EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT ("**Agreement**") is made and entered into as December 17, 2025 (the "**Effective Date**") by and between the CITY OF MARTINEZ, a municipal corporation ("**City**"), and TUCKER SADLER ARCHITECTS, INC., a California corporation ("**Tucker Sadler**" and/or "**Developer**"). The City and the Developer may be individually referred to as a "**Party**" and together as the "**Parties**."

RECITALS

WHEREAS, the Martinez Waterfront encompasses 135 acres along the Carquinez Strait, portions of which have been held in trust by the City on behalf of the State of California since 1851; and

WHEREAS, the Martinez Waterfront includes the 70-acre Marina, which currently includes a public launch ramp, surface parking, fishing pier, 332 boat slips, a dog park, amphitheater, open spaces, and marine-related businesses; and

WHEREAS, the Martinez Waterfront also includes an additional 65 acres of trust lands held by the East Bay Recreation and Park District ("**EBRPD**") and leased to the City, with public recreational facilities including baseball fields, bocce courts, trails, lawn area with playground and picnic facilities, skate park, and one multipurpose field, with more EBRPD open spaces, parks, and recreational uses on adjacent lands, all of which are available to the public; and

WHEREAS, the State Lands Commission and the City worked collaboratively for several years to plan and develop the City's Waterfront Marina Trust Lands Use Plan ("**TLUP**"), which was approved by the State Lands Commission on June 7, 2024; and

WHEREAS, the TLUP outlines a long-term vision to revitalize approximately 135 acres of waterfront, including the marina, open space, recreational areas, education and event center, and marine-related businesses; and identifies water-related recreation, appropriate commercial uses, and public access enhancements as key components to transform the area into a regional destination while supporting the ongoing operations of the Marina; and

WHEREAS, the revitalization of the Martinez Marina and Waterfront has long been identified as a City Council goal and the City Council recognizes that the Marina and Waterfront are unique and valuable community assets and has expressed a strong commitment to ensuring it is safe, and that it develops into a vibrant, accessible destination for residents and visitors alike for years to come; and

WHEREAS, in June 2024, the City's long-standing marina management partner, Almar Marina Management, submitted a 60-day notice to terminate its contract after almost 20 years and this unexpected action required the City to assume direct control of the Marina on an interim basis, effective August 21, 2024; and

WHEREAS, since Almar Marina Management departed with the City in August 2024, the City conducted outreach to various marina operators and developers to see if they were interested in taking over management or partnering on a revitalization effort; and

WHEREAS, Safe Harbor Marinas ("**Safe Harbor**"), the largest owner and operator of marinas in the United States, expressed initial interest and undertook a preliminary pro forma analysis to assess feasibility. Their findings concluded that landside development, to include

hotels, boat storage, and commercial sites, in combination with in-water development, would be necessary to attract boaters, activate the Waterfront, and support long-term operational success of a marina; and

WHEREAS, expressing an openness to understand more, the City was introduced by Safe Harbor to their development partner, Tucker Sadler, an architecture and land development firm with whom they have successfully collaborated on similar projects; and

WHEREAS, in February 2025, staff received an unsolicited proposal from the Developer for a hospitality, retail, and recreational concept within the bounds of the granted lands of the TLUP, indicating the Developer's intent to work with the City to implement the TLUP and revitalize the Martinez Waterfront; and

WHEREAS, the Proposed Development set forth in the Proposal includes Hospitality, Tourism, and Events Facilities, Commercial and Retail, Recreation and Public Amenities, Open Space and Connectivity, Infrastructure and Parking, and Future Flexibility in the remaining areas; and

WHEREAS, in response to the Proposal, staff conducted preliminary due diligence (as is consistent with any development proposal) to assess the merits of the Proposed Development; and

WHEREAS, staff's due diligence included, among other items, meeting with the Developer and Safe Harbor on several occasions,

WHEREAS, staff conducted a background and reference check of the Developer; and

WHEREAS, staff conducted a site visit to several similar facilities built by the Developer, and

WHEREAS, on July 16, 2025, the City Council unanimously voted to enter into the negotiations for this Exclusive Negotiating Agreement with the Developer as the first steps towards considering a public-private partnership with a qualified developer to revitalize the Martinez Waterfront and Marina; and

WHEREAS, the Proposed Project potentially represents a unique and transformative opportunity to partner with an experienced developer to introduce a demand-generating use at the Martinez Marina and Waterfront while saving significant time and City resources compared to a traditional visioning and entitlement process; and

WHEREAS, advancing the Proposed Project through the development analysis and environmental review and other public permitting processes are consistent with the TLUP and the purposes of Senate Bill 1424, Chapter 628, Statutes of 2014; and

WHEREAS, through the development agreement negotiation and environmental review and public consultation and permitting processes, the City and the Developer intend to pursue public review, complete the required environmental impact analyses, including consideration of project alternatives, negotiate a development agreement, and secure all necessary approvals for the project, including a Development Agreement (also referred to herein as a "Definitive Agreement") and State Lands Commission and Bay Conservation and Development Commission approvals; and

WHEREAS, there are several documents and plans governing the Martinez Marina and Waterfront, including without limitation: the City's General Plan, the Martinez Municipal Code, Senate Bill 1424, Chapter 628, Statutes of 2014, and the 2024 TLUP adopted by the City in March 2024 and approved by the State Lands Commission in June 2024; and

WHEREAS, the Developer's Proposed Project is subject to the Public Trust Doctrine, the California Environmental Quality Act ("**CEQA**"), the McAteer-Petris Act governing the San Francisco Bay Conservation and Development Commission, Government Code Section 66600, et seq., the Martinez Municipal Code, as well as other applicable federal, state, and local regulations and laws (collectively, "**Controlling Documents and Laws**"); and the Developer acknowledges and understands the Controlling Documents and Laws will shape the Proposed Project; and

WHEREAS, the development or use of such lands for private residential or non-trust housing purposes is prohibited under state law and the terms of the City's trust grant, as the Martinez Marina and Waterfront is situated upon sovereign lands of the State of California granted to the City of Martinez to be held in trust for the benefit of the people of the State, and pursuant to the California Constitution, the Public Trust Doctrine, and the statutory terms of the legislative grant, such trust lands must be used for purposes consistent with commerce, navigation, fisheries, recreation, and other public trust-related uses; and

WHEREAS, the Developer acknowledges the Proposed Project will require approval and/or be subject to oversight by several public agencies, beyond the City, including the U.S. Army Corps of Engineers, the State Lands Commission, the Bay Conservation and Development Commission, the State and San Francisco Bay Regional Water Quality Control Board, and the California Department of Fish and Wildlife; and

WHEREAS, the City and the Developer additionally agree future public outreach is required and necessary early and continuing throughout the process for the Proposed Project, and intend to develop and implement a comprehensive Public Outreach Plan; and

WHEREAS, the Developer additionally acknowledges and understands significant Developer time, effort, and resources will be needed to advance the requisite re-entitlement effort, and the expenditure of significant time, effort, and resources in no way guarantees success; and

WHEREAS, the Developer has over six decades of experience in mixed-use development across the United States and developing large, complex projects in partnership with multiple parties and a proven track record of creating economic and social revitalization across numerous and diverse communities, such as San Diego, Chula Vista, and San Francisco, which includes similar projects located along the shoreline; and

WHEREAS, the Proposed Project presents a unique and transformative opportunity, particularly given the future entitlement planning of a large site along with uses that would be economic demand drivers for the Martinez Waterfront and Marina, the Northern Waterfront in Contra Costa County, and the surrounding region; and

WHEREAS, the City Council's approval of this Exclusive Negotiating Agreement is an agreement to negotiate with the Developer toward the development of the Proposed Project and its revitalization of the Martinez Waterfront and Marina, but it is not approval of the Proposed Project itself, and if this Exclusive Negotiating Agreement is approved, the next steps will be

significant public outreach, refinement of the proposal, economic viability and environmental impacts analysis, consideration of alternatives, and negotiation of a development agreement.

AGREEMENT

1. RECITALS. The Parties agree the Recitals set forth above are true and are incorporated by reference.

2. PURPOSE. The Parties agree the Purpose of this Exclusive Negotiating Agreement is to create a framework for the City and the Developer to negotiate only with each other for the development of the Proposed Project, to engage in public outreach and gather community input, to complete the required environmental impacts review, and to negotiate a potential development agreement for the Proposed Project. This Exclusive Negotiating Agreement is a first step for the proposed public-private partnership, but it is not a development agreement and is not City approval of any project and does not obligate any Party to enter into a final agreement or approve the Proposed Development.

3. PROPERTY DESCRIPTION. The Martinez Waterfront and Marina is the real property described in Exhibit A, referred to as Proposed Project Area, attached to this Agreement and may be referred to in this Agreement as the "**Property**".

4. AGREEMENT TO NEGOTIATE.

a. **Period of Negotiations**. This Agreement shall commence on the Effective Date for 24 months and shall end on December 17, 2027 (the "**Negotiating Period**"). Any extension of the Negotiating Period shall require approval by the City Council. The Developer further acknowledges the City Council undertakes no commitment or obligation to the Developer to grant such an extension, and the City Council may, in its sole and absolute discretion, approve, conditionally approve, or reject an extension.

b. **Agreement to Negotiate**. During the Negotiating Period, (i) the Developer agrees to take the actions further described in Section 5 below with respect to the Proposed Project, and (ii) the Parties agree to negotiate in good faith with respect to the framework for an ultimate agreement regarding the development, leasing, and operation of the Proposed Development on the Property (a "**Definitive Agreement**"). The Developer acknowledges and agrees the City requires additional due diligence and the Developer shall take the actions set forth in Section 5 prior to having substantive discussions for a Definitive Agreement, and any Definitive Agreement must be ultimately approved by the City Council as a condition to such Definitive Agreement's execution and effectiveness, such approval to be granted, denied, or withheld in the City Council's sole and absolute discretion.

c. **Exclusivity**. Except as permitted under Section 12, the City agrees during the Negotiating Period to negotiate exclusively with the Developer regarding the Proposed Development to be located on the Property. The City agrees, during the Negotiating Period, to negotiate exclusively and in good faith with the Developer regarding the Developer's Proposed Development for the Premises. The Developer agrees the City is not precluded from negotiating with other parties related to other City properties.

d. **End of Negotiating Period**. Unless this Exclusive Negotiating Agreement terminates in accordance with its terms prior to the expiration of the Negotiating Period, then upon

the expiration of the Negotiating Period, this Exclusive Negotiating Agreement shall automatically and immediately terminate without the need for further notice and/or action by either Party. Upon such automatic termination, neither Party shall have any further rights, remedies, responsibilities, obligations, and/or liability under this Agreement including, without limitation, the obligation to continue to negotiate with respect to the Proposed Development, except as set forth in those provisions of this Agreement that expressly survive the expiration of the Negotiating Period or earlier termination of this Agreement, including this Agreement's Indemnity provisions.

e. **Right to Terminate or Not Reach Agreement**. If at any time, either Party determines in its sole and absolute discretion, the Proposed Development is not feasible or financeable or cannot be entitled, or the Party does not otherwise desire to proceed with the negotiations for any reason, such Party may provide written notice to the other Party of such determination. The Developer acknowledges the City expects the ultimate Proposed Development to include hotels, as expected to be necessary to the financial viability of the project. The Developer expressly agrees the Project will need to be self-financing, without any City financing. The City reserves the right to cease negotiations if the Developer cannot provide a proposal that is self-financing. The Negotiating Period and this Exclusive Negotiating Agreement shall automatically terminate on the date of delivery such notice, and except for any obligations or liability pursuant to provisions of this Exclusive Negotiating Agreement that expressly survive termination, including this Exclusive Negotiating Agreement's Indemnity provisions, neither Party shall have any further rights, remedies, or obligations to the other Party under this Agreement and each Party shall be relieved and discharged for all further responsibility or liability hereunder.

5. PROPOSED DEVELOPMENT. The Proposed Development contains publicly-accessible mixed-use components on the landside of the Marina, proposed to be developed by Tucker Sadler, and publicly-accessible waterfront-related components on the waterside of the Marina, proposed to be developed by Tucker Sadler and/or a mutually-approved marina operator. Together, the Landside Development and the Waterside Development comprise the "**Proposed Development**" or **"Proposed Project."**

a. **Proposed Landside Development by Tucker Sadler.** Developer's Proposal is a mixed-use commercial and hospitality development, which may include the following proposed components, all subject to change via the public outreach and project consideration and environmental impacts review process:

- **Recreation and Public Amenities:** A pool deck, sport courts and fields, an indoor water recreation amenity, dog park, kite area, public art, and enhanced public boat launch facilities for both motorized and non-motorized vessels.
- **Open Space and Connectivity:** Public plazas and community gathering spaces, improved access to the pier, enhanced connections and improved public access with the existing park, grass and beach-style waterfront areas, connectivity to the downtown, and extensive pedestrian-friendly pathways, active and passive open space, as well as marshland and habitat restoration.
- **Hospitality, Tourism, and Events Facilities:** Hotels, commercial facilities, and other mixed-use components providing lodging for a variety of clientele and needs such as extended stay, boutique/specialty tourist, and business hotels; a yacht club, sea

scouts' facility, community/event center; and an outdoor amphitheater with supporting back-of-house space.

- **Commercial and Retail:** New commercial/retail buildings, restaurants, and supporting commercial uses associated with boating, fishing and bait shop, and waterfront activities.
- **Infrastructure and Parking:** Surface and underground parking, along with new public infrastructure including roadways, secondary project access, utilities, sidewalks, and lighting. The project will also include a designated area planned for potential future ferry service, allowing flexibility if a ferry operator and ferry service demand allows. The project will also include a proposed interim use for that part of the project site that would be compatible with potential future ferry service.
- **Future Flexibility:** A designated area reserved for potential future development, which could accommodate additional commercial, hotel, and/or other allowable uses based on market demand. Considering the future helps support the proper Environmental Review process to conduct as part of the process.

b. **Proposed Waterside Development by Tucker Sadler and/or a Mutually-Approved Marina Operator.** Tucker Sadler's Proposal is a waterfront and marina revitalization, including the following proposed components, all subject to change via the public outreach and project consideration and environmental impacts review process:

- **Marina**: New and upgraded boat slips and fueling stations, designed to accommodate a range of vessels from recreational boats to larger vessels, and potentially ferry service.
- **Seawall and Breakwater**: A redesigned and/or repaired eastern seawall and northern breakwater to minimize the ongoing need to dredge the marina.
- **Boat Launch and Storage:** New boat storage and maintenance facility, with a new boat launch, and storage for boats and non-motorized vessels.
- **Non-Motorized Vessel Access:** New access and launch points for non-motorized vessels, including kite surfing, wind surfing, paddleboards, canoes, kayaks, and other non-motorized vessels.
- **Club and Community Facilities:** In addition to the new yacht club and sea scouts' facilities, provide buildings, facilities, and storage for new fishing and boating clubs, with focused community, youth, educational, and seasonal events and programming.
- **Pedestrian Amenities:** Pedestrian and accessible public marina promenades, viewing decks, and other open spaces.

c. Any modification of the scope of the Proposed Development or the area and boundaries of the Property must be made by mutual written agreement of the Parties. The

Parties acknowledge the preliminary design materials to be provided by the Developer pursuant to Section 6 below will be conceptual in nature and subject to revision and refinement throughout the Negotiating Period in order to achieve a plan for the Proposed Development acceptable to each of the Parties. The Parties additionally recognize that changes may occur in the Proposed Development as additional information is obtained during the Negotiating Period and as the City's decision-making evolves through the CEQA process and the applicable other government approvals process.

6. REQUIRED DEVELOPER SUBMITTALS. The Developer acknowledges taking the actions and submitting the items set forth in this Section 6 is necessary to further define the scope of the Proposed Development as well as for City to evaluate the financial and market feasibility of the Proposed Development and the possibility of a Definitive Agreement. Accordingly, during the Negotiating Period, the Developer agrees to take the actions set forth in the following Sections 6(a) through (h):

a. **Public Outreach**.

i. Public Outreach Strategy. The City shall develop, in consultation with the Developer, and communications consultants selected by City at the Developer's expense under Section 10, a Public Outreach Strategy for the public outreach and public consideration process of the Proposed Project after the approval of this ENA. The purpose of the public outreach strategy is to obtain input and feedback on the Proposed Development from relevant stakeholders, which include, but are not limited to: local, regional, state, and federal agencies; tribal governments, community-based organizations; the business community; Marina and Waterfront users; and the community at large.

ii. Outreach Efforts**.** During the Negotiating Period and per the Public Outreach Strategy, the Developer shall participate with City in Proposed Development's public outreach efforts, including stakeholder outreach, public meetings, and other outreach as desired in connection with the Proposed Development and/or as set forth in the Public Outreach Plan. The Developer agrees to provide City with no less than 10 Business Days' advance written notice of any meetings with stakeholders with respect to the Proposed Development. In addition, the Developer agrees to coordinate directly with the City prior to releasing and/or making any public comments or statements with respect to the Proposed Development.

b. **Proposed Development Preliminary Project Description**. Within three months after execution of this Exclusive Negotiating Agreement, or a later time as agreed in writing by the City and the Developer, the Developer shall prepare and submit to the City a preliminary project description and site plan (together, "**Preliminary Project Description**") for the Proposed Development, which shall be in narrative form with sufficient detail to conceptually understand the Proposed Development and each component thereof, as well as any infrastructure proposed to be developed on the Property thereby allowing City to explore the project description and ancillary uses. The Preliminary Project Description shall be accompanied by preliminary site plans and drawings as follows:

i. Colored conceptual renderings and drawings, which should be of sufficient detail to establish the Proposed Development's design theme, site layout, building massing, architectural quality, circulation, landscape concept, and other elements of the Proposed Development; and

ii. A scaled site layout (*i.e*. a site plan) of all buildings, parking layout and other features necessary for City to understand the scope of the Proposed Development.

The Preliminary Project Description and preliminary drawings shall depict a timeless design that honors Martinez's distinctive architectural legacy while creating a vibrant destination for existing and future generations by drawing from local history, creating a sense of place, using natural materials, and design with sensitivity to the natural environment. The Preliminary Project Description and preliminary drawings shall be used by the City and the Developer in refining the project scope, ensuring consistency with applicable planning goals, and identifying key issues to be addressed in subsequent design development.

c. **Preliminary Development and Entitlement Approach**. Within three months after execution of this Exclusive Negotiating Agreement, or a later time as agreed in writing by the City and Developer, the Developer shall submit to the City a preliminary development and entitlement approach in narrative form with anticipated timelines, major milestones, requisite governmental approvals, inclusive of the State Land Commission, Bay Conservation Development Commission, and other environmental permitting agencies approval processes, and construction phasing, through to the proposed development schedule of performance and project opening date.

d. **Market Demand and Economic Feasibility Study**. The Developer shall produce and provide the City with a market demand and economic feasibly study for the primary and ancillary uses of the Proposed Development, to support the Proposed Development's feasibility. Promptly following the Effective Date, the Parties agree to work in good faith to efficiently define the scope of such market demand and economic feasibility study. The Developer also agrees the City will conduct a peer review of this market demand study using a consultant selected by the City and the Developer at the Developer's expense.

e. **Preliminary Project Financing Plan**. Within three months after execution of this Exclusive Negotiating Agreement, or a later time as agreed in writing by the City and Developer, the Developer shall submit to City a preliminary project financing plan, explaining the intended project financing for both the water and land side developments. All Parties agree the City intends the Proposed Project to be self-financed and self-sustaining, without any City financing or any risk to the City's taxpayers.

f. **Project Labor Agreement**. The Developer shall commence substantive negotiations with all local labor unions likely to perform work on the Proposed Development regarding terms to be incorporated into a corresponding project labor agreement(s) or equivalent with such unions and provide a written report to City with respect to progress on the same.

The Developer shall also commence substantive negotiations with hotel and hospitality labor unions likely to operate the Proposed Development regarding terms to be incorporated into a corresponding labor peace agreement(s) or equivalent with such unions and provide a written report to City with respect to progress on the same.

g. **Local Hire/Public and Community Benefits Plan**. The Developer shall provide to City (i) a proposed a local hire plan to hire local qualified and experienced consultants, general and specialty contractors, specialty trades and vendors with respect to the construction and operation of the Proposed Development, and (ii) a proposed public and community benefits plan with respect to the benefits of the Proposed Development to the public.

h. **Identification of Partners**. Within six months after execution of this Exclusive Negotiating Agreement, or a later time as agreed by City and Developer, the Developer shall identify and provide to City documentation of the expertise, experience and financial capability to undertake the potential development of the Property of all Developer's proposed partners in connection with the financing and operation of the Proposed Development (*e.g.*, with respect to hotels, attractions, facilities, and/or operations).

7. PROPERTY DUE DILIGENCE.

a. **Right of Entry License Agreement**. Upon written request from the Developer, and subject to the preconditions for conducting Ground Work (as defined below) and any necessary CEQA review, the City shall consider approval of one or more temporary Right of Entry License Agreement (each an "**ROE License**") on City's standard terms and conditions for those portions of the Property not subject to an agreement with a third party and under the immediate control of City permitting Developer and its employees, contractors, subcontractors, and agents to enter designated portions of the Property for the purposes of conducting soils tests and other due-diligence tests, investigations, and examinations in, on, under or about the Property (collectively, "**Work**"), all at the Developer's sole cost and expenses. As a condition to entering any designated portions of the Property under the ROE License to conduct Work requiring ground disturbances or consisting of any subsurface or invasive testing or investigation, including any sediment testing in the Marina (collectively, "**Ground Work**"), (i) the Developer shall obtain the City's consent to an associated Work plan; provided the City may grant, withhold, or condition consent in its sole and absolute discretion, and (ii) a City-appointed monitor with experience in the type of Ground Work proposed to be conducted shall be present to observe the Ground Work and to advise the City whether Ground Work was carried out in accordance with the Work plan in accordance with accepted industry standards.

b. **Indemnity**. The Developer agrees, to the fullest extent provided by Law (as defined in Section 24(k) below), to defend, indemnify, and hold harmless the City, its Councilmembers, employees, officials, contractors, subcontractors, and agents (each a "**City Party**" and collectively, "**City Parties**") as well as the Property from any and all claims, demands, liability, losses, costs, damages, expenses (including, without limitation, all reasonable attorneys' fees and consultant/expert fees), liens, awards, fines, penalties, charges, actions, causes of actions, suits of any kind, administrative or judicial proceedings, orders, and/or judgments, whether based on contract or in tort, at law or in equity, or as a violation of any Laws (collectively, "**Claims**") as a result of any Work or accessing the Property, except to the extent arising from either: (i) the Developer's discovery of any pre-existing condition unless Developer (A) negligently exacerbates such condition, (B) performs the Work in a manner inconsistent with commonly accepted industry standards or in violation of Laws, or (C) performs the Ground Work in a manner inconsistent with the Work plan; or (ii) City's sole negligence or willful misconduct. The indemnity set forth in this Section 6(b) shall survive the expiration of the Negotiation Period or earlier termination of this agreement and also be in addition to, and not in lieu of, the indemnity set forth in Section 17 below and any indemnity provisions set forth in any ROE License, Three-Party Agreement, and/or other agreement.

c. **ROE License Term**. Any ROE License issued by City shall in no event have a term extending beyond the Negotiating Period or the earlier termination of this Agreement. Notwithstanding anything to the contrary in any ROE License, any ROE License issued by the City to the Developer shall automatically terminate upon the expiration of the Negotiating Period

or termination of this Agreement. Any obligations accruing under the ROE License prior to termination shall survive.

8. DEVELOPER'S FINDINGS, STUDIES, AND REPORTS.

a. **Products**. The Parties acknowledge and agree the Developer, and/or third parties on behalf of the Developer, have commissioned, prepared, shall be preparing, or are in the process of preparing various items and work product in connection with and related to the Proposed Development, including, not limited to, the following (collectively, as the same may be in draft form, initially prepared and/or revised, "**Products**"):

- design, architectural, and engineering products, plans, reports, tests, studies, cost estimates, and investigations;
- development and construction related plans, phasing, schedules, and costs;
- marketing analysis and studies;
- geotechnical analysis and surveys;
- soils and materials investigations, tests, reports, and results;
- hazardous materials investigations, tests, reports, and results;
- air quality and greenhouse gas emissions analysis;
- noise and vibration study;
- stormwater management and hydrology study;
- sea-level rise analysis;
- biological resources report;
- cultural and tribal resources study;
- traffic impact study, vehicle miles traveled analysis, and parking and transportation demand management plan;
- utility infrastructure plan;
- financial and/or feasibility analysis and proformas;
- due diligence related items;
- and work product documents.

The Developer agrees to provide to the City (i) promptly following completion, copies of all Products prepared in connection with this Exclusive Negotiating Agreement regardless of whether the Developer's rights to proceed with the Proposed Development have been terminated, and (ii) upon the City's request, drafts and progressions of all such Products. Subject to Section 8(b) below, copies of all Products that are provided to the City are provided as-is and without any representation or warranty whatsoever, or recourse or liability to the Developer of any kind.

b. **Transferable Products**. Products related to the physical condition of the Property, including any structures located thereon, subsurface conditions, and conditions of water and sediment, shall be referred as "**Transferable Products**." The Developer shall use commercially reasonable efforts to cause all contracts with third parties preparing Transferable Products to provide Transferable Products be prepared for the benefit of the Developer and the City and/or in any event be transferable in whole part by and to the City without restriction, cost, or fee. Upon the expiration of the Negotiating Period or earlier termination of this Exclusive Negotiating Agreement and regardless of whether a Definitive Agreement is executed, the Developer shall be deemed to have transferred its interest in Transferable Products already provided to the City, and the Developer shall immediately deliver to the City the most up to date versions/copies of all Transferable Products not already delivered to the City, in both cases as-is and without any representation or warranty whatsoever, or recourse or liability to the Developer of any kind, except as to the delivery of the most current complete form of the Transferable

Products generated by the Developer or generated on the Developer's behalf. Following such transfer, the Transferable Products shall be the property of the City and the City shall have the right, at no cost to City and in its sole and absolute discretion, to use, grant, license, reproduce, or otherwise dispose of such Transferable Products to any person or entity, in connection with the any future development of the Property, or for any other reason. The Developer represents and warrants all Transferable Products provided to the City are transferable to the City without cost or expense to the City. The Developer agrees the City may transfer and use, grant, license, reproduce, or otherwise dispose of such Transferable Products to any person or entity; provided the City makes no representation or warranty and secures a written waiver agreement confirming, to the extent allowed by applicable law, the Developer shall have no liability to the City or other transferee with respect to the accuracy or breadth of information contained in the Transferable Products or the use thereof.

c. **Other Products**. As between the Parties, all Products other than Transferable Products ("**Other Products**") shall be and remain the sole property of the Developer and shall not be deemed transferred to the City; provided, however, the City shall not be prohibited or limited from disclosing and providing copies of any Other Products to a third party as the City determines such disclosure and/or production is required pursuant to the California Public Records Act, the Brown Act, or other requirement under applicable Laws.

d. **Confidential Document Exchange.** The Parties agree documents may be confidentially exchanged between the Parties under applicable law without disclosure to any other party as permitted by Government Code Section 7927.605 and Section 7925.005 and any other applicable law.

e. **Survival**. The terms of this Section 8 shall survive the expiration of the Negotiating Period or the earlier termination of this Agreement.

9. AGREEMENT TRANSFER. The expertise, experience, and financial capability to undertake the potential development of the Property as contemplated by this Exclusive Negotiating Agreement are of significant importance to the City entering into this Exclusive Negotiating Agreement. Any attempt by the Developer to transfer or assign this Exclusive Negotiating Agreement or any rights or duties hereunder, whether by operation of Law or otherwise, shall be void and shall absolutely and conclusively terminate the Developer's rights hereunder; and further, any assignment or transfer of any partnership, limited liability company interest, corporate stock or other ownership or management interest in either member of the Developer or in any partner, shareholder, manager, or member of the Developer, or change in form or percentage ownership of either member of the Developer without the prior written consent of the City shall be void and shall absolutely and conclusively terminate the Developer's rights hereunder. If, nevertheless, the City consents or is deemed or required by law to consent to a transfer or assignment of this Exclusive Negotiating Agreement, then as a condition precedent to such consent and as non-refundable consideration for such consent to a transfer or assignment of this Exclusive Negotiating Agreement, the Developer shall pay to the City an amount equal to the excess, if any, of the net consideration received by the Developer as a result of such transfer or assignment over the sum of the costs and expenses paid or incurred by the Developer prior to any transfer or assignment in performing its obligations under this Exclusive Negotiating Agreement.

10. COSTS AND EXPENSES.

a. **General Costs and Expenses**. The Developer hereby agrees within 30 days of the Effective Date or a later time as agreed in writing by the City and Developer, to enter into a reimbursable cost recovery agreement with the City, in a form approved by the City Attorney, to pay for all reimbursable costs incurred by the City after the execution of this Exclusive Negotiating Agreement ("Reimbursable Costs"), both direct and indirect, including state or federally mandated costs, associated with review and processing of the Proposed Project. Reimbursable costs include, but are not limited to, all items within the scope of the City's adopted User Fee Schedule, except as modified herein, as well as the cost of retaining professional, legal, and technical consultant services and any services necessary to perform functions related to review and processing of the applications for the and inspection of the work. Fees for consultant services, peer review, or plan check shall be at actual cost plus 10 percent for administrative oversight charge. The City shall provide Developer an accounting of the costs charged against this fund on a monthly basis.

b. If, for any reason, a City invoice for replenishment of the Reimbursable Costs from Developer is not paid in full within 45 days of being sent by the City, the City may, at the sole and exclusive discretion of the Community and Economic Development Department, temporarily or permanently halt processing of the Proposed Project and, after notice in the manner required by applicable law, may deny the application. Prior to completion of processing of any phase of the project, any and all outstanding amounts due pursuant to this Exclusive Negotiating Agreement shall be paid. The Community and Economic Development Department may withhold issuance of further plan checks, entitlements, permits, certificates of occupancy, etc., until all required processing fees have been paid in full. The Developer acknowledges and agrees to the provisions of this Section 10, notwithstanding any time limits or rights afforded to Developer under the Permit Streamlining Act (Government Code Section 65920, et seq.) or other applicable law.

c. The City reserves absolute discretion as to the selection, hiring, assignment, supervision and evaluation of any and all employees, contractors, or consultants who may be necessary to assist the City in processing of the Proposed Project. The Developer shall reimburse the City for all fees for consultant services, peer review, or plan check at actual costs plus 10 percent for administrative oversight charge. The City will provide copies of invoices upon request by Developer, which may be redacted if necessary to protect confidential information.

d. The advance of funds pursuant to this Agreement shall not be dependent upon the City's approval or disapproval of the project, the application, or any part thereof, or upon the result of any action, and shall in no way influence processing of the application. Neither the Developer nor any other person providing funding for processing of the application shall, as a result of Developer funding, have any expectation as to the results of the City's actions in connection with processing of the Proposed Project. In approving this Exclusive Negotiating Agreement providing for application processing, the City makes no decision on any potential development project, and has and continues to reserve its full discretion, including to consider whether to approve, disapprove, or conditionally approve, any potential project, and to assess potential environmental impacts, and alternatives to any proposed project, including taking no action, in compliance with all applicable law, including the California Environmental Quality Act.

e. The Developer is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent, or consultant of the City engaged in processing of the Proposed Project. This prohibition shall not be construed to preclude the Developer, its agents or representatives, from providing information to the City or any employee, agent, or consultant of the City, or from seeking information from the City, or employee, agent, or consultant of the City with respect to processing of the application. No promises, representations,

or warranties, either express or implied, have been made by the City, its officials, employees, consultants or agents and it is further expressly agreed no person has any authority to make any representation, promise, or warranties to the Developer or any other person that the funding under this Exclusive Negotiating Agreement will in any way influence the processing of the Project, or any eventual action by the Parks, Recreation, Marina, and Arts Commission ("**PRMAC**"), the Planning Commission, and/or City Council as to the Proposed Project.

f. **Survival**. The terms of this Section 10 shall survive the expiration of the Negotiating Period or earlier termination of this Exclusive Negotiating Agreement. Except as otherwise may be provided in any Definitive Agreement, the Developer shall have no liability for reimbursable costs incurred after the expiration or termination of this Exclusive Negotiating Agreement, but shall continue to be required to pay all reimbursable costs incurred before the expiration or termination of this Exclusive Negotiating Agreement.

11. NEED FOR DEFINITIVE AGREEMENT.

a. **Purpose**. The Parties acknowledge and agree this Exclusive Negotiating Agreement is for the sole purpose of facilitating information in order to conduct additional due diligence with respect to the Proposed Project and to negotiate in good faith the framework on terms of a potential Definitive Agreement, and nothing in this Exclusive Negotiating Agreement shall or is intended to bind the Parties to approve the Proposed Project, or enter into a Definitive Agreement, or complete the Proposed Development or any component thereof. Further, nothing in this Exclusive Negotiating Agreement commits the City to make any particular legislative or other project approval. Unless and until a Definitive Agreement is approved as set forth in Section 11(d) below and executed by all Parties, the Parties do not intend to be bound by any agreement other than this Agreement and any agreements entered into under this Agreement (e.g., a ROE License).

b. **Negotiating Schedule.** The City and the Developer agree the intent is to complete public outreach, take in and analyze community input, complete the environmental impacts review process, and refine the Proposed Project and negotiate a Definitive Agreement within 24 months after execution of this Exclusive Negotiating Agreement.

c. **Negotiating Framework.** The City and the Developer acknowledge this Exclusive Negotiating Agreement is a framework for negotiation and they have not agreed upon the essential terms or the material elements of a transaction, including, without limitation, the form of requisite entitlements, the rent and other financial compensation due to the City, the final legal description of the Property subject to any Definitive Agreement, the time or manner of and significant terms related to any Definitive Agreement and/or entitlements, the type and structure of any Definitive Agreement, the conditions precedent to any lease, if any, the ultimate design of and requirements related to the Proposed Development, a comprehensive and required schedule of performance, and construction schedule and phasing of the Proposed Project, each of which are an essential component of the transaction which shall be the subject matter of further negotiations and shall be set forth, if at all, in a Definitive Agreement approved by the City Council, or in the case of the Developer, its principal(s), each in their sole and absolute discretion, and executed by authorized representatives of each of the City and the Developer subject to approval under applicable law. Any Definitive Agreement shall require the submittal of documentation of all proposed construction loans and developer equity needed to carry out the Proposed Project. Further, the Developer acknowledges the design of the Proposed Project, the identity, stability, and financial capacity of the Developer, and the terms and conditions of any lease for the Proposed Development, will be of material concern to the City and comprise part of the essential

terms not yet agreed upon by the Parties. The Developer agrees to make continuing full disclosure to the City of its proposed methods of financing the Proposed Project. Any Definitive Agreement shall include one or more agreements requiring the Developer to timely redevelop and place in service the recreational, commercial, public, and other allowable uses contemplated by the Proposed Project.

d. **Formal Approval Requirement**. Any Definitive Agreement shall not be approved or binding on any Party unless and until it has been fully executed by the City and the Developer, approved by counsel of each Party as to form and legality, and approved by the City Council with respect to City and by the authorized representatives of each member of the Developer following compliance with all Laws. The Definitive Agreement shall be subject to all applicable Laws.

e. **Survival**. The terms of this Section 11 shall survive the expiration of the Negotiating Period or earlier termination of this Agreement.

12. RESERVATION OF DISCRETION.

(a) **Discretionary Actions**. Notwithstanding anything to the contrary set forth in this Exclusive Negotiating Agreement, the Developer acknowledges and agrees as follows:

i. The City reserves its sole and absolute discretion to approve, disapprove, or condition all actions, which require by Law the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which City cannot lawfully be committed to by contract (collectively, "**Discretionary Action**"), and nothing in this Agreement will be construed as circumventing or limiting City's discretion with respect to environmental review required by CEQA (including, without limitation, an Environmental Impact Report, a Mitigated Negative Declaration, or mitigation measures in connection with the CEQA review, or adoption of a "no project" alternative pursuant to CEQA), approval of all other permits and entitlements, approval of a Definitive Agreement, and the making of findings and determinations required by Law;

ii. compliance with CEQA is a legal precondition to the City's commitment or approval of any Discretionary Action, and no Discretionary Action shall be approved or deemed to be approved by the City or the City Council until the requisite CEQA analysis has been completed, including evaluation of potential project alternatives, and any Proposed Project has been considered and approved by the City or the City Council in accordance with CEQA's requirements; and

iii. any and all Discretionary Actions may be approved, denied, and/or conditioned by City, in its sole and absolute determination, and subject to applicable discretionary standard, no Discretionary Actions will be presented to or considered by City unless and until all necessary environmental review under CEQA has been completed and certified.

(b) **No Commitment**. The Parties agree and acknowledge an approval of a project under CEQA and CEQA Guidelines, California Code of Regulations, Title 14, Sections 15352 and 15378 has not occurred by the City's approval of this Exclusive Negotiating Agreement. The CEQA analysis, any Discretionary Actions, the Proposed Development, and any Definitive Agreement may be reviewed and considered by City, in its sole and absolute discretion, and the Parties acknowledge and agree this Exclusive Negotiating Agreement is not and in no way guarantees approval of a Definitive Agreement, CEQA analysis, required findings, including

without limitation a Statement of Overriding Considerations, a Mitigation Monitoring Reporting Program, or any permits, entitlements (including, without limitation, any Discretionary Actions), improvements or other project approvals required by any governmental agencies or entities or other party (including, but not limited to, the State Lands Commission), (collectively, "**Required Approvals**") of or for the Proposed Project. The Developer acknowledges this Exclusive Negotiating Agreement shall in no event be construed as a direct or indirect commitment by the City, the City Council, and/or any other entity to take or to not take any action, whether under CEQA, the McAteer-Petris Act, or under any other Law.

(c) **Requisite Approvals Require City Council Action**. The Developer acknowledges and agrees, other than the City Council acting as City's governing body pursuant to all Laws, any statements by any City official, including any individual City Councilmember, any City Commissioner, any City employee, or City contractor or consultant, expressing concurrence, acceptance, or approval of any terms of any Definitive Agreement, whether verbally or in writing, shall not in any way be construed or interpreted by the Developer as the City concurring, accepting, or approving of any Definitive Agreement.

13. CURRENT USE OF THE PROPERTY. For avoidance of doubt and unless and until otherwise stated in an approved Definitive Agreement executed by the Parties after compliance with applicable law, City shall have the right, in its sole and absolute discretion and without the Developer's consent, to do any of the following, none of which shall be a breach by the City of its obligations under this Exclusive Negotiating Agreement: (a) use, operate, manage, or issue rights (whether through a lease, easement, permit, license, or other agreement) to any party for all or any portion of the Property for any and all legal uses; (b) to construct or to permit construction of any type on the Property; (c) to amend, modify, or terminate any agreement(s) related to the Property.

14. DEFAULT. Failure by any Party to do any of the following shall constitute a default under this Agreement: (a) subject to each Party's discretion with respect to various determinations set forth in this Agreement (including with respect to any Definitive Agreement or, in the case of City, with respect to any Discretionary Actions), to negotiate in good faith; (b) to negotiate exclusively as provided in Section 4(c) above; (c) to timely perform any of its obligations under this Exclusive Negotiating Agreement; (c) failure by the Developer to pay any City invoice under Section 10 for reimbursable costs; or (e) to timely perform any other of its duties as provided in this Exclusive Negotiating Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, and the other Party, specifying the nature of the default and the action required to cure the default. If an actual default remains uncured for 30 days after the date of notice, it shall be deemed an "**Uncured Default**," and the non-defaulting Party may terminate this Agreement in accordance with Section 14 of this Agreement. The Developer expressly agrees any Uncured Default may result in the City terminating this Agreement in its entirety or pursuing any other remedy available to the City under Section 15.

15. REMEDIES FOR BREACH OF AGREEMENT/WAIVER.

a. **Sole Remedy.** In the event of an Uncured Default, and except as otherwise set forth in a ROE License, the sole remedy of a non-defaulting Party shall be to terminate this Agreement. Termination for an Uncured Default shall be effective upon the defaulting Party receiving a written termination notice from the non-defaulting Party. Except for those obligations that expressly state they survive the termination of this Agreement, following any termination by any Party for an Uncured Default, no Party shall have any further rights,

remedies, or obligations to the other Parties under this Agreement and the Parties shall each be relieve and discharged from all further responsibility or liability under this Agreement.

b. **Limitations on Remedies.** The Developer acknowledges the City would not have entered into this Exclusive Negotiating Agreement if the City could become liable for damages or specific performance whether under this Exclusive Negotiating Agreement or in anticipation of or prior to the execution of a Definitive Agreement or in connection with the Proposed Project. Consequently, and regardless of any actual or alleged default by City or the Developer under this Agreement, the Parties agree as follows:

i. In no event shall City have any liability for monetary damages of any type whatsoever (whether based on contract or tort or any other theory of damages);

ii. In no event shall the City be liable for specific performance or any other equitable remedy;

iii. Except with respect to liabilities, obligations, costs, and expenses in connection with obligations that expressly survive the expiration of the Negotiation Period or termination of this Agreement, including the obligation to pay the Reimbursable Costs to the City under Section 10, in no event shall the Developer have any liability for monetary damages of any type whatsoever (whether based in contract or tort or any other theory of damages); and

iv. In no event shall the Developer be liable for specific performance or any other equitable remedy, except for the Developer's obligations with respect to the Transferable Products.

c. **Survival.** The terms of this Section 15 shall survive the expiration of the Negotiating Period or earlier termination of this Exclusive Negotiating Agreement.

16. ASSUMPTION OF THE RISK. The Developer assumes the risk that, notwithstanding the terms of this Exclusive Negotiating Agreement, good faith negotiations, expenditure of significant funds and personnel time, (a) the Parties may not come to terms on a Definitive Agreement or the City may not approve any required legislative approval", (b) any and all Discretionary Actions and/or Required Approvals, including, but not limited to, those requiring City Council approval, may be denied in the City's, City Council's, and/or relevant party's sole and absolute discretion, (c) the requisite entitlements to advance the Proposed Project are subject to the approval and/or consent of governmental entities and/or parties other than the City and may not be granted, and (d) the Proposed Project may be subject to legal challenges that may be successful. Accordingly, except as otherwise expressly set forth in this Exclusive Negotiating Agreement, no Party shall have any liability to any other Party if the Parties are unable to come to terms and/or fail to enter into a Definitive Agreement or the requisite entitlements to complete the Proposed Project are not approved or cannot be obtained. The terms of this Section 16 shall survive the expiration of the Negotiating Period or the earlier termination of this Exclusive Negotiating Agreement.

17. INDEMNITY.

a. **Developer Indemnity Obligations.** Without limitation of the Developer's other obligations under this Exclusive Negotiating Agreement, the Developer agrees, at their sole cost and expense, to indemnify, defend, and hold harmless all City Parties from any and all Claims arising out of: (i) the performance or non-performance by the Developer of any of its obligations

under this Exclusive Negotiating Agreement; (ii) any actions taken by the Developer or their affiliates, representatives, directors, officers, employees, shareholders, managers, members, partners, agents, contractors, attorneys, successors and assigns (each a "**Developer Affiliate**" and collectively, "**Developer Affiliates**") in connection with this Exclusive Negotiating Agreement; (iii) the consideration or approval of this Exclusive Negotiating Agreement; (iv) the consideration, approval, and/or denial of any permits and/or approvals sought by or granted to any Developer Affiliate; (v) any indemnity or defense obligation imposed on the City by another public or private entity in connection with the Proposed Project or this Exclusive Negotiating Agreement; (vi) the approval, denial, or conditioning of any amendments to this Exclusive Negotiating Agreement, any Discretionary Actions, or any other action or decision taken by City or the City Council in connection with this Agreement, the Property, the Proposed Development, and/or any Discretionary Action; (vii) alleged non-compliance with CEQA, National Environmental Policy Act, or other Laws related to this Exclusive Negotiating Agreement, any amendments to this Exclusive Negotiating Agreement, the Proposed Project, the Property, any Discretionary Actions, or any decisions taken by City and/or the City Council; (viii) any legal challenges to the Proposed Development.

b. **City Defense**. The City shall be entitled to select its own counsel, in its sole and absolute discretion, independent and separate to any counsel selected by the Developer to represent the Developer to conduct defense of City Parties from any Claims. Costs and expenses incurred by the City in defense of any Claims shall be paid by the Developer's indemnification obligations under this Section 17 and subject to immediate payment by the Developer. The City's participation in its defense of any City Parties from any Claims shall not relieve the Developer of any defense and indemnity obligations under this Section 17. The indemnity obligations set forth in this Section 17 are in addition to, and not in lieu of, any other Developer indemnity obligations in this Exclusive Negotiating Agreement, and ROE License Agreement, or otherwise.

c. **Survival**. The terms of this Section 17 shall survive the expiration of the Negotiating Period or the earlier termination of this Exclusive Negotiating Agreement.

18. WAIVER AND RELEASE.

a. **Released Claims.** In connection with the execution of this Exclusive Negotiating Agreement, the Developer, on behalf of themselves and the Developer Affiliates, does hereby fully and without limitation release, acquit and forever discharge the City and the City Parties of and from any and all manner of claims, rights, debts, contracts, agreements, promises, and commitments, of whatever nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, fixed or contingent, in law or in equity, whether class, derivative or individual in nature, for indemnity or otherwise, which any Developer Affiliate now has or may have against any City Party based on, related to, and/or arising from any of the following (collectively, "**Released Claims**"): (i) any act or omission of any of the City Parties prior to the Effective Date; (ii) the waiver of remedies set forth in Section 15 above; (ii) the City, the City Council, the State Lands Commission, the Bay Conservation and Development Commission, and/or any other governmental entity with jurisdiction over the Property not approving any of the Required Approvals; (iii) the Controlling Documents and Laws; and (iv) successful legal challenges to the Proposed Project.

b. **Civil Code Section 1542 Waiver**. With respect to the Released Claims, the Developer, on behalf of itself and all Developer Affiliates, expressly waives all rights under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Developer: Tucker-Sadler

c. **Survival.** The terms of this Section 18 shall survive the expiration of the Negotiating Period or the earlier termination of this Agreement.

19. NO WAIVER. No waiver of any provision of this Agreement shall be implied by any failure of a Party to provide a notice of default or to enforce any remedy, even if a violation shall continue or be repeated subsequently. Any waiver by a Party of any provision of this Exclusive Negotiating Agreement may only be in writing, and no express waiver shall affect any provision other than the one specified in the waiver and then only for the time and in the manner specifically stated.

20. NOTICES. Any notices, consents, and/or approvals may be addressed as set forth below (or as any address may have been changed by subsequent notice given to the other Party) and shall be in writing and: (a) personally served upon the applicable Party; (b) delivered via reputable over-night courier service; (c) delivered by U.S. postal service certified letter; or (d) sent via email, in which case the actual notice shall be executed and sent as an attachment to the electronic mail transmission, and the subject line of the electronic mail transmission shall include the words "LEGAL NOTICE" in all capital letters. Any notice or notices given or served shall be binding for all purposes upon the applicable Party when received (including when received via email); provided, however, if served by certified mail, service will be considered completed and binding on the Party served for 48 after deposit in the U.S. Mail.

Tucker Sadler Notice Address:

Gregory A. Mueller, Design Principal & C.E.O.
1747 Hancock Street, Suite A
San Diego, CA 92102
Email:gmueller@tuckersadler.com

with a copy to:

Diane L. Mueller, Director of Operations
1747 Hancock Street, Suite A
San Diego, CA 92102
Email: dmueller@tuckersadler.com

City Notice Addresses:

Michael Chandler, City Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94553
mchandler@cityofmartinez.org

with a copy to:

Teresa L. Highsmith
City Attorney
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101
THighsmith@chwlaw.us

with a copy to:
Brianne Zorn, Mayor
City of Martinez
525 Henrietta Street
Martinez, CA 94553
bzorn@cityofmartinez.org

21. NO BROKER. The Developer hereby represents and warrants to the City that the Developer has not retained or employed any real estate broker, agent, or finder in connection with this Exclusive Negotiating Agreement. The Developer shall be solely responsible for the payment of any fee or commission due to any real estate broker, agent, or finder and agrees to indemnify and defend and hold the City harmless from any and all claims with respect to any commission or equivalent compensation alleged to be owing by the City. The terms of this Section 21 shall survive the expiration of the Negotiating Period or the earlier termination of this Exclusive Negotiating Agreement.

22. NO RELATIONSHIP. The Developer and all Developer Affiliates shall act in an independent capacity and in no event as agents, officers, employees, representatives, or contractors of the City. The City assumes no liability for the Developer or any Developer Affiliate's actions and/or performance, and the City assumes no responsibility whatsoever for any taxes, bonds, payments or commitments of any kind, explicit or implicit, made by the Developer or any Developer Affiliate. Nothing in this Exclusive Negotiating Agreement creates or shall be deemed to create any form of joint venture or partnership between the Parties.

23. OFAC COMPLIANCE. The Developer represents and warrants to the City as follows: (a) the Developer and any person or entity owning an interest in the Developer is not now, and shall not while this Exclusive Negotiating Agreement is in effect, be a person or entity with whom the Developer or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56, or under any successor statutes or regulations, including, without limitation, persons and entities ("**Prohibited Persons**") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a person or entity (also, a "**Prohibited Person**") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (b) none of the funds or other assets of the Developer constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person; (c) no Prohibited Person has any interest of any nature whatsoever in the Developer (whether directly or indirectly); (d) none of the funds of the Developer have been derived from any unlawful activity with the result that the investment in the Developer is prohibited by law or this Exclusive Negotiating Agreement is in violation of law; and (e) the Developer has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

24. MISCELLANEOUS.

a. **Entire Agreement; Amendments**. Except as expressly otherwise provided in this Exclusive Negotiating Agreement, this Exclusive Negotiating Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the stated terms and conditions, and supersedes all negotiations or previous agreements or understandings between the Parties, their agents, or their predecessors in interest with respect to all or any part of the subject matter hereof. The terms of this Exclusive Negotiating Agreement may not be amended or modified except by a written instrument duly executed by all Parties.

b. **Incorporation of Exhibit**. The Exhibit attached to this Agreement is also incorporated by reference and deemed a part hereof.

c. **Section Headings**. The section headings are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

d. **Partial Invalidity**. If any term, provision, or condition contained in this Exclusive Negotiating Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Exclusive Negotiating Agreement, or the application of any term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Exclusive Negotiating Agreement shall be valid and enforceable to the fullest extent possible permitted by Law.

e. **Drafting Presumption; Review Standard**. All Parties acknowledge and agree this Exclusive Negotiating Agreement has been agreed to by all Parties and all Parties have consulted with attorneys with respect to the terms of this Exclusive Negotiating Agreement. Nothing in this Agreement shall be construed in favor of or against any Party by reason of the extent to which each Party participated in the drafting of this Exclusive Negotiating Agreement. Any deletion of language from this Exclusive Negotiating Agreement prior to its execution by each Party shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication the parties intended thereby to state the converse of the deleted language.

f. **Approval Standard.** Unless a different standard is expressly otherwise set forth in this Exclusive Negotiating Agreement, whenever in this Exclusive Negotiating Agreement the consent or approval of the City, the City Council, the City Manager, or the Developer is required, consent or approval may be given, withheld, or conditioned in the sole and absolute discretion of the applicable person or party, subject to compliance with applicable law.

g. **Time is of the Essence**. Time is of the essence for all provisions of this Exclusive Negotiating Agreement. Any uncured default by the Developer to perform within the time limits stated shall automatically terminate the Developer's rights hereunder.

h. **Computation of Time Periods.** If any date or time period specified in this Agreement ends on a non-Business Day, the date will automatically be extended until 5:00 p.m. Pacific Time on the next Business Day. For purposes of this Agreement, "**Business Day**" means any day other than a Saturday, Sunday, federally recognized holiday, California State recognized holiday, or a day City Hall is closed.

i. **Non-Parties**. Nothing in this Exclusive Negotiating Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Exclusive Negotiating Agreement on any persons other than City, Tucker Sadler, and their respective permitted successors and assigns, nor is anything in this Exclusive Negotiating Agreement intended to relieve or discharge the obligation or liability of any other persons to any party to this Agreement, nor shall any provisions give any other persons any right of subrogation or action over or against any party to this Exclusive Negotiating Agreement.

j. **Governing Law**. This Exclusive Negotiating Agreement and all the rights and obligations of the Parties hereto and all the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the internal Laws of the State of California without regard to conflict of laws principles. Venue for any legal proceeding shall be in Contra Costa County, California. For purposes of this Exclusive Negotiating Agreement, "**Laws**" shall mean present and future federal, California state, City of Martinez, and other applicable local laws, rules, orders, ordinances, resolutions, regulations, statutes, requirements, policies, codes, and executive orders, and all rules, regulations, and government orders with respect thereto, including without limitation any of the foregoing relating to hazardous materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act, the McAteer-Petris Act, and comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Laws shall also include, but are not limited to, the Laws enacted by the City of Martinez, and any governmental permits and approvals, including, without limitation, any State Lands Commission and Bay Conservation and Development Commission laws and approvals.

k. **Developer Authority**. Each Developer Party hereby represents and warrants as follows: (i) the Developer Party is a duly formed and existing in its state of formation set forth above and is qualified to do business in the State of California; (ii) the Developer Party has the power pursuant to Laws, its certificate of formation, and its relevant governing documents to execute and deliver this Agreement; and (iii) each person signing on behalf of the Developer Party is duly authorized to sign and bind Developer Party to this Agreement.

l. **Joint and Several Liability**. The obligations imposed upon the Developer under this Agreement shall be joint and several with respect to each Developer Party, and the act or signature of, or notice from or to, any one or more Developer Party with respect to this Agreement shall be binding upon each Developer Party with the same force and effect as if each and all of them had so acted or signed, or given or received any notice.

m. **Counterparts**. This Exclusive Negotiating Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Any facsimile or copies of original signatures or signatures delivered electronically (such as .pdf, .tif, or other electronic files or via DocuSign or equivalent) shall be considered and treated as if they were original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and each Developer Party have executed this Exclusive Negotiating Agreement as of the Effective Date.

Tucker Sadler
By: _____
Name: Gregory A. Mueller
Title: Design Principal & C.E.O.
Dated: 12 / 11 / 2025

City of Martinez

By: _____
Brianne Zorn, Mayor

Dated: _____

Approved as to Form:

By: _____
Teresa Highsmith, City Attorney

Dated: _____

EXHIBIT A

Property Description

The Proposed Project Area is the three parcels outlined in the pink line on the map below drawn from Figure 1 of the TLUP. Some improvements outside this area may be warranted to facilitate the potential development, such as the secondary access point.

Dropbox Sign

Audit trail

Title	Exclusive Negotiating Agreement Tucker Sadler
File name	Attachment_A_-_Ex...er_Architects.pdf
Document ID	5e12dc991329a7e49972b15450e53f929241600c
Audit trail date format	MM / DD / YYYY
Status	Signed

Document History

SENT	**12 / 11 / 2025** 15:10:43 UTC-8	Sent for signature to Greg Mueller (gmueller@tuckersadler.com) from dfendley@cityofmartinez.org IP: 12.155.182.226
VIEWED	**12 / 11 / 2025** 16:39:16 UTC-8	Viewed by Greg Mueller (gmueller@tuckersadler.com) IP: 146.75.146.82
SIGNED	**12 / 11 / 2025** 16:40:28 UTC-8	Signed by Greg Mueller (gmueller@tuckersadler.com) IP: 146.75.146.82
COMPLETED	**12 / 11 / 2025** 16:40:28 UTC-8	The document has been completed.