

Attachment 8

Schedule of Performance

INTRODUCTION

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Agreement (or “LDDA”) to which this Schedule of Performance is attached; (ii) parenthetical numbers are references to sections of the Agreement; (iii) unless expressly limited in the Agreement, all Required Completion Dates provided for in this Schedule of Performance may be extended by applicable Force Majeure provisions; and (iv) in the event of an inconsistency between this Schedule of Performance and the Agreement, the Agreement shall prevail.

Except as otherwise provided in the Agreement, the Required Completion Date may be extended by mutual agreement of the Parties from time to time and documented in writing, so long as such extension does not exceed the Outside Date as defined in the Agreement. Except as otherwise provided in the Agreement, the City Administrator shall be authorized to grant extensions under this Schedule of Performance on behalf of the City so long as such extension does not exceed the Outside Date as defined in the Agreement.

In the following table with respect to remedies, a <sup>1</sup> denotes that the Parties shall have met and conferred pursuant to Section 2.3.1, and a <sup>2</sup> denotes that the Parties shall have met and conferred pursuant to Section 2.3.2 before pursuing any remedies available to the non-defaulting Party pursuant to Article IX of the Agreement, in addition to any applicable notice and cure pursuant to Section 9.2 of the Agreement.

	<b><u>LLDA Obligation</u></b> <b><u>(LLDA Section to be added)</u></b>	<b><u>Party(ies)</u></b> <b><u>Responsible for</u></b> <b><u>Compliance</u></b>	<b><u>Required</u></b> <b><u>Completion Date</u></b>	<b><u>Exclusive</u></b> <b><u>Remedy(ies)</u></b> <b><u>for Event of</u></b> <b><u>Default Under</u></b> <b><u>Article IX.</u></b>
1	Developer delivers Security Deposit to City. (§1.4 )	Developer	Within 10 days after Effective Date of LDDA.	Termination of LDDA. <sup>1</sup>
2	Memorandum of LDDA recorded. (§1.6)	City or Developer	Concurrent with Effective Date of LDDA.	N/A

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3	Billboard Agreement Executed (§1.3.1)	City and Developer	Within 30 days after Effective Date of the LDDA	Specific Performance <sup>1</sup>
4	Property Management Agreement Executed (§1.3.2)	City and Developer	Within 30 days after Effective Date of LDDA.	-Specific Performance <sup>1</sup> -Termination of LDDA. <sup>1</sup>
5	Master Plan Approved by Port. (§2.2.1)	City (as to City and Port approval) and Developer	By the dates provided in the Amended and Restated CSA.	Termination of LDDA <sup>2</sup>
6	Surcharging Schedule Approved. (§5.2.4.1)	City and Developer	90 days from the Effective Date of the LDDA.	Specific Performance <sup>1</sup>
7	Developer's Pre-Close of Escrow Environmental Inspection Schedule Approved. (§5.2.4.2)	City and Developer	30 days from the date the Surcharging Schedule is approved by the Parties.	Specific Performance <sup>1</sup>
8	Intentionally deleted.	-	-	-
9	Parcel Map Recorded (§2.4)	City	Within 30 days of Effective Date of the LDDA.	Specific Performance <sup>1</sup>
10	Caltrans Agreement Executed for Under Freeway Easement	City	Within 180 days of Effective Date of	Termination of LDDA <sup>1</sup>

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	(§2.2.5.3)		the LDDA.	
11.	Approved Procedures Related to the Design-Build Contractor’s Self-Performance of Construction Work Under the Design-Build Contract (§3.2.2)	City and Developer	Within 60 days after the Effective Date.	Specific Performance <sup>1</sup>
12.	Approved form of Design-Build Contract to be Submitted to the Design-Build Contractor (§3.2.2)	City and Developer	Within 90 days after the Effective Date.	Specific Performance <sup>1</sup>
13	Approved Bridging Documents (§3.2.1)	City and Developer	Within 180 days of Effective Date of LDDA	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>
14	Design-Build Contract Form Approved by Parties (§3.2.2)	City and Developer	Within 180 days of Effective Date of LDDA	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>
15	35% G-Max Price Approved by Parties (§3.3.1.2)	City and Developer	Within 180 days of Effective Date of LDDA	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>
16	Schedule of Performance for Public Improvements Approved. (§3.4)	City and Developer	Within 180 days of Effective Date of LDDA.	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>

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17	CTC Approval of G-Max Price and Design-Build Contract for Public Improvements. (§ 2.2.2)	City	Within 180 days of Effective Date of LDDA (automatically extended based on terms of Amended Baseline Agreement.)	Termination of LDDA <sup>2</sup>
18	Design-Build Contract Executed. (§3.2.2)	Developer shall cause its Affiliate, California Capital & Investment Group, Inc. to execute.	Within 10 days after the Parties approval of the G-Max Price pursuant to <u>Section 3.3.1.2.</u>	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>
19	Approved Construction Drawings (§3.2.4)	City and Developer	As set forth in the Public Improvements Schedule of Performance pursuant to <u>Section 3.4</u> , but no later than the date to commence construction of the Public Improvements.	Specific Performance <sup>1</sup> Termination of LDDA <sup>1</sup>
20	Necessary Non- City Governmental Approvals for Construction of Public Improvements Received by City. (§2.7)	City and Developer	Prior to construction of Public Improvements.	Termination of LDDA <sup>1</sup>

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21	Project Labor Agreement and Cooperation Agreement Executed (§2.2.3)	City	Prior to commencement of construction of Public Improvements.	Limited termination right of Developer pursuant to §2.2.3) <sup>1</sup>
22	Development Agreement and PUD Approved by City Council. (§6.4.1.2)	City and Developer	Within 180 days of Effective Date of LDDA.	Termination of LDDA by Developer only <sup>1</sup>
23	Construction Phase Air Quality Monitoring Plan Approved (§6.4.)	City and Developer	Prior to commencement of construction of Public Improvements.	N/A (Condition to Closing)
24	Developer Election to Construct (in lieu of funding) Developer Funded Wharf Improvements (§3.5.1)	Developer	Prior to commencement of construction of Public Improvements.	N/A
25	Rail Access Agreement Executed (§2.2.4)	City	By the date provided in the Amended and Restated Cost Sharing Agreement.	-Self Help by Developer to extent allowed by Amended and Restated CSA <sup>1</sup> -Termination of LDDA <sup>1</sup>
26	Request for Proposals Issued for Port Rail Terminal Operator. (§2.2.4)	City	By the date provided in the Amended and Restated Cost	-Self Help by Developer to extent allowed by Amended

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			Sharing Agreement	and Restated CSA <sup>1</sup>  -Termination of LDDA <sup>1</sup>
27	Rail Terminal Design Build Contract Executed by Port. (§2.2.4)	City	By the date provided in the Amended and Restated Cost Sharing Agreement	-Self Help by Developer to extent allowed by Amended and Restated CSA <sup>1</sup>  -Termination of LDDA <sup>1</sup>
28	Rail Terminal Construction Commenced. (§2.2.4)	City	By the date provided in the Amended and Restated Cost Sharing Agreement	-Self Help by Developer to extent allowed by Amended and Restated CSA <sup>1</sup>  -Termination of LDDA <sup>1</sup>
29	Rail Terminal Construction Completed and Operational. (§2.2.4)	City	By the date provided in the Amended and Restated Cost Sharing Agreement; but in no event later than Closing of first Lease.	-Self Help by Developer to extent allowed by Amended and Restated CSA <sup>1</sup>  -Termination of LDDA <sup>1</sup>
30	Commence Formation of Special District. (§3.6)	City and Developer	Within one (1) year of Effective Date of LDDA.	- Self Help <sup>1</sup>  -Specific Performance <sup>1</sup>

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31	Completion of Public Improvements, including all necessary infrastructure remediation activities, deconstruction/demolition of all existing improvements for the applicable Phase. City issues Notices of Completion to Developer for applicable Phase. (Article III)	City	In accordance with the Schedule of Performance for the Public Improvements agreed to by the Parties in accordance with §3.4 of the LDDA.	Termination <sup>1</sup>
32	Termination of All Existing Leases, including Pass Through Lease as to the applicable portion of the Lease Property. (§6.4.1.6)	City	Prior to Lease Closing for applicable portion of the Lease Property.	Termination by Developer if Closing condition not satisfied by the Outside Closing Date pursuant to §6.6.3 <sup>1</sup>
33	Termination of Caltrans Construction Easement. (§6.4.10.1)	City	Prior to Lease Closing for West Gateway.	Termination by Developer if Closing condition not satisfied by the Outside Closing Date pursuant to §6.6.3 <sup>1</sup>
34	Escrow Opened for applicable Phase. (§6.7.1)	City and Developer	Within 30 days from receipt of the 90 day Notice of Completion of	Termination <sup>1</sup> Specific Performance <sup>1</sup>

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			Public Improvements from City for the applicable Phase pursuant to <u>Section 3.5.2.</u>	
35	Developer and City Execute Right of Entry Agreement (§5.2.4)	Developer	Prior to entry on the Lease Property.	Termination by City only for Developer default <sup>1</sup>  Specific Performance by City or Developer <sup>1</sup>
36	Determination of Lease Property Square Footage for the applicable Phase for the Purposes of Final Legal Description and Base Rent. (§ 6.6.1)	City and Developer	Prior to Lease Closing.	N/A
37	Formation of Special District. (§6.2.11)	City and Developer	Prior to first Lease Closing.	- Self Help <sup>1</sup> -Specific Performance <sup>1</sup>
38	Developer Payment of Fair Share of West Oakland Community Fund for applicable Phase. (Article IV)	Developer	Through applicable Lease Closing.	-Specific Performance <sup>1</sup> -Termination <sup>1</sup>
39	Developer completes (or City waives in writing) all City	Developer	Prior to City obligation to enter	-Specific Performance <sup>1</sup>

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	Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§6.3)		Lease; but in no event later than the Outside Closing Date as defined in §6.6.3.	Termination of LDDA <sup>1</sup>
40	City completes (or Developer waives in writing) all Developer Required Conditions Precedent to Lease and submits required information and documents to Escrow for the applicable Phase. (§6.5)	City	Prior to Developer obligation to enter Lease; but in no event later than the Outside Closing Date as defined in §6.6.3.	Termination of LDDA <sup>1</sup> -Liquidated Damages <sup>1</sup>
41	Lease Closing on applicable Phase. (§ 6.8.3)	City and Developer	After all conditions precedent have been satisfied or waived by the Parties; but in no event later than the Outside Closing Date as defined in §6.6.3.	See Rows 37, 38, above.
42	Partial Termination Notice Recorded Issued at Each Closing and Final Termination Notice recorded at Final Lease Closing. (§1.1.2)	City	Concurrent with each Closing	Specific Performance <sup>1</sup>