

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

by and between

CAL COAST DEVELOPMENT, LLC

and

THE CITY OF SAN LEANDRO

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2008 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (“**City**”) and Cal Coast Development, LLC, a Delaware limited liability company (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties**.”

WHEREAS, the City seeks development of the City-owned property consisting of approximately 40 acres located within the City limits in the Shoreline-Marina area and more particularly described in Exhibit A attached hereto and incorporated herein (the “**Site**”);

WHEREAS, the City’s General Plan calls for the development of the Shoreline-Marina area with uses that are compatible with the area’s recreational character and which will enhance its appeal as a destination for East Bay residents and visitors, including such identified uses as hotels, restaurants, and a conference center/meeting facility;

WHEREAS, Developer submitted a timely response to the City’s Request for Qualifications seeking a developer with experience in shoreline development and public private partnerships to develop at the Site a high-quality hotel, restaurants, public amenities and possibly residential, office and water-oriented commercial uses (the “**Project**”);

WHEREAS, at its meeting of June 16, 2008, the City Council of the City of San Leandro (“**City Council**”) directed staff to pursue negotiations with Developer regarding Developer’s proposed development of the Project on the Site, and authorized City staff to prepare an agreement granting Developer exclusive rights to negotiate for the purpose of reaching agreement on terms and conditions for development of the Project; and

WHEREAS, Developer anticipates expending significant funds to conduct certain studies that will be needed to assess the feasibility of the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to successfully negotiate an agreement that will describe the terms and conditions governing development of the Project on the Site. The Parties shall diligently and in good faith pursue such negotiations. Furthermore, the Parties shall use their best efforts to obtain any third-party consent, authorization, approval, or exemption required in connection with the transactions contemplated hereby. This Agreement does not impose a binding obligation on City to convey any portion of or interest in the Site to Developer, nor does it obligate City to grant any approvals or authorizations required for the Project. Without limiting the generality of the foregoing, Developer expressly acknowledges that any agreement resulting from the negotiations contemplated hereby shall become effective only if the agreement is approved by the City Council following compliance with all applicable notice and hearing requirements and

compliance with all other requirements of law, including without limitation the California Environmental Quality Act (“CEQA”).

2. Developer’s Exclusive Right to Negotiate With City. City agrees that it will not, during the term of this Agreement, directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Site or the development of the Site, and City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Site or any portion thereof. Furthermore, City shall not, directly or indirectly, through any officer, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Site or any portion thereof.

3. Term. The term of this Agreement (“**Term**”) shall commence on the Effective Date, and shall terminate eighteen (18) months thereafter, unless extended or earlier terminated as provided herein. The Term may be extended for up to a maximum of eighteen (18) additional months upon the mutual written agreement of Developer and City acting through and in the discretion of its City Manager.

4. Deposit. By not later than the Effective Date, Developer shall pay to the City a cash deposit (the “**Initial Deposit**”) in the amount of Fifty Thousand Dollars (\$50,000) to cover third-party costs that City incurs for legal and consulting fees in connection with the Project and the negotiation with Developer regarding agreements for development of the Site, including without limitation, expenses incurred for financial feasibility studies, design analyses, environmental analyses, and legal fees incurred in connection with the negotiation and drafting of agreements with Developer. City will hold the Initial Deposit in a separate City-managed cost-recovery account bearing interest at the City’s portfolio rate, and all interest earned on such account shall become a part of the Initial Deposit. If the Term is extended pursuant to Section 3, by not later than the date upon which the extension begins, Developer shall pay to the City an additional cash deposit in the amount of Twenty-Five Thousand Dollars (\$25,000) (the “**Additional Deposit**”) which shall be added to the account in which the Initial Deposit has been placed and which City may draw upon for the same purposes as described in this Section. The Initial Deposit, together with the Additional Deposit (if applicable) are hereafter referred to as the “**Deposit**”. If the Site or portions thereof are leased to Developer, at the commencement of the lease, any remaining balance of the Deposit will be credited toward the lease payments or other sums payable by Developer to City.

5. Termination.

5.1 Termination by Mutual Agreement. This Agreement may be terminated at any time by the mutual written consent of the Parties. In the event of such termination, City shall return the balance of the Deposit to Developer, and subject to Section 5.4, neither Party shall have any further rights against or liability to the other under this Agreement.

5.2 Termination by City for Cause. City shall have the right to terminate this Agreement upon City's good faith determination that Developer is not negotiating diligently and in good faith. City shall exercise such right by delivering not less than ten (10) business days' advance written notice to Developer describing the nature of Developer's default and the termination date. If Developer does not commence to cure the default and resume negotiations in good faith within such ten (10) business day period, City may terminate this Agreement effective as of the termination date stated in the notice. In the event of termination by the City pursuant to this Section 5.2, the City shall have the right to retain the balance of the Deposit, and subject to Section 5.4, neither Party shall have any further rights against or liability to the other under this Agreement.

5.3 Termination by Developer. Developer shall have the right to terminate this Agreement upon Developer's good faith determination that City is not negotiating diligently and in good faith. Developer shall exercise such right by delivering not less than ten (10) business days' advance written notice to City describing the nature of City's default and the termination date. If City does not commence to cure the default and resume negotiations in good faith within such ten (10) business day period, Developer may terminate this Agreement effective as of the termination date stated in the notice. In addition, Developer shall have the right to terminate this Agreement, effective upon ten (10) days' written notice to City, if Developer determines, in the exercise of Developer's sole discretion, that the results of Developer's investigation of the Site are unsatisfactory with respect to Developer's desired development activities or if Developer is unable to obtain other necessary approvals, rights or interests. In the event of termination by the Developer pursuant to this Section 5.3, City shall return the balance of the Deposit to Developer, and subject to Section 5.4, neither Party shall have any further rights against or liability to the other under this Agreement.

5.4 Effect of Termination. Upon the expiration of the Term as such may be extended, or upon the earlier termination of this Agreement without the Parties having successfully negotiated an agreement regarding development of the Site, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 8.1 (Studies), Section 8.2 (Access; Indemnity), Section 18 (Confidentiality), and Section 22 (Indemnification) shall survive such termination. In no event shall either Party have the right to seek an award of damages as a result of the termination of this Agreement.

6. Description of the Project; Compliance with CEQA. The Parties acknowledge that the Project description set forth in this Agreement is preliminary in nature and shall be described in further detail in the subsequent agreement to be negotiated during the Term. The Project may include a hotel, restaurant, additional amenities and additional uses that may include a conference center, office space, retail and residential development. The residential component, if any, will comply with all applicable state and local requirements and regulations regarding inclusionary/affordable units. The Parties acknowledge that development of the Site for the Project will require the grant of discretionary land use entitlements subject to the City's normal review and approval process, that the Project must comply with CEQA, and that nothing in this

Agreement is intended to or shall be interpreted as the grant of any approvals for development of the Project or the Site, or the modification or waiver of any City procedures or requirements.

The Parties acknowledge that nothing in this Agreement shall be deemed a commitment by the City to enter into an agreement for conveyance of any interest in the Site or for the development of the Project. In addition, the Parties acknowledge that the final form of any agreement governing the leasing and development of the Site may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

If required pursuant to CEQA, City will cause an Environmental Impact Report (“EIR”) to be prepared for the Project. City will select the consultant for preparation of the EIR. Developer will pay City’s costs for environmental review, including the cost of City’s EIR consultant. Developer’s obligation to pay such costs shall be in addition to Developer’s obligation to pay City expenses pursuant to Section 4.

7. Developer Work and Timeline. Exhibit B details the tasks to be undertaken by Developer during the Term. The Parties agree that if the Term is extended pursuant to Section 3 of this Agreement, Exhibit B shall be revised accordingly and initialed by both Parties at the time of extension.

8. Developer’s Studies; Right of Access.

8.1 Developer’s Studies. During the Term, Developer shall prepare, at Developer’s sole expense, any studies, surveys, plans, specifications and reports (“**Developer’s Studies**”) Developer deems necessary or desirable in Developer’s sole discretion, to determine the suitability of the Site for the Project. Such studies may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses, and design studies. Developer shall provide to City copies of all reports, test results, studies, analyses, cost estimates, and similar documents prepared for or commissioned by Developer with respect to the Project or the Site within ten (10) business days following their completion; provided however, Developer shall not be obligated to provide proprietary financial information.

Developer agrees to include in all contracts for the preparation of any of Developer’s Studies a provision that will permit City to have the right to use and rely upon each such study and report. City and Developer agree that traffic studies for Marina Boulevard, Fairway Drive and Monarch Bay Drive are essential to the further definition of the Project and shall be undertaken as soon as reasonably possible.

Developer’s obligation to provide reports and studies pursuant to this Section 8.1 shall survive the expiration or earlier termination of this Agreement.

8.2 Right of Access. Subject to the terms of existing agreements regulating the use of the City-owned parcels comprising the Site, Developer shall have the right of reasonable access for the purposes of inspection, environmental assessments, soils testing, and similar work.

Developer shall be responsible for obtaining any additional rights of access to the Site that are necessary to prepare the Developer's Studies. The City may impose reasonable limitations on access to the Site, and may require Developer to provide City with proof of insurance in compliance with City's requirements prior to performance of studies on the Site. City's advance written approval shall be required for any invasive testing. Developer agrees that unless City agrees otherwise in writing, Developer shall repair, restore, and return the Site and all improvements located thereon to their condition prior to any such testing at Developer's sole cost and expense. Developer shall at all times keep the Site free and clear of all liens and encumbrances.

Developer shall indemnify, defend, and hold the City and its elected and appointed officers, officials, employees, consultants, agents and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including without limitation reasonably attorney's fees and of litigation) (all of the foregoing, collectively "**Claims**") arising out of Developer's and Developer's agents, employees, consultants, representatives and contractor's entry on the Site or otherwise arising out of the exercise of this right of access. Developer's defense and indemnity obligations pursuant to this Section 8.2 shall survive the expiration or earlier termination of this Agreement.

9. City's Reports, Obligations, and Studies. Within fifteen (15) days following the Effective Date, City shall make available to Developer for review or copying at Developer's expense all nonprivileged studies, surveys, plans, specifications, reports, and other documents with respect to the Site that City has in its possession or control. Studies or documents prepared by City and its agents solely for the purpose of negotiating the terms of an agreement for development of the Site are excluded from this requirement.

City and Developer agree to work cooperatively on hydrology and other tidal action studies in order to formulate strategies for (i) maintenance of the federal channel in order to allow access to a boat launch ramp, and (ii) maintenance of a reasonable water level in the current boat harbor basin that, at a minimum, maintains water in the basin at low tide and keeps the water free of debris and odor. City agrees to use best efforts to make a determination regarding the continued use of the harbor by not later than March 1, 2009.

10. City Ownership of Site. The City owns, and plans to maintain ownership of the Site. Ground lease rates for the Site will be subject to approval by the City Council, and will be based, without limitation, on such factors as market conditions, density of development, costs of development, risks to the City, risks to the Developer, estimated Developer profit, public purpose and/or fair value for the uses permitted to be developed, and financial requirements of the City.

11. Community Participation.

A. Developer agrees to attend and assist in planning the agenda for all Shoreline Development Citizens Advisory Committee ("**CAC**") meetings, and agrees to inform CAC members on issues related to the Project such as the market, benefits and challenges of hotel/convention centers, restaurants, office, and residential development. Developer

shall also prepare and present discussions regarding constraints and traffic studies. The Developer shall gather ideas for Site development and shall review master plan concepts with the CAC.

B. In keeping with the City of San Leandro public process, the Developer will participate in at least four public meetings that will afford community groups, labor organizations and other stakeholders an opportunity to discuss issues related to the development of the Project. The public meetings will include community or town hall meetings. Work sessions at the City Council and/or Planning Commission will provide additional opportunities for public participation.

C. The Developer shall be generally responsive to the community, and shall maintain a local toll-free telephone number and email address to which members of the community may provide comment on the Project and proposed Site development.

12. Developer's Pro Formas and Evidence of Financing. During the Term, Developer shall obtain preliminary financing commitments from prospective lenders or financing partners for the Project. Prior to execution of any agreement for the development of the Site, Developer shall provide City with a pro forma for the Project that confirms the financial feasibility of Developer's proposed development of the Site, and shall provide evidence satisfactory to City that Developer has secured commitments, subject only to commercially reasonable conditions, for all financing necessary for the successful completion of the Project. City shall not be obligated to seek City Council approval unless and until the documents required by this Section have been provided.

13. Fiscal Neutrality. Developer shall cooperate with the City to ensure that development of the Project will be fiscally neutral with respect to the City's General Fund. Any City funding mechanism shall (a) result in no negative impact to the City's General Fund, taking into consideration the reasonably anticipated General Fund revenues that the Project may generate, and (b) avoid negative effects to the existing or future operations of the City. Any model analyzing proposed Project funding or financial assistance shall provide for preservation of current and future General Fund fiscal neutrality, and shall include funding for normal and customary municipal services required in connection with the Project including without limitation, police and fire services. Nothing in this Agreement is intended to or shall be interpreted as providing a commitment on the part of City to provide any form of funding or financial assistance for the development of the Site or the operation of the Project.

14. Relationship of the Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

15. Developer's Consultants and Professionals. If the Parties reach agreement regarding lease of the Site and development of the Project, Developer's architect will be Withee Malcolm Architects, or another architect with comparable skill and experience in commercial, residential, waterfront and public space design, including experience designing L.E.E.D certified buildings. City's approval of a change in architecture firms will be required.

16. Disclosure.

A. Developer warrants that none of its principals, officers, partners, joint venturers, employees, associates, or affiliates who have any economic interest in this Agreement or the contemplated development of the Site or the Project, have a familial, financial, or other material relationship with any elected or appointed official or employee of the City.

B. City warrants that none of its elected or appointed officials have any economic interest in this Agreement, the contemplated development of the Site or the Project, nor do they have any familial, financial, or other material relationship with Developer or any of Developer's principals, officers, partners, joint venturers, employees, associates, or affiliates.

17. Expenses. Except as otherwise expressly provided herein, all costs and expenses (including, without limitation, all legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby shall be paid by the Party incurring the same. Nothing in this Section is intended to or shall be interpreted to affect any City policy regarding payment of City fees for processing permits and approvals by applicants.

18. Confidentiality; Dissemination of Information. During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations. Nothing contained in this section shall be construed or interpreted to prevent or restrain compliance with the provisions of the California Public Records Act or the Ralph M. Brown Act.

City and Developer enter into this Agreement with the understanding that Developer may provide certain information of a confidential nature during negotiations. Such information may be necessary for City to verify information that is relevant to negotiations. City and Developer agree that they will keep confidential and not disclose any information submitted by Developer in the course of the negotiations and identified as privileged or confidential under the law unless ordered to do so by a final order of court. Developer agrees to bear all costs and expenses (including attorney's fees) related to any litigation that is filed seeking disclosure of information and documents submitted by Developer in connection with the negotiations contemplated hereby. Notwithstanding the provisions of this Section, in no event shall any Party be required to disclose to any other party information which is protected by the attorney-client privilege.

19. Execution of Definitive Agreement. If the Parties successfully negotiate an agreement for the development of the Site, City staff shall recommend approval of the agreement to the City Council. The City shall have no legal obligation to grant any approvals or authorizations for the

Project prior to City Council approval of the Project and related agreements following compliance with CEQA and all other applicable requirements of law.

The Parties agree that the definitive agreement will include the following provisions:

(i) Developer and its contractors shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. Compensation for all construction work related to the Project shall be paid at not less than the general prevailing rate of per diem wages determined in accordance with Prevailing Wage Laws for each craft or type of workman or mechanic needed to perform the work.

(ii) Developer and its contractors and all sublessees of the Site or part thereof shall comply with the City of San Leandro Living Wage Ordinance (San Leandro Municipal Code, Title 1, Article 6, Chapter 6) (“**LWO**”).

20. Transfer and Assignment. The qualifications of Developer are of particular concern to City. Accordingly, no assignment or other transfer of this Agreement shall be permitted other than to an affiliate of Developer in which Edward J. Miller maintains at least fifty-one percent (51%) or more of the ownership interests.

21. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a non-business day.

City: City of San Leandro
Office of Business Development
835 East 14th Street
San Leandro CA 94577
Attn: Cynthia Battenberg, Business Development Manager

Developer: Cal Coast Development, LLC
1450 W. Redondo Beach Blvd., Suite 150
Gardena, CA 90247
Attn: Edward J. Miller

22. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees (defined in Section 8) from and against all Claims (defined in Section 8) arising out of or in connection with the actions of Developer or Developer's agents, employees, officers, representatives, contractors or consultants pursuant to this Agreement; provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. This Section shall survive the expiration or earlier termination of this Agreement.
23. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.
24. Entire Agreement, Amendments, Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
25. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted pursuant to Section 20; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.
26. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
27. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
28. Developer's Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 28 not to be true, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of Agency.

(i) Authority. Developer is a limited liability company, duly organized and in good standing under the laws of the State of Delaware and in good standing and authorized to do business in the State of California. Developer's manager and sole member is Edward J. Miller. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer, enforceable in accordance with their respective terms.

(ii) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

THE CITY OF SAN LEANDRO,
a municipal corporation

By: _____
Steve Hollister, Interim City Manager

ATTEST:

By: _____
Marian Handa, City Secretary

APPROVED AS TO FORM:

By: _____
Jayne W. Williams, City Attorney

DEVELOPER:

CAL COAST DEVELOPMENT, LLC
a Delaware limited liability company

By: _____
Edward J. Miller

Title: Manager and Sole Member

EXHIBIT A – SITE



**EXHIBIT B
DEVELOPER WORK SCHEDULE**

Task	Deadline
1. <u>Presentation of ENRA to Shoreline-Marina Committee</u>	September 23, 2008
2. <u>Presentation of ENRA to City Council and Developer Signature of ENRA</u>	October 20, 2008
3. <u>Participate in all Shoreline Development Citizens Advisory Committees.</u> Developer shall attend all Shoreline CAC meetings, scheduled to begin in December 2008, and prepare materials for presentation at meetings, as needed.	Ongoing
4. <u>Participate in all Community Meetings.</u> Developer shall attend all Town Hall Community meetings and other community meetings to share Project concepts and obtain feedback.	Ongoing
5. <u>Participate in City Council Meetings.</u> Developer shall be available and participate in, as requested by City staff, all Shoreline-Marina Committee meetings, City Council meetings and work sessions.	Ongoing
6. <u>Preliminary Project Concept Submittal.</u> The Developer shall deliver to the City a preliminary development concept, including conceptual land use and massing plan.	July 2009
7. <u>Developer Due Diligence.</u> Completion by the Developer of the due diligence which may include the following items: soils/geotechnical, phase 1, hazardous materials, title review, boundary/ALTA survey, initial traffic study, initial utility study, acoustics, entitlement process, retail market study, hotel market study, development fee study, and/or other studies as needed at Developer's sole discretion.	October 2009
8. <u>Negotiation of Business Terms for Agreement Regarding Development of Project.</u> Developer and City will agree to main business terms.	December 2009
9. <u>CEQA Review.</u> City completes review of project pursuant to CEQA, including EIR if required.	April 2010

<p>10. <u>Final Project Concept Submittal.</u> Developer to submit Detailed Development Program including: type and size of construction; number of hotel rooms and square foot of conference space; residential unit mix by number of bedrooms and square feet per unit, including number of affordable units by type of unit; parking plan; retail plan including square feet and target tenants, site plans and floor plans; access/circulation plan; elevations; and, financial pro forma.</p>	<p>April 2010</p>
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