will apply Project Sources to the Project in the priorities outlined below.</p> <p>i. Land Proceeds will be applied in the order listed below to pay or repay: (1) directly for Horizontal Development Costs, subject to reimbursement with Land-Secured Financing Proceeds on a tax-exempt or taxable basis, as permitted by law; (2)</p>

	<p>Developer Return; (3) Developer Capital, subject to reimbursement with Land-Secured Financing Proceeds on a tax-exempt or taxable basis, as permitted by law; and (4) unreimbursed Developer Capital used for Horizontal Development Costs and unpaid Cost of Carry, but only after Land-Secured Financing Proceeds have been exhausted.</p> <p>ii. Land-Secured Financing Proceeds will be applied in the order listed below to pay or reimburse: (1) debt service for outstanding CFD and IFD Bonds, as set forth in the DDA; (2) unreimbursed Developer Capital used for Qualified Project Costs, including unpaid Cost of Carry; (3) unreimbursed Land Proceeds used to repay Developer Capital and unpaid Cost of Carry; (4) directly for Qualified Project Costs; and (5) Eligible Vertical Improvement Costs to the extent set forth in the DDA.</p> <p>iii. The Port may designate in its sole discretion the uses of any other sources the Port uses for the Project, subject to reasonable financial protections negotiated in the DDA.</p> <p>(c) <u>Reinvestment of Surplus Proceeds.</u> The Developer Return Statement, in addition to showing Developer Return for the Project as of the applicable Phase Completion Date, will identify Land Proceeds, if any, not required to pay Developer Return (excluding the Cost of Carry) or to return Developer Capital for a given Phase (the “<b>Phase Surplus</b>”). The Phase Surplus will be deemed to have been deposited into an interest-bearing deposit account (the “<b>Project Account</b>”) and the proceeds will be applied instead of Developer Capital to pay directly for subsequent Horizontal Development Costs. The DDA will include provisions to address accounting for the time value of money of the Phase Surplus relative to its application to subsequent Horizontal Development Costs. Nothing in this Term Sheet or the DDA will restrict Master Developer’s use of its own capital or its share of the Phase Surplus.</p> <p>(d) <u>Ground Leases with Annual Rent Obligations.</u> If, after all Infrastructure and Public Facilities for the Project have been completed and accepted by the City and the Port, the Developer Return Statement for the Project</p>
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	<p>shows that Master Developer has received the Developer Return, and Master Developer has received a return of Developer Capital, then the Port may elect to receive 55% of the annual rent payments under any new Ground Leases under <b>Section 14(a)(iii)</b> (Timing for Required Annual Ground Rent), and Master Developer will receive or retain the remaining 45%, without restrictions on either Party’s use of its share except as specifically provided otherwise. The DDA will describe the mechanism by which third-party ground tenants will pay Master Developer its remaining 45% share on a pre-paid basis.</p> <p>(e) <u>Distribution of Project Surplus.</u> After all Infrastructure and Public Facilities for the Project have been completed and accepted by the City and the Port, and Master Developer has received the Developer Return and a return of Developer Capital, any prepaid ground rent, land sale proceeds, and Net New Interim Lease Revenues remaining in the Project Account (the “<b>Project Surplus</b>”) will be distributed to the Parties with the Port receiving 55% of the Project Surplus and Master Developer receiving or retaining 45% of the Project Surplus.</p> <p>(f) <u>Financial Reporting and Final Reconciliation.</u> At intervals to be specified in the DDA, after Master Developer begins to incur Horizontal Development Costs within any Phase, it will provide reports on Project Sources and their uses in form reasonably acceptable to the Port. Within a specified time after the Phase Completion Date of each Project Phase, Master Developer will submit a final Phase accounting to the Port, showing the cumulative Horizontal Development Costs, Developer Return for the entire the Project, and all payments made to the Port under the DDA.</p> <p>(g) <u>Audit Rights.</u> The Port will have audit rights for each Phase and for the Project as a whole, to be specified in the DDA.</p>
<p><b>11. Port Participation in Vertical Development</b></p>	<p>Each Ground Lease and Purchase Agreement will include provisions for Port participation in Ground Lease revenues and in any transfer or refinancing as defined below and to be further negotiated for the Transaction Documents.</p> <p>(a) <u>Percentage Rent.</u></p>

	<ul style="list-style-type: none"> <li>i. Beginning in lease year 30, the Port will be entitled to annual payments of 1.5% of modified gross revenues (net of taxes, insurance, utilities, and capital expenditures as further defined in the Transaction Documents, which, through commercially reasonable leasehold mortgagee protection measures will be subordinate to debt service payable on permitted secured loans) on all buildings other than residential condominium buildings, Buildings 12 and 21, Parcels E-1A and E-1B, and the District Parking Facilities.</li> <li>ii. Beginning in lease year 60, the Port will be entitled to annual payments of 2.5% of modified gross revenues (net of taxes, insurance, utilities and capital expenditures as further defined in the Transaction Documents, which, through commercially reasonable leasehold mortgagee protection measures will be subordinate to debt service payable on permitted secured loans) on all buildings other than residential condominium buildings, Buildings 12 and 21, Parcels E-1A and E-1B, and the District Parking Facilities.</li> </ul> <p>(b) <u>Refinancing</u>. The Port will be entitled to 1.5% of net proceeds from the refinancing of Ground Leases and associated improvements. The DDA will specify how net proceeds on refinancing will be calculated, but net proceeds will be net of the original unamortized loan amount, any portion of the refinancing proceeds designated for and actually used to reinvest in the building, and all third party costs incurred in connection with the applicable sale or refinancing, including prepayment penalties on the debt.</p> <p>(c) <u>Ground Lease and Fee Transfers</u>. The calculation of net proceeds for Port’s participation in Ground Lease and fee transfers will be set forth in the DDA, but will exclude the seller’s cost basis in the parcel.</p> <ul style="list-style-type: none"> <li>i. If Master Developer, or any affiliate or joint venture acting as a Vertical Developer of a Development Parcel, sells the Development Parcel to an unaffiliated (to be defined in the DDA) third party (each, a “<b>Third-Party Transfer</b>”) before the earlier of: (1) three years after</li> </ul>
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	<p>conveyance of the Development Parcel to Master Developer; or (2) the date that Port issues the first site permit for the transferred Development Parcel (the earliest to occur, the “<b>Early Transfer Date</b>”), then all net proceeds of the Third-Party Transfer will be included as Project Sources and applied in accordance with <b>Section 10</b> (Developer Return). The net proceeds of the Third Party Transfer will exclude Master Developer’s (or its affiliate’s or joint venture’s) Entitlement costs incurred after the DDA Effective Date in connection with the Development Parcel (including architect, attorney, and consultant costs in preparing schematic drawings and obtaining necessary approvals) plus a 12% return calculated annually on such Entitlement costs, but the DDA will provide a more detailed description of excluded costs.</p> <p>ii. If a Ground Lease or fee is transferred on or after the Early Transfer Date, the Port will be entitled to 1.5% of the net transfer proceeds as more particularly described in the DDA.</p> <p>(d) <u>Condominium Transfers</u>. All condominium parcels sold in fee will include a transfer fee covenant that provides for a payment to the Port of 1.5% of the gross sale price (net of costs of sale only) of sale of individual condominium units after but not including the first sale.</p>
<p><b>12. Financing Mechanisms</b></p>	<p>The DDA will describe in greater detail the principal land-secured financing mechanisms being considered to finance Qualified Project Costs and ongoing operations and maintenance costs of designated Infrastructure and Public Facilities. The DDA will be drafted to implement the goal of maximizing the use of the financing mechanisms described below to directly finance or reimburse Master Developer for the Qualified Project Costs on a tax-exempt basis to the maximum extent permitted by law or on a taxable basis.</p> <p>Before Master Developer incurs any Qualified Project Costs, the Parties will enter into an Acquisition Agreement, which will specify the procedures and conditions for the City’s and the Port’s purchase of or direct payment for the Qualified Project Costs of Qualified Facilities and, to the extent agreed and permitted by law, Eligible Vertical Improvements with Project debt and any other available sources of funds.</p>

Currently, the primary financing mechanisms being considered are:

(a) Infrastructure Financing District.

- i. Port IFD Guidelines. By Resolution No. 123-13, the Board adopted on April 23, 2013 “*Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission*” (the “**Port IFD Guidelines**”) attached as **Exhibit H**. Consistent with the Port IFD Guidelines, the City would form a single infrastructure financing district (“**IFD**”) consisting of all Port property (the “**waterfront district**”) in accordance with IFD Law. Following CEQA review, the City would then consider formation of project-specific project areas and adoption of project specific infrastructure financing plans, which for Pier 70 could include one or more project subareas within the Waterfront Site consistent with the Project Phasing Schedule. The City may seek judicial validation of one or more of: the formation of the waterfront district project area(s); the allocation of tax increment to the waterfront district; the issuance of tax increment bonds; and related issues. If so, Master Developer will cooperate reasonably with the City in bringing the validation action(s). The Port and OEWD will work with the Assessor’s Office within 6 months after the completion of each building to have the parcel enrolled on the San Francisco tax rolls.
- ii. IFD Financing Plan and Priorities. The Project qualifies as a “Pier 70 district” for which a “Pier 70 enhanced financing plan” is authorized under IFD Law. Accordingly, the Port will prepare a Pier 70 enhanced financing plan for the Project in consultation with Master Developer and present it to the Board for adoption. As used in this Term Sheet in reference to the Project, “**IFD financing plan**” means the Pier 70 enhanced financing plan and the “**project area**” means the Pier 70 district, including any project subareas within the district, consisting of the Waterfront Site, the 20<sup>th</sup>/Illinois

	<p>Parcel, and, subject to further negotiation, some or all of the Third-Party Parcels and other developable parcels at Pier 70.</p> <p>The Parties will propose an IFD financing plan that would authorize the financing of all of Qualified Project Costs and Eligible Vertical Improvement Costs to the maximum extent permitted by law. The proposed plan will prioritize the use of the tax increment to fund: (1) first, the costs of horizontal development; (2) second, Master Developer’s (or its affiliated or joint venture Vertical Developer’s) Eligible Vertical Improvement Costs; and (3) third, unaffiliated Vertical Developers’ Eligible Vertical Improvement Costs. The DDA will include detailed descriptions and definitions of eligible costs. The Port will submit a memorandum of understanding with the City Controller, as authorized under Charter section B7.320, to the Board for approval with the proposed IFD financing plan, which together, when approved, will commit the City to allocate tax increment to the project area in accordance with the adopted IFD financing plan.</p> <p>iii. <u>Use of Tax Increment.</u> Tax increment may be used: (1) to pay Qualified Project Costs on a pay-as-you-go basis; (2) to service tax increment bond financing used to pay Qualified Project Costs; (3) to repay CFD debt; (4) to pay Eligible Vertical Improvements Costs in the priorities established under the IFD financing plan; and (5) for any other purpose authorized by the IFD financing plan and applicable law.</p> <p>iv. <u>Tax Increment Allocation to the Project Area.</u> Subject to the time limitations in IFD Law for the capture of ERAF (defined below), “<b>Net Available Increment</b>” will consist solely of approximately \$0.90 per property tax dollar (based on FY 2012-2013 adopted tax allocation) in the County consisting of: (1) the City’s share of available tax increment from the Waterfront Site and the 20<sup>th</sup>/Illinois Parcel (i.e., \$0.646 per property tax dollar in the County in FY 2012-2013); and (2) the County’s share of available tax increment from</p>
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the Waterfront Site and the 20<sup>th</sup>/Illinois Parcel that would otherwise be allocated to the Educational Revenue Augmentation Fund (i.e., \$0.253 per property tax dollar in the County in FY 2012-2013) (“ERAF”), subject to limitations under IFD Law, the Port IFD Guidelines, and the adopted IFD financing plan. Under IFD Law, tax increment from the project area that is allocated to local school or college districts or taxing entities cannot be allocated to the waterfront district.

To the extent permitted by law, Net Available Increment will be used to pay directly for or reimburse Master Developer for all Qualified Project Costs. The base year for the project area will be the fiscal year in which the Board adopts the ordinance approving the IFD financing plan unless the ordinance or the IFD financing plan as adopted specifies otherwise. Net Available Increment may be allocated to the project area for the Project beginning in the fiscal year following the base year and allocated to the waterfront district for 45 years from the date the waterfront district actually receives \$100,000 of Net Available Increment from the project area.

After the last ERAF-secured debt (as defined in IFD Law) for the project area or subarea has been incurred (i.e., within the 20-year window available under IFD Law), no further ERAF tax increment will be allocated to the Project except to the extent previously pledged and used for any ERAF-secured debt.

v. Allocation of Tax Increment Between the Parties.

The Port will seek Board approval of an IFD financing plan that will provide for the following allocation of Net Available Increment between Master Developer and the Port to the extent allowed under IFD Law and applicable tax laws:

1. Consistent with the Port IFD Guidelines, 91.11% of the Net Available Increment allocated to the project area for the Project will be used to reimburse Master Developer for its Qualified Project Costs to the extent

	<p>permitted by law, the adopted IFD financing plan, and the Port IFD Guidelines.</p> <p>2. The remaining amount of the Net Available Increment will be allocated to the Port to fund other Pier 70 improvements as specified in the IFD financing plan.</p> <p>The Summary Pro Forma attached as <b>Exhibit G</b> assumes that Net Available Increment available to the Project will be allocated in the manner described above.</p> <p>IFD bonds may be issued that are secured by a pledge of Net Available Increment allocated, in part, to the Project and, in part, to the Port, as described above. Consequently, the DDA will outline a structure for allocation of IFD bond proceeds consistent with the allocation of Net Available Increment between Master Developer and the Port as discussed above.</p> <p>vi. <u>Tax Increment Shortfalls.</u> To the extent consistent with any applicable public financing, Vertical Developers will be required to pay any shortfall in anticipated property taxes caused by a downward reassessment of the Development Parcel subject to their Ground Leases or fee interests through a levy of special taxes.</p> <p>(b) <u>Community Facilities District.</u></p> <p>i. <u>Formation.</u> The City will form a single community facilities district (“<b>CFD</b>”) early in the Project over the Waterfront Site and all other buildable parcels at Pier 70 in accordance with CFD Law. Special taxes will be levied against all leasehold and fee interests in taxable parcels in the CFD. The DDA will authorize two tranches of CFD bond debt; the first would be used to pay directly for or reimburse Master Developer for its Qualified Project Costs; the second would be available to pay for a portion of waterfront infrastructure to protect the Project from perils associated with climate change and sea level rise under certain circumstances. Master Developer may submit written requests that the City issue first tranche</p>
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	<p>CFD debt, but the City will retain sole discretion over timing and other conditions of debt issuance. In addition, the City will have the right at its sole discretion to issue CFD debt early in each Project Phase in an amount that is secured by special taxes authorized under the RMA not to exceed the expected maximum property tax rate.</p> <p>ii. <u>Use of CFD Proceeds.</u> The DDA will authorize CFD bond proceeds to be used to pay directly for or to reimburse Master Developer for Qualified Project Costs. At the request of Master Developer, the City may agree to apply special taxes levied in the CFD to finance Qualified Project Costs on a pay-as-you-go basis to the extent not needed to pay debt service on CFD bonds, or the City may choose to hold the special taxes for reserves and other requirements under the bond indenture and other purposes consistent with the bond indenture, CFD Law, and the DDA. In no event may the City use first tranche CFD bond proceeds or pay-as-you-go special taxes for any purpose other than the Project until the Port has satisfied its obligations under the DDA and the Acquisition Agreement.</p> <p>In no event will the DDA require Master Developer to provide or cause to be provided credit enhancement for the issuance of CFD bonds except to the extent and on terms acceptable to Master Developer in its sole discretion.</p> <p>Until all of Developer’s Qualified Project Costs have been paid, all CFD special taxes generated from the Waterfront Site will be used to fund Qualified Project Costs only within the Waterfront Site.</p> <p>iii. <u>Issuance of Debt.</u> The Parties anticipate that CFD debt will be issued in coordination with horizontal and vertical development schedules and will be repaid by special taxes paid by private landowners and ground lessees and, subject to conditions to be specified in the DDA, by Net Available Increment.</p>
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	<p>iv. <u>Rate and Method.</u> The rate and method of apportionment of special taxes (“<b>RMA</b>”) for the CFD will establish a maximum tax rate for each taxable parcel, differentiating between residential and non-residential and developed and undeveloped parcels and specify the order in which special taxes will be levied against different types of parcels. The RMA will be developed by the Port’s special tax consultant, in consultation with Master Developer, Port and City staff, and other consultants selected by the Port or the City, based on the Parties’ agreement on the maximum tax rates as reflected in the DDA. The RMA may provide for the maximum rate for special taxes to escalate over time. The Port and Master Developer will agree upon the maximum tax rate and the proposed special taxes for the CFD, taking into account ad valorem property taxes, the proposed Special Taxes for the CFD, and any overlapping special taxes and assessments.</p> <p>v. <u>Repayment through IFD.</u> The Parties anticipate that a portion of Net Available Increment of the IFD will be used to pay CFD debt, reduce special taxes, and for other Project purposes, resulting in a proportionate reduction in CFD special taxes and debt service.</p> <p>(c) <u>Maintenance District:</u> The City anticipates creating a perpetual maintenance community facilities district (“<b>Maintenance CFD</b>”) over all of Pier 70. The City may create a Maintenance CFD over part of Pier 70, and then allow annexation as each Phase is developed, or it may form a Maintenance CFD over the entirety of Pier 70 and create zones corresponding to development Phases in which taxation commences as each Phase is developed. Maintenance special taxes levied against each taxable Development Parcel would provide pay-as-you-go funds for operations and maintenance costs (including street sweeping, landscaping, and right-of-way maintenance) of specified Infrastructure and Public Facilities subject to amounts, limitations, and conditions to be set forth in the DDA and the Financing Plan. If the proposed boundaries of the Maintenance CFD are the same as the proposed boundaries of the CFD, then the</p>
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	<p>City may instead form a single CFD with two separate special taxes, one for facilities and one for maintenance. Except as otherwise agreed by Master Developer, all maintenance special taxes collected from the Waterfront Site will be used to maintain property within the Waterfront Site.</p> <p>(d) <u>Other Financing Sources.</u> The Port retains the right to contribute other sources of funding that cost less than 18% annually to pay Horizontal Development Costs and Eligible Vertical Improvement Costs if and when available to reduce the Port’s liability for return of Developer Capital and associated Developer Return. The City, the Port, and Master Developer will cooperate to explore state and federal incentives that might be available for horizontal and vertical construction of the Project, such as for brownfield remediation, transit-oriented development, and sustainability pilot programs. Possible options, in coordination with the City, could include placing on the ballot an initiative to approve a parks general obligation bond that would include funds for certain public open spaces at Pier 70; exploring with City financial officers and other City departments the feasibility and desirability of using other public financing mechanisms that might be employed to assist in financing the Project, such as mortgage revenue bonds, revenue bonds for infrastructure, and GreenFinanceSF bond financing for energy and water conservation and renewable energy improvements to buildings.</p> <p>(e) <u>Maximum Use of Land-Secured Financing Proceeds.</u> Qualified Project Costs will be paid from IFD and CFD proceeds to the extent available.</p>
<p><b>13. Open Spaces, Parks, and Recreation</b></p>	<p>As part of the Public Facilities, Master Developer will develop major new public parks and open spaces connecting the Waterfront Site with surrounding neighborhoods and the waterfront. The development of these Public Facilities will be distributed among the Phases so that parks and open spaces are generally completed in coordination with the completion of adjacent vertical development.</p> <p>Parks and open spaces (other than privately-owned building-integrated open spaces) will be owned by, and will remain under the jurisdiction and control of, the Port, and will be managed and programmed by Master Developer or a third-party operating entity subject to Port approval under an</p>

	<p>appropriate license or management agreement meeting the requirements for a Maintenance CFD, as described in <b>Section 12(c)</b> (Maintenance District), subject to applicable conditions of the BCDC major permit for those portions of the Project within BCDC jurisdiction. Maintenance of the parks and open spaces on the Waterfront Site will be funded by maintenance special taxes imposed on Vertical Developers on the Waterfront Site through the Maintenance CFD. These parks, totaling approximately 7 acres, are described in the Overview.</p>
<p><b>14. Disposition of Development Parcels</b></p>	<p>(a) <u>Master Developer Option.</u></p> <p>i. <u>Option Rights.</u> Master Developer (and its affiliates and joint ventures) will have option rights (for each parcel, an “<b>Option</b>”) as follows: (1) on all Development Parcels <u>(subject to Section 15(c) (Hoe Down Yard))</u>; (2) on the 20<sup>th</sup>/Illinois Parcel under the conditions specified in <b>Section 15(a)</b> (20<sup>th</sup>/Illinois Parcel); and (3) on Parcels E-1A and E-1B under conditions to be specified in the DDA. The Port will not have any right to “put” a Development Parcel to Master Developer. The Option will not include District Parking Facilities Parcels C-1A, C-1B, and C-<del>2</del><u>or 2</u>, historic Buildings 12 and <del>21-21</del>, <u>or Third-Party Parcels other than the 20<sup>th</sup>/Illinois Parcel and possibly the Hoe Down Yard as described in Section 15(c) (Hoe Down Yard).</u></p> <p>ii. <u>Option Price.</u> The Port will sell Development Parcels to be developed primarily as for-sale residential condominiums in fee, subject to a maximum amount of residential condominium units of the total amount residential units to be negotiated and included in the DDA. The Port will transfer all other Development Parcels by 99-year Ground Leases. All Development Parcels will be transferred at fair market rental value for Ground Lease parcels or fair market value for fee parcels (in either case, “<b>FMV</b>”), determined in accordance with the appraisal process described in <b>Section 14(c)</b> (Appraisal Process). Master Developer will have 90 days after completion of each appraisal process to exercise its Option.</p> <p>iii. <u>Timing for Required Annual Ground Rent.</u> After all of the following have occurred: (1) Master</p>

	<p>Developer has completed all Infrastructure and Public Facilities; (2) the Port or the City has accepted all completed Qualified Facilities; (3) the Master Developer Return Statement shows that Master Developer has received the Developer Return; and (4) Master Developer has received the return of Developer Capital, then all new Ground Leases that the Port conveys will include an annual ground rent obligation based on FMV, subject only to periodic escalation based on the Consumer Price Index (San Francisco-Oakland-San Jose, all urban consumers) published by the U.S. Department of Labor Bureau of Labor Statistics or, if no longer published, a similar index acceptable to the Parties, subject to a minimum and a maximum increase to be included in the DDA, with no market re-sets, and the Port will receive annual payments of 55% of the annual ground rent obligation. Until then, all Ground Leases will be fully prepaid. The Parties will continue to negotiate on an earlier date to convert to Ground Leases with annual ground rent, a mechanism to partially prepay Ground Leases (e.g., ground rent prepaid for 75 years, followed by 24 years of annual ground rent payments) or a mechanism to create an annuity for the Port from its 55% profit participation, if any.</p> <p>iv. <u>Closing</u>. If Master Developer timely exercises the Option at the appraised FMV, Closing will occur in accordance with the DDA upon satisfaction or waiver of conditions. Subject to <b>Section 10(b)</b> (Priorities for Application of Project Sources), the Port will use Land Proceeds to pay Developer Return (excluding the Cost of Carry) and to repay Developer Capital, the latter subject to reimbursement from tax-exempt or taxable Land-Secured Financing Proceeds as of the date of each Closing. Any remaining Land Proceeds will be placed in the Project Account and treated as provided in <b>Section 10(c)</b> (Reinvestment of Surplus Proceeds).</p> <p>v. <u>Failure to Close</u>. If Master Developer does not timely close on a Ground Lease after exercising its Option at the appraised FMV, then the Port will</p>
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offer the Development Parcel for a third-party public offering (in each case, a “**Public Offering**”) at the appraised FMV according to procedures briefly described below.

(b) Public Offerings.

i. Broker-Managed Offerings. Public Offerings will be managed by a broker selected from a list of pre-qualified brokers selected by Master Developer and the Port and be made available to third-party bidders that meet bidder selection guidelines for residential and commercial parcels to be set forth in the DDA (each, a “**Qualified Bidder**”) for a minimum price no less than its appraised FMV (the “**Minimum Bid Price**”). The Public Offering documents will specify that each bidder must agree to enter into an appropriate agreement with the Port that will require the winning bidder to comply with the SUD, the Waterfront Land Use Plan, including the Waterfront Design and Access Element, Project design review and approval procedures, and applicable City and Port requirements consistent with the DDA. The Public Offering will be on the market for a reasonable period of time determined by the Qualified Broker in consultation with the Port and Master Developer and specify a date by which the escrow must close. The Port will sell the Development Parcel to the Qualified Bidder submitting the highest bid price that meets or exceeds the Minimum Bid Price.

ii. Failed Offering. If no Qualified Bidder submits a bid at or above the Minimum Bid Price, then Master Developer will have a right to exercise an Option to purchase the Development Parcel at the Minimum Bid Price. If Master Developer chooses not to exercise its Option under this **Section 14(b)(ii)** (Failed Offering), then a second Public Offering for the parcel will be held. The DDA will include a procedure for proceeding if the parcel fails to sell for the Minimum Bid Price at the second Public Offering.

(c) Appraisal Process. Within 30 days after Master

Developer delivers an Appraisal Trigger Notice to the Port, the Parties will initiate an appraisal process to determine the FMV of the applicable Development Parcel in accordance with the following procedures:

- i. Appraisal Panel. The Parties will issue joint instructions (“**Appraisal Instructions**”) to a member of the Appraisal Institute who meets specified qualifications, including requirements to avoid conflicts of interest (each, a “**Qualified Appraiser**”), to prepare an appraisal report consistent with Appraisal Instructions that will be attached to the DDA. The DDA may include a list of pre-approved Qualified Appraisers from which the Parties may select.
- ii. Appraisal Disputes. If the Parties agree on the value conclusions in an appraisal report, it will be final for the purpose of the Option. If either Party objects to the appraisal within 15 days, either Party may submit the appraisal to an expedited dispute resolution process. Under the expedited process, each Party will have the right to engage another Qualified Appraiser to prepare an appraisal report using the same instructions. Each Party will be responsible for the costs of its own Qualified Appraiser, and will share equally in the costs of the third Qualified Appraiser. Currently, the Parties anticipate that appraisal disputes will be resolved as follows:
  1. If, based on the appraisal prepared by each of the Parties’ Qualified Appraiser, the difference between the Parties’ value conclusions is 10% or less of the higher value, then the FMV will be the average of the two values.
  2. If the difference between Parties’ value conclusions is greater than 10% of the higher value, then the Parties will select a third Qualified Appraiser to perform a third appraisal using the same instructions, and the FMV will be established as follows:
    - A. If the difference between the value conclusion in the Port’s appraisal and the

	<p>third value is 10% or less, then the FMV will be the average of those two values.</p> <p>B. If the difference between value conclusion in Master Developer’s appraisal and the third value is 10% or less, then the FMV will be the average of those two values.</p> <p>C. If neither the Port’s nor Master Developer’s value conclusion is within 10% of the third value, or if both the Port’s and Master Developer’s value conclusions are within 10% of the third value, the third value will be deemed FMV.</p> <p>(d) <u>Other Parcels</u>. The District Parking Facilities and Buildings 12 and 21 are not subject to Master Developer’s Option under <b>Section 14(a)</b> (Master Developer Option). Disposition, if any, is addressed in <b>Section 16</b> (District Parking Facilities) and <b>Section 17</b> (Placemaking Parcels).</p>
<p><b>15. 20<sup>th</sup>/Illinois and Third-Party Parcels</b></p>	<p>(a) <u>20<sup>th</sup>/Illinois Parcel</u>. The Port will seek Port Commission and Board approval to publicly offer and sell the 20<sup>th</sup>/Illinois Parcel. The Parties have agreed to the following conditions relating to this sale:</p> <ul style="list-style-type: none"> <li>i. The Port’s minimum offering price for the 20<sup>th</sup>/Illinois Parcel will be established by a proprietary appraisal and publicly offered in accordance with the Port’s customary procedures as soon as practicable after the Board approves the sale, which the Parties will submit to the Board for approval as part of Project Approval. The offering will be open to all qualified bidders, including Master Developer.</li> <li>ii. The bid documents will specify that the winning bidder must close escrow no later than 12 months after the Board approves the sale, with sale proceeds payable through escrow to Master Developer to be applied to the accrued and unpaid Developer Return (excluding the Cost of Carry) on Master Developer’s Project Entitlement costs incurred before Project Approval.</li> <li>iii. If Master Developer has not received funds from</li> </ul>

	<p>the sale of the 20<sup>th</sup>/Illinois Parcel within 12 months from Project Approval, then within 60 days, the Port must either pay Master Developer an amount equal to the appraised FMV of the 20<sup>th</sup>/Illinois Parcel, or offer Master Developer the right to purchase the 20<sup>th</sup>/Illinois Parcel at its appraised FMV.</p> <p>(b) <u>Third-Party Parcels.</u> The Port intends to sell the <u>other Third-Party Parcels that it owns</u> through proprietary public offerings. The Port may elect at its sole option to treat proceeds from the sale of <u>those</u> Third-Party Parcels as Land Proceeds that are applied as set forth in <b>Section 10</b> (Developer Return), but in no event will the Port be obligated to do so, nor will the Third-Party Parcels <u>(other than the 20<sup>th</sup>/Illinois Parcel and possibly the Hoe Down Yard (if Master Developer obtains an Option under Section 14(a) (Master Developer Option) as described in Section 15(c) (Hoe Down Yard))</u> be included in or be deemed to be included in the Project.</p> <p>(c) <u>Hoe Down Yard.</u> The Port will also cooperate with the City on its potential purchase and later sale of the Hoe Down Yard, which will be deemed a Third-Party Parcel if the City acquires it. The DDA may describe a process by which Master Developer could obtain an Option <u>under Section 14(a) (Master Developer Option)</u> on the Hoe Down Yard if the City acquires <del>it by relinquishing the</del> <u>Hoe Down Yard and Master Developer relinquishes the</u> Option for a Development Parcel of equivalent value. <u>If those events occur, then upon the effective date of this transfer of rights, the Hoe Down Yard will be a Development Parcel and the Development Parcel for which Master Developer relinquished its Option will be a Third-Party Parcel under the Transaction Documents,</u> with a corresponding change to the boundaries of the Waterfront Site.</p>
<p><b>16. District Parking Facilities (Parcels C-1A, C-1B, and C-2)</b></p>	<p>(a) <u>Sources for District Parking Facilities.</u> The Parties will continue to discuss a number of options to finance the District Parking Facilities with the goal of including their agreement on how to finance these structures in the DDA. Financing options under consideration include public financing of the District Parking Facilities, use of net operating income from the facilities, use of Developer Capital (subject to a 12% annual return on and repayment of capital invested), and use of Port</p>



	<p>Project proceeds. If Developer Capital is used to fund District Parking Facilities, return of and on Developer Capital will be funded by, among other potential sources, Port's 55% share of the Project Surplus, if any.</p> <p>Under the option currently preferred by the Parties, the DDA will require the Port and the City to use good faith efforts to maximize use of taxable IFD and CFD bond proceeds to construct the portion of the District Parking Facilities found to serve a public purpose. The Port would own and manage the District Parking Facilities and make spaces available to Master Developer as described below. Master Developer could undertake the construction of the District Parking Facilities on behalf of the Port in this scenario, subject to applicable public works requirements, as the Port's fee developer for a market rate development fee. The Port would be responsible for directly paying for all development costs. To the extent permitted by law, the Port would consider the use of net operating revenues as a secondary source for repayment of any CFD or IFD bonds used to finance construction any portion of the costs. Except to the extent needed to pay CFD or IFD bond debt service, the Port would retain all net operating revenues.</p> <p>(b) <u>Allocation of Parking.</u> The DDA will specify the allocation of parking spaces between residential, commercial, and public access uses at the Waterfront Site and Pier 70 parking demand outside of the Waterfront Site. Any allocation will require cost-sharing that meets the requirements of any public financing sources. CFD special taxes from the Waterfront Site will not subsidize construction of parking spaces for dedicated use by buildings outside of the Waterfront Site. Before operations begin, the Parties will enter into reciprocal easement agreements and other ancillary agreements. The DDA will also specify a process under which the Parties will agree on the number, if any, of parking spaces within a District Parking Facility assigned to a Development Parcel before vertical development of the parcel begins until Master Developer's overall parking allocation is assigned. The agreements allocating parking spaces to commercial and residential occupants of Development Parcels will provide for the spaces to be available at market rates, subject only to market adjustments not to exceed a market-based adjustment based on survey and provisions to ensure</p>
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	<p>that public parking does not subsidize private parking.</p> <p>(c) <u>Flex Zoning</u>. The SUD will provide for flexible zoning of the parcels designated for the District Parking Facilities to enable the Parties to develop the parcel(s) for residential or commercial use if the Parties determine later that one or more are not needed for that use.</p>
<p><b>17. Placemaking Parcels (Buildings 12 and 21; Parcels E-1A and E-1B)</b></p>	<p>(a) <u>Ground Leases for Historic Buildings</u>. Master Developer will be obligated to rehabilitate these historic buildings in accordance with the Secretary’s Standards. The Port will convey Buildings 12 and 21 to Master Developer under separate ground leases, each of which will reflect the building’s net market value (which may be positive) or net required subsidy (which may be negative) with financial terms to be included in the DDA. The Parties expect that <del>the Port will pay for any project-generated financing proceeds would be the sole source of funds that the Port would contribute to Master Developer’s Historic Improvement costs for Buildings 12 and 21 and would only be used to fill the</del> feasibility gap necessary for Master Developer to achieve a 10 percent profit on <del>Buildings 12 and 21, by paying for qualified costs of Historic Improvements with IFD financing</del> <u>its Historic Improvement costs</u>. The Parties will continue to investigate the impact of any allocation of historic tax credits on the anticipated use of <del>IFD project-generated financing proceeds</del>, required lease terms if Master Developer obtains allocations of historic tax credits, and other legal issues required to be resolved for incorporation into the DDA, <del>with the understanding that IFD financing will be the sole source of public funds that the Port will contribute to the costs of Historic Improvements and that IFD financing will be limited to the amount necessary to fill the feasibility gap</del> <u>subject to the limitation on the Port’s possible contribution of project-generated financing proceeds</u> described in the third sentence of this Subsection.</p> <p>(b) <u>Ground Leases for New Construction</u>: Master Developer will have an option to ground lease Parcels E-1A and E-1B from the Port at no cost for the establishment of placemaking uses, which may include construction of new buildings that will house a combination of small scale local production, arts and cultural uses, small business incubator uses, retail and innovation retail and other publically accessible and</p>

	<p>activating uses. The Parties will continue to investigate the potential use of land-secured financing sources solely to reimburse Master Developer’s qualified Eligible Vertical Improvements of placemaking or other public uses to which the Port agrees to the maximum extent permitted by law and its impact on the nature and tenure of the owner and operator of the completed spaces. If the Parties conclude that legal impediments prevent the use of these sources to reimburse Master Developer for its Developer Capital investment in these buildings, the Port will have no obligation to reimburse Master Developer for those costs. In any case, Master Developer will not be entitled to Developer Return on its Entitlement and development costs associated with Parcels E1-A and E-1B incurred after the effective date of the DDA. The DDA and SUD will include provisions that may allow for other uses of and disposition process for these parcels if Master Developer elects not to exercise its option on these parcels.</p>
<p><b>18. Interim Leasing</b></p>	<p>Master Developer will work with the Port on its interim leasing of parcels at the Waterfront Site until each parcel is ready for development. If Master Developer is able to bring Net New Interim Lease Revenues to the Waterfront Site, 50% of all Net New Interim Lease Revenues that the Port receives, net of Master Developer’s reasonable costs associated with the interim leasing program as set forth in the DDA, will be treated as Land Proceeds.</p>
<p><b>19. Noonan Building Tenants</b></p>	<p>The Port currently has space leases with a number of tenants in the Building 11, also known as the Noonan Building, many of whom are artists (the “<b>Noonan Tenants</b>”). Under Master Developer’s current concept plan, Building 11 will be demolished. Master Developer will offer space in one of the Placemaking Parcels (“<b>Replacement Space</b>”) to each Noonan Tenant that is of similar size to the tenant’s existing premises. Rent on the Replacement Space will be based on the Port’s current parameter rent schedule for the Noonan Building, inflated to the date on which the new lease for the Replacement Space begins by a process to be included in the DDA. The right to Replacement Space will be personal to the person identified on the Port lease and will be limited to Noonan Tenants who are in good standing on the date on which the Board endorses this Term Sheet and who remain in good standing under their leases with the Port until Master Developer offers the Replacement Space. Noonan Tenants will not be allowed to sublease or assign their leases for</p>

	Replacement Space.
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**Term Sheet Non-Binding**

Under the San Francisco Charter, no officer or employee of the City has authority to commit the City to the Project until the appropriate City departments and agencies have approved the transaction. Except as set forth in the ENA, no legal obligation will exist with respect to the transactions described in this Term Sheet, unless and until the Parties have negotiated, executed, and delivered mutually acceptable agreements based upon information produced from the CEQA process and other public review and hearing processes and subject to all applicable governmental approvals. Before entering into final Transaction Documents, the Port and the City retain the absolute discretion to: (a) require modifications to the Project and any proposed agreements as are deemed necessary to mitigate significant environmental impacts; (b) select feasible alternatives that avoid or reduce significant adverse environmental impacts of the Project; (c) require implementation of specific measures to mitigate the significant adverse environmental impacts of the Project, as identified through environmental review; (d) reject all or part of the Project as proposed if the economic and social benefits of the Project rejected do not outweigh otherwise unavoidable significant adverse environmental impacts of the Project; or (e) approve the Project upon finding that the economic and social benefits of the Project approved outweigh otherwise unavoidable significant adverse environmental impacts of the Project. Before entering into final Transaction Documents, Master Developer also retains the absolute discretion to make modifications to the Project and to determine not to proceed with the proposed Project.

**MASTER DEVELOPER:**

FOREST CITY DEVELOPMENT  
CALIFORNIA, Inc.,  
a California corporation

By: \_\_\_\_\_  
Kevin Ratner  
Authorized Representative

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

**PORT:**

CITY AND COUNTY OF SAN  
FRANCISCO, a municipal corporation,  
operating by and through the  
SAN FRANCISCO PORT COMMISSION

By: \_\_\_\_\_  
Monique Moyer  
Executive Director

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

Endorsed by Port Resolution No.  
and Board Resolution No.

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**APPENDIX**  
**Index of Defined Terms**

Many key terms are defined in the Introduction and Overview for readability. Definitions are also located in the chart at the locations specified below.

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Qualified Appraiser	§ 14(c)(i)
Qualified Bidder	§ 14(b)(i)
Qualified Facilities	Overview; § 4(a)(iv)
Qualified Project Costs	Overview; § 4(a)(iv)
Replacement Space	§ 19
RFQ	Overview
RMA	§ 12(b)(iv)
Secretary's Standards	Overview
SFMTA	Overview
SFPUC	Overview
State Lands	Overview; § 4(a)(ix)
SUD	Introduction
TDMP	Overview
Term Sheet	Introduction
Third-Party Parcel	§ 2
Third-Party Transfer	§ 11(c)(i)
Transaction Documents	Introduction; § 4
Vertical Developer	Overview
vertical development	Overview; § 3(b)
waterfront district	§ 12(a)(i)
Waterfront Site	Introduction



Document comparison by Workshare Professional on Tuesday, June 11, 2013 10:34:52 AM

Input:	
Document 1 ID	file://C:/Attchmnt/Pier 70 - Forest City/Term Sheet/Port drafts/Pier 70 Term Sheet + BA recommendations 060513.docx
Description	Pier 70 Term Sheet + BA recommendations 060513
Document 2 ID	file://C:/Attchmnt/Pier 70 - Forest City/Term Sheet/Port drafts/Pier 70 Term Sheet Port + BA recommendations rev 061113.docx
Description	Pier 70 Term Sheet Port + BA recommendations rev 061113
Rendering set	standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<a href="#">Moved from</a>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	26
Deletions	19
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	45