

CITY OF ALAMEDA

Memorandum

To: Honorable Chair and Members of the
Alameda Reuse and Redevelopment Authority

Honorable Chair and Members of the
Community Improvement Commission

Honorable Mayor and Members of the City Council

From: Debra Kurita
Executive Director/City Manager

Date: March 5, 2008

Re: Approve First Amendment to Alameda Point Exclusive Negotiation Agreement Between the Alameda Reuse and Redevelopment Authority, Community Improvement Commission, City of Alameda, and SCC Alameda Point, LLC, Extending the Timeline for Several Mandatory Milestones and Creating a New Developer Consultant Costs Account

BACKGROUND

On May 8, 2007, the Alameda Reuse and Redevelopment Authority (ARRA) selected SunCal Companies as its Master Developer for Alameda Point and established a 60-day due diligence and Exclusive Negotiation Agreement (ENA) negotiation period. The due diligence period was completed, and the ENA between SCC Alameda Point, LLC (SunCal), a SunCal entity, and the ARRA, Community Improvement Commission (CIC), and City was executed on July 18, 2007. Since the ENA approval, SunCal has continued its due diligence and conducted site investigations; held two community meetings; and met with local, regional, State, and Federal stakeholders, including the United States Navy (Navy).

The ENA set forth a multi-year timeline and included a schedule of mandatory performance milestones outlined in Exhibit B-1 of the ENA ("Schedule of Performance"). The Schedule of Performance assumed that SunCal would implement the Alameda Point Preliminary Development Concept (PDC), which served as the basis for the 2006 final draft Conveyance Term Sheet with the Navy. During its evaluation of the PDC, SunCal conducted site investigations and technical analyses and determined that the PDC is not financially feasible. SunCal's due diligence indicates that the previous costs to mitigate the site's flood and geotechnical conditions were underestimated, and that revenues from certain portions of the site would not support these increased costs.

As a result of these circumstances, SunCal wants to pursue new and distinct development concepts for the site. However, SunCal does not believe that it can fully explore alternative development concepts within the Schedule of Performance outlined

Honorable Chair and Members of the Alameda House and
Honorable Chair and Members of the Community Improvement Commission
Honorable Mayor and Members of the City Council

in the ENA. As a result, SunCal has requested that the ARRA approve a six-month extension of five Mandatory Milestones in the Schedule of Performance, including the submission of the Development Concept (and its related plans) and the Entitlement Application, to September 19, 2008, and November 18, 2008, respectively. SunCal did not request an extension of the ENA's overall 24-month timeline. On February 6, 2008, the ARRA considered SunCal's request for a time extension and directed staff to negotiate an amendment to the ENA to provide such an extension subject to specific terms and conditions. The recommended First Amendment to the ENA ("Amendment") is attached.

In addition to the new information regarding the site conditions at Alameda Point, the housing and credit markets have continued to decline dramatically in recent months. A number of SunCal projects within California are now seriously financially distressed and, since mid- December, SunCal has significantly scaled back its planning and pre-development activities with regard to the Alameda Point project. SunCal has informed ARRA staff that it has significant outstanding invoices due and owing to its consultants.

DISCUSSION

In response to SunCal's request for an extension of its project milestone schedule, the ARRA Board directed staff to negotiate an ENA amendment that provides SunCal the additional time to re-plan the project to accommodate the newly discovered site conditions. However the ARRA Board also directed staff to negotiate additional ENA provisions to more fully ensure that sufficient developer investment is made to achieve the deferred milestones.

The following provides an overview of the terms and conditions that were requested by the ARRA and how those issues are addressed in the negotiated ENA Amendment:

- 1) **Document Delivery.** The ARRA requested SunCal to provide copies to ARRA staff of specific, important components of its work so that ARRA staff can gauge the level of effort required by both parties to meet the extended Mandatory Milestones. The "Document Delivery" condition requires that SunCal, within 15 days of the approved Amendment, provide to ARRA staff copies of the following work conducted to date:
 - i. Adaptive Reuse. Historic preservation and adaptive reuse technical analyses;
 - ii. Market Studies. Market reports or studies of land uses considered for Alameda Point; and
 - iii. Project Pro Forma. Most current drafts of Project Pro Formas. All proprietary work will be transmitted directly to ARRA's consultants.

SunCal agreed to those provisions, and they are included in the proposed amendment.

- 2) **Negotiating Costs Account.** The existing ENA provides that SunCal must deposit \$342,000 each quarter into a Negotiating Cost Account in order to fully fund ARRA's costs. SunCal made its first two quarterly deposits in July and October of 2007, but has not paid its January 2008 payment. Currently, there is a fund balance of approximately \$425,000 in the ARRA's Negotiating Costs Account, partially because of the slowdown in activity with SunCal. The ARRA suggested that accumulated balances over the \$342,000 base amount would be more efficiently dedicated towards SunCal's technical consultant costs.

The Amendment allows this balance to be applied in the following manner: \$342,000 towards SunCal's outstanding January 18, 2008, quarterly deposit to the Negotiating Costs Account; and \$83,000 to SunCal to pay a portion of third-party costs consulting costs incurred to date. Subsequently, SunCal will be obligated to replenish the Negotiating Costs Account to ensure that at the commencement of each new quarter, there is a full \$342,000 in the account, as shown in the attached Payment Schedule.

SunCal agreed to these provisions, and they are included in the proposed amendment.

- 3) **Developer Consultant Costs Account.** To ensure that there would be a transparent source of funding to pay for the necessary project planning activities, the ARRA required that a new account be created to ensure that SunCal will spend the funds necessary to achieve the extended Mandatory Milestones. It is also important to avoid SunCal contractually controlling Alameda Point over the next nine months without making progress on entitling and redeveloping the land. To ensure that work is undertaken, SunCal will deposit additional funds into a new "Developer Consultant Costs Account" and expend a sufficient amount of these funds each month so that SunCal meets the extended Mandatory Milestones. The ARRA proposed that the Developer Consultant Cost Account be fully funded within ten days of the date of the ENA amendment. SunCal has requested that the Account not be funded until April 19, 2008, the date of the next ARRA Negotiating Cost deposit.

The following summarizes the parameters of the new Developer Consultant Costs Account:

- i. Quarterly Deposit. Beginning in the second quarter of 2008 (April 19, 2008), SunCal will make quarterly deposits of \$350,000 over the remaining term of the Amended ENA to a new account that will be held in a separate escrow account established, paid for, and used by SunCal for

any third-party consultant or legal expenses incurred after the effective date of the Amendment. As described previously, the first quarter 2008 (January 19, 2008 – April 19, 2008) funds will be used by SunCal to pay for third-party work conducted to date. These first quarter funds consist of \$83,000 of surplus funds currently in the ARRA's Negotiating Costs Account and \$267,000 from SunCal, for a total \$350,000 expenditure.

- ii. Payment Rate. SunCal will be obligated to expend at a minimum monthly rate of \$117,000, which is the monthly average of the quarterly deposit on third-party consultant expenses over the term of the Amended ENA. Failure to expend the full \$350,000 at the end of each quarter is a default pursuant to the ENA.
- iii. Termination or Default. If SunCal terminates or defaults on the Amended ENA, any remaining funds in the Account would revert to the ARRA.

Staff concurs with SunCal's proposal to defer its initial Developer Consultant Costs Account deposit to April 19, 2008. The proposed Amendment contains this approach.

- 4) **Monthly Reporting.** The ARRA also required that a mechanism for monitoring the monthly progress and expenditures of SunCal be created, as it conducts the work necessary to meet the extended Mandatory Milestones. This will help ensure that activity is underway on redevelopment of Alameda Point. SunCal will be required to provide a monthly report to the ARRA, which includes the following information:

1. Task Descriptions. A reasonably detailed narrative of the tasks accomplished and activities undertaken related to predevelopment of Alameda Point.
2. Invoices. Copies of all invoices from third-party consultants for work expended against the Developer Consultant Costs Account.
3. Expenditures. Accounting of the monthly and cumulative expenditures of the Developer Consultant Costs Account.

SunCal agreed to these provisions, and they are included in the proposed Amendment.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no financial impact to the General Fund, CIC, or ARRA budgets. The required deposits, along with a cost recovery provision in the ENA, ensure that the selected developer pays for ARRA staff costs and consultant expenses.

RECOMMENDATION

Approve the First Amendment to the Alameda Point Exclusive Negotiation Agreement with SCC Alameda Point, LLC (SunCal), extending the timeline for several Mandatory Milestones and creating a new Developer Consultant Costs Account.

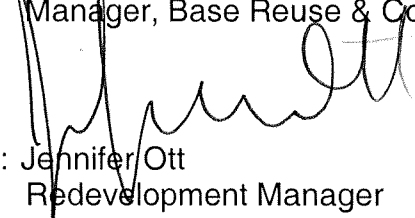
Respectfully submitted,



Leslie A. Little
Development Services Director



By: Debbie Potter
Manager, Base Reuse & Community Programs Division



By: Jennifer Ott
Redevelopment Manager

LAL/DP/JO:

Attachments:

1. First Amendment to Alameda Point Exclusive Negotiation Agreement
2. Payment Schedule for SunCal's Quarterly Deposits to Negotiating Costs Account and Developer Consultant Costs Account

**FIRST AMENDMENT
TO
ALAMEDA POINT
EXCLUSIVE NEGOTIATION AGREEMENT**

THIS FIRST AMENDMENT TO ALAMEDA POINT EXCLUSIVE NEGOTIATION AGREEMENT (“**First Amendment**”) is made as of March 4, 2008 (the “**Effective Date**”), by and between **ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**, a Joint Powers Authority established by the City of Alameda and the Community Improvement Commission under the California Joint Exercise of Powers Act and a public entity lawfully created and existing under the State of California (the “**ARRA**”), the **COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA**, a public body corporate and politic (“**CIC**”), and the **CITY OF ALAMEDA**, a municipal corporation (the “**City**”, and together with ARRA and CIC, “**Alameda**”) and **SCC Alameda Point LLC, a Delaware limited liability company** (“**Developer**”). Alameda and Developer are individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

RECITALS

This First Amendment is entered upon the basis of the following facts, understandings and intentions of the Parties.

A. The Parties entered into that certain Alameda Point Exclusive Negotiation Agreement, dated as of July 18, 2007 (the “**Original Agreement**”), which shall be amended by this First Amendment.

B. Developer has requested an extension of the Mandatory Milestones set forth in Exhibit B-1 of the Original Agreement pursuant to Section 4.2.1 of the Original Agreement.

C. The Parties hereto now desire to amend the Original Agreement on the terms and conditions hereinafter set forth.

D. The Original Agreement, as amended by this First Amendment, shall hereinafter collectively be referred to as the “**Agreement**”.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions and promises set forth herein, the ARRA, the CIC, the City and Developer agree as follows:

1. Definitions. All capitalized terms used herein shall have the definitions given in the Original Agreement, unless otherwise expressly stated herein.

2. Document Delivery. Notwithstanding anything to the contrary in Sections 3.8.1 pertaining to completion and internal review by Developer, and consistent with Section 3.8.3 of the Agreement, on or before the date which is fifteen (15) days from the Effective Date of this First Amendment Developer shall deliver to Alameda copies of the following technical and financial information prepared or commissioned by Developer for the Project and/or the Project Site: (a) all technical feasibility analysis conducted on the historic preservation/adaptive reuse program for the Project; (b) third-party market reports or studies of land uses considered at the Project Site completed in connection with securing financing, including, without limitation, the market study prepared by the Concord Group; and (c) the most current draft Project Pro Forma (in pdf form) for high density and low density alternatives. Developer may provide confidential or proprietary information directly to Alameda's consultants.

3. Amended Section 6. Section 6 of the Agreement is hereby amended as follows:

a. Amended Heading. The Section 6 heading is hereby deleted and replaced with the following: "Section 6. Alameda Cost Recovery/Reimbursement; Developer Consultant Costs Account."

b. Amended Section 6.2. Section 6.2 of the Agreement is hereby amended to add the following: "Alameda shall provide monthly invoices or timesheets, as appropriate, to Developer for Pre-Development Costs to be reimbursed by Developer pursuant to this Section 6."

c. Amended Section 6.3. Section 6.3 of the Agreement is hereby amended to add the following: "Alameda shall have the right without Developer's consent to adjust line item amounts shown in the Annual Budget so long as such adjustments do not exceed the Annual Budget. By way of example, such adjustments may include adding new consultants, or adjusting funds allocated to staff to consultants or vice versa. If Alameda makes such adjustments, Alameda shall provide the adjusted Annual Budget to Developer within thirty (30) days of completion of such adjustments."

d. Amended Section 6.3.1.1. Section 6.3.1.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

6.3.1.1 On the ninetieth (90th) day following the Approval Date, Developer shall deposit additional funds into the Negotiating Costs Account equal to twenty-five percent (25%) of the Annual Budget (each a "**Quarterly Deposit**"). Commencing as of April 19, 2008, Developer shall deposit sufficient funds into the Negotiating Costs Account to have a beginning balance of twenty-five percent (25%) of the Annual Budget (e.g., if twenty-five percent (25%) of the Annual Budget equals Three Hundred Forty-Two Thousand Two Hundred Four Dollars (\$342,204) and there is a beginning balance of One Hundred Thousand Dollars (\$100,000), Developer shall deposit Two Hundred Forty-Two Thousand Two

Hundred Four (\$242,204)). Developer shall continue this process for each ninety (90) day negotiating period until this Agreement is terminated; provided, however, that in any twelve (12) month period, Developer shall not be responsible for reimbursement of Pre-Development Costs in excess of the Annual Budget as attached hereto or as revised as provided below, however, such excess costs shall be shown as an accrued deficit in the Negotiating Costs Account Ledger.

e. Amended Section 6.3.1.2. Section 6.3.1.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

6.3.1.2 (a) If a deficit of greater than ten percent (10%) of the pro-rated Annual Budget has accrued in the Negotiating Costs Account Ledger for three (3) successive quarters, or for three (3) quarters in any calendar year, Developer and Alameda shall meet and confer in good faith to assess the sufficiency of the Annual Budget amount, and may upon the written consent of each, adjust the Annual Budget accordingly. Thereafter, Quarterly Deposits shall consist of twenty-five percent (25%) of the Annual Budget as revised, plus any deficit accrued in the Negotiating Costs Account Ledger.

(b) The Parties may, upon the written consent of each, adjust the Annual Budget. If Alameda determines that an increase in the Annual Budget is necessary and Developer does not agree, then Alameda shall have no obligation to perform, or cause to be performed, any Pre-Development Work for which such increased amount is necessary, pending resolution of the dispute.

f. New Section 6.3.2. Section 6 of the Agreement is hereby amended to add the following new Section 6.3.2:

6.3.2 Use of Negotiating Costs Account Funds Accrued as of the Effective Date of the First Amendment. The Parties acknowledge that as of the Effective Date of the First Amendment, the Negotiating Costs Account balance equals Four Hundred Twenty-Five Thousand Thirty-Seven Dollars (\$425,037). Alameda shall apply the balance as follows: (a) Three Hundred Forty Two Thousand Two Hundred Four Dollars (\$342, 204) shall be applied as the Quarterly Deposit due on January 18, 2008; and (b) Alameda shall reimburse to Developer the surplus funds in the amount of Eighty-Two Thousand, Eight Hundred Thirty-Three Dollars (\$82,833).

g. New Section 6.4. Section 6 of the Agreement is hereby amended to add the following new Section 6.4:

6.4 Initial Deposit; Developer Consultant Costs Account Ledger.

6.4.1.1 On or before April 19, 2008, (a) Developer and Alameda shall jointly establish an escrow account (the "**Developer Consultant Costs Account**") with First American Title Company at its office located in Pleasanton, California ("**Escrow Holder**") solely for purposes of paying consultant and legal fees and costs of Developer's third-party consultants and attorneys incurred solely from work on the Project on and after April 19, 2008 (collectively, "**Developer Consultant Costs**") except as provided in Sections 6.4.1 and 6.4.5 below, (b) Developer shall deposit cash in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) into the Developer Consultant Costs Account (the "**Initial Developer Consultant Deposit**"), and (c) Developer shall provide a list of consultants Developer has engaged, or intends to engage, to work on the Project (the "**Consultant List**"). Developer shall have the right to update and/or revise the Consultant List.

6.4.1.2 Interest earned on funds in the Developer Consultant Costs Account shall accrue to that account. Developer shall pay all escrow fees related to the Developer Consultant Costs Account, which may be paid out of the funds in that account.

6.4.1.3 All invoices and charges for Developer Consultant Costs made against that account (including invoices and charges paid pursuant to Section 6.4.2 below) shall be recorded on a separate ledger (the "**Developer Consultant Costs Account Ledger**").

6.4.1.4 If Developer's actual Developer Consultant Costs for such ninety (90) day period exceed the Initial Developer Consultant Deposit, Developer shall fund such costs from its own sources.

6.4.1 Federal Transportation Authority Grant. Alameda has obtained a Federal Transportation Authority ("**FTA**") grant for transportation feasibility analyses. Matching funds in the amount of Sixty Thousand Dollars (\$60,000) are required for the release of the FTA grant funds. Immediately upon deposit of the Initial Developer Consultant Deposit into the Developer Consultant Costs

Account, Developer shall instruct Escrow Holder to pay to Alameda Sixty Thousand Dollars (\$60,000) of the Initial Developer Consultant Deposit, which Alameda shall apply as the matching funds for the FTA grant.

6.4.2 Mechanism for Funding Ongoing Developer Consultant Costs. On July 19, 2008 and each ninetieth (90th) day thereafter, Developer shall deposit additional funds into the Developer Consultant Costs Account equal to Three Hundred Fifty Thousand Dollars (\$350,000) (each a “**Developer Consultant Cost Quarterly Deposit**”). Developer shall continue this process for each ninety (90) day negotiating period until this Agreement is terminated. Any extension of this Agreement as provided herein shall extend the procedures set forth in this Section 6.4.2.

Section 6.4.3 Monthly Reporting. Commencing on April 19, 2008 and every thirty (30) days thereafter, Developer shall provide a report (the “**Monthly Report**”) to Alameda. The first Monthly Report shall cover the period commencing on the Effective Date of the First Amendment through April 19, 2008 and shall include payments made pursuant to Section 6.5.2 below as part of the documentation required pursuant to this Section 6.4.3. The Monthly Report shall, at a minimum, include: (a) a narrative of the tasks accomplished and activities undertaken by Developer’s consultants and attorneys on the Project; (b) updates and/or revisions to the Consultant List, if applicable; (c) copies of all invoices for Developer Consultant Costs paid pursuant to Section 6.5.2 below (solely as part of the first Monthly Report); (d) copies of all invoices for Developer Consultant Costs billed to the Developer Consultant Cost Account; and (e) a tally of monthly and cumulative expenditures paid pursuant to Section 6.5.2 below and from the Consultant Cost Account. If Alameda disputes any invoice or charge to the Developer Consultant Costs Account, Alameda shall notify Developer, and if the Parties so agree that an invoice or charge has been inappropriately charged against the Developer Consultant Costs Account, Developer shall promptly replenish the Developer Consultant Costs Account in the amount of the inappropriate invoice(s) or charge(s).

Section 6.4.4 Payment Rate. Developer shall pay Developer Consultant Costs from the Developer Consultant Costs Account at a rate of One Hundred Seventeen Thousand Dollars (\$117,000) per month plus or minus ten percent (10%). If Developer satisfies all of the Mandatory Milestones (except to the

extent the Mandatory Milestone for the Project Pro Forma has been waived by Alameda pursuant to Section 4.2.2 above) on or before the submission and completion dates provided on Exhibit B-1 attached hereto, the Parties shall meet and confer in good faith to re-evaluate the amount and/or rate to be expended by Developer thereafter pursuant to this Section 6.4.4 based on mutually acceptable projections and shall revise Section 7.1.7 below to reflect any mutually agreed upon amount and/or rate adjustment consistent with mutually agreed upon revisions to this Section 6.4.4.

6.4.5 Termination. As part of the establishment of the Developer Consultant Costs Account pursuant to Section 6.4.1.1 above, the Parties shall instruct Escrow Holder that upon termination of this Agreement any surplus funds in the Developer Consultant Costs Account remaining after (a) the completion of the ninety (90) day negotiating period during which this Agreement was terminated, and (b) payment of Developer Consultant Development Costs incurred by Developer after the Effective Date of the First Amendment and prior to such termination, shall be paid either to Alameda pursuant to a termination pursuant to Section 8.1 of this Agreement, or to Developer pursuant to a termination pursuant to Sections 8.2 or 8.3 of this Agreement. Alameda shall have no obligation whatsoever to pay any Developer Consultant Costs, whether incurred prior to or after termination of this Agreement. This Section 6.4.5 shall survive the expiration or termination of this Agreement.

h. New Section 6.5. Section 6 of the Agreement is hereby amended to add the following new Section 6.5:

Section 6.5 Payment of Consultants.

6.5.1 July 18, 2007 through Effective Date. Developer represents and warrants that it shall pay within thirty (30) days of the Effective Date of the First Amendment, all unpaid Developer Consultant Costs incurred during the period from July 18, 2007 to the Effective Date of the First Amendment, except to the extent any such Developer Consultants Costs are subject to dispute between Developer and the applicable consultant.

6.5.2 Effective Date through April 19, 2008. Commencing on the Effective Date of the First Amendment,

Developer shall pay Developer's costs incurred solely from work on the Project (including consultant and legal fees and costs of Developer's third-party consultants and attorneys) incurred during the period from the Effective Date of the First Amendment to April 19, 2008 at a rate of One Hundred Seventeen Thousand Dollars (\$117,000) per month plus or minus ten percent (10%) (prorated for the partial months).

i. Amended Section 7.1.2. Section 7.1.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

7.1.2 Failure of Developer to Make Requested Deposits.

7.1.2.1 In the event Developer fails to make the Initial Deposit or any Quarterly Deposit pursuant to the procedure set forth in Section 6 of this Agreement, Alameda shall have the right to give written notice thereof to Developer specifying the amount of the deposit which was not made. Following the receipt of such notice, Developer shall have fifteen (15) business days to make the required deposit and Alameda shall have the right to suspend all Pre-Development Work being performed by third parties paid by Alameda during such cure period. If Developer has not then made the required deposit, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.2.1 In the event Developer fails to make the Initial Developer Consultant Deposit or any Developer Consultant Cost Quarterly Deposit pursuant to the procedure set forth in Section 6 of this Agreement, Alameda shall have the right to give written notice thereof to Developer specifying the amount of the deposit which was not made. Following the receipt of such notice, Developer shall have fifteen (15) business days to make the required deposit. If Developer has not then made the required deposit, Alameda shall have the right to terminate this Agreement by written notice to Developer.

j. New Section 7.1.7. Section 7 of the Agreement is hereby amended to add the following Section 7.1.7:

7.1.7 Failure of Developer to Pay Developer Consultant Costs.

7.1.7.1 If at the end of the thirty (30) day period following each Developer Consultant Cost Quarterly Deposit, Developer has failed to expend Three Hundred Fifty Thousand

Dollars (\$350,000) (subject to the ten percent (10%) tolerance provided in Section 6.4.4 above) during the prior quarter, then such failure shall be a Developer Event of Default and Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.7.2 If as of April 19, 2008, Developer has failed to expend One Hundred Seventeen Thousand Dollars (\$117,000) per month plus or minus ten percent (10%) (prorated for the partial months) required by Section 6.5.2 above), then such failure shall be a Developer Event of Default and Alameda shall have the right to terminate this Agreement by written notice to Developer.

4. Amended Exhibit B-1. Exhibit B-1 to the Agreement is deleted in its entirety and replaced with Exhibit B-1 attached hereto.

5. Amended Exhibit B-2. Exhibit B-2 to the Agreement is deleted in its entirety and replaced with Exhibit B-2 attached hereto.

6. Amended Exhibit C. Exhibit C to the Agreement is deleted in its entirety and replaced with Exhibit C attached hereto.

7. Authority. The persons signing below represent that they have the authority to bind their respective party, and that all necessary board of directors', shareholders', partners', redevelopment agency's or other approvals have been obtained.

8. Counterparts. This First Amendment may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this First Amendment.

9. Agreement in Full Force and Effect. Except as otherwise expressly modified by the terms of this First Amendment, the Agreement remains unchanged and in full force and effect.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written.

ARRA:

Alameda Reuse and Redevelopment Authority,
a joint powers authority formed under California law

By: _____

Name: _____

Title: _____

Approved as to form:

By: 

Name: DONNA MOONEY

Title: ASSISTANT GENERAL COUNSEL

CIC:

Community Improvement Commission of the City of Alameda,
a public body, corporate and politic

By: _____

Name: _____

Title: _____

Approved as to form:

By: 

Name: Teresa L. Highsmith

Title: General Counsel

CITY:

City of Alameda,
a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:


By: 

Name: Teresa L. Highsmith

Title: City Attorney

DEVELOPER:

SCC Alameda Point LLC,
a Delaware limited liability company

By: 

Name: Bruce V. Cook

Title: General Counsel

Exhibit B-1

**Schedule of Performance
(Mandatory Milestones)**

All defined terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-1 is attached.

Unless otherwise provided, all Mandatory Milestones are measured from the Effective Date of the Original Agreement (July 18, 2007).

A.	<u>Mandatory Milestone</u>	<u>Submission Date</u>
1.	Master Project Schedule	Thirty (30) business days; updated quarterly thereafter
2.	Development Concept	September 19, 2008
3.	Infrastructure Plan	September 19, 2008
4.	Business Plan	September 19, 2008
5.	Entitlement Application	November 19, 2008
B.	<u>Mandatory Milestone</u>	<u>Completion Date</u>
1.	Project Pro Forma	November 19, 2008

Exhibit B-2

**Schedule of Performance
(Non-Mandatory Milestones)**

All terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-2 is attached.

Unless otherwise provided, all Non-Mandatory Milestones are measured from the Effective Date (for example, eight (8) months means the date which is eight (8) months after the Effective Date).

Non-Mandatory Milestones described below are good faith estimates by the Parties of the time required to complete the Transaction Documents.

<u>Non-Mandatory Milestone</u>	<u>Completion Date</u>
1. EDC MOA Amendment	24 months
a. Submit EDC application	19 months
b. Finalize EDC MOA Amendment	24 months
2. NEPA Supplemental Environmental Impact Statement (SEIS)	24 months
a. Project scoping	14 months
b. Circulate Draft SEIS	19 months
c. Hearings and comments	19-24 months
d. Finalize SEIS	24 months
3. Section 106 Memorandum	24 months
a. Revise historic resources report	13 months
b. Complete economic study on buildings	15 months
c. Finalize Section 106 Memorandum amendment	24 months

4. USFWS/NMFS Biological Documents	24 months
a. Biological Assessment/reinitiate Section 7 consultation with USFWS	12 months
b. Finalize new Biological Opinion with USFWS	24 months
c. Predator Management Agreement	24 months
d. Determine if NMFS Biological Opinion necessary/conduct Biological Assessment	18 months
e. Finalize NMFS Biological Opinion	24 months
5. Early Transfer Documents	24 months
a. Finalize Draft Navy Term Sheet	18 months
b. Draft ETCA	15 months
c. Draft Administrative Order (AOC) with Environmental Protection Agency (EPA), Department of Toxic Substances Control, Regional Water Quality Control Board	17 months
d. Draft FOSET	18 months
e. Public Comment/Finalize ETCA, AOC, FOSET, submit to Governor/EPA	21 months
f. Approval by Governor/EPA	24 months
g. Final remediation contract and environmental insurance policies	24 months
6. CEQA Documents	24 months
a. Project scoping	14 months
b. Notice of Preparation	15 months
c. Circulate Draft Environmental Impact Report (EIR)	19 months

d. Hearings and comments/finalize EIR	24 months
7. CAA/DDA	24 months
a. CAA executed	14 months
b. Draft DDA	18 months
c. Public hearings	18-24 months
d. Approval of DDA	24 months
8. Development Agreement/Entitlements	24 months
a. Submit Entitlement Application	16 months
b. Public hearings/approvals	18-24 months
c. Development Agreement finalized and approvals granted	24 months
9. Tidelands Trust Exchange Agreement	24 months
a. Submit draft Tidelands Trust Exchange Agreement to California State Lands Commission (CLSC)	12 months
b. Reach agreement on language with CLSC staff	18 months
c. Obtain approval of CLSC	24 months
10. Public Planning Process	24 months
a. Introductory meetings/constraints analysis	3 months
b. First round public planning charrettes	4-6 months
c. Second round public planning charrettes	6-14 months
d. Development Concept public review	14 months

e. Historic Preservation Plan public review	14-16 months
f. Focused topic community meetings	14-18 months
g. Hearings and comments on EIR/DDA/entitlements	18-24 months

Exhibit C

Annual Budget

[Attached]

SUNCAL COMPANIES
Annual ENA Cost Recovery Budget

EXHIBIT C

City Staff Salary and Benefits	Salary	Benefits	Total	12-Month Duration	Quarterly Negotiating Deposit
City Manager Staff					
Assistant City Manager*	\$188,351	\$56,505	\$244,856	25.00%	\$15,303
Development Services Staff					
Director, Development Services Department	\$172,430	\$51,729	\$224,159	20.00%	\$44,832
Base Reuse Division Manager	\$135,645	\$40,694	\$176,339	75.00%	\$33,063
Redevelopment Manager	\$104,907	\$31,472	\$136,379	30.00%	\$10,228
Contract Administrator	\$68,478	\$20,543	\$89,021	3.00%	\$668
Office Assistant, Base Reuse	\$62,132	\$18,640	\$80,771	15.00%	\$3,029
Other City Staff					
Assistant City Attorney	\$154,898	\$46,451	\$201,289	15.00%	\$7,548
Director, PW	\$171,887	\$51,566	\$223,453	5.00%	\$2,793
City Engineer, PW	\$127,914	\$38,374	\$166,288	15.00%	\$6,236
Supervising Civil Engineer, PW	\$111,740	\$33,522	\$145,262	15.00%	\$5,447
Traffic Engineer, PW	\$71,473	\$21,442	\$92,915	15.00%	\$3,484
Director, Planning and Building	\$166,764	\$58,367	\$225,131	5.00%	\$2,814
Manager, Planning*	\$115,671	\$34,701	\$150,372	50.00%	\$18,797
Director, Finance	\$156,668	\$47,000	\$203,668	3.00%	\$1,528
Subtotal Salary and Benefits			\$488,588		\$122,147
Consultant/Legal Services					
Legal					
Elliman Burke Hoffman & Johnson (CAA, DDA)				\$126,000	\$31,500
Fragner, Seifert, Pace and Winograd (CAA, DDA)				\$90,000	\$22,500
Shute, Mihaly & Weinberger (Tidelands Trust, CEQA, Navy MOA, ETCA, etc.)				\$237,500	\$59,375
Contractual					
Economic & Planning Systems (Land Economics and Fiscal Impact Analysis)				\$182,500	\$45,625
Keyser Marston Associates (Land Economics)				\$10,000	\$2,500
MARC Associates (Inter-governmental Relations)				\$64,000	\$21,000
Russell Resources (Environmental)				\$100,000	\$25,000
Engineering Consultants				\$50,229	\$12,557
Subtotal Consultant/Legal Services				\$ 880,229	\$210,057
TOTAL				\$ 1,368,817	\$ 342,204

* These staff members will be labor monthly to the project as a fixed percent Full Time Equivalent employees; the remaining City staff and consultants will use time sheets to bill time expended on the project.

Proposed SunCal 2008 Payment Schedule

QUARTER	ACCOUNT			Max. Total
	ARRA Cost Recovery (Existing)	SunCal Consultant Account (New)		
April 19 – July 19	\$342,204 ¹	\$350,000		\$692,204
July 19 – Oct. 19	\$342,204 ¹	\$350,000		\$692,204
Oct. 19 – Jan. 19	\$342,204 ¹	\$350,000		\$692,204

¹ For each quarter, the ARRA cost recovery beginning quarterly balance will be \$342,204 (e.g., if there is a beginning balance of \$100,000, SunCal will be required to deposit \$242,204)