

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT**

by and between

**CAL-COAST COMPANIES LLC**

and

**THE CITY OF SAN LEANDRO**

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2011 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (“**City**”) and Cal-Coast Companies LLC (“**Developer**”), a Delaware limited liability company. City and Developer are hereinafter collectively referred to as the “**Parties**.”

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

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

WHEREAS, the City Council on October 20, 2008 entered into an 18 month Exclusive Negotiating Rights Agreement (the “**Original ENRA**”) with Developer to work with a Citizens Advisory Committee to develop a master plan for a high-quality hotel, restaurants, public amenities and possibly residential, office and water-oriented commercial uses for the Site;

WHEREAS, the City and Developer extended the term of the Original ENRA to October 20, 2011;

WHEREAS, the Developer assisted the City in exploring alternatives for the boat harbor basin located within the Site, and has agreed to work with the City to implement an alternative should continued dredging not be possible;

WHEREAS, the Developer worked with the community, participating in four Town Hall meetings, sixteen meetings of the Shoreline Development Citizens Advisory Committee (“**CAC**”), and providing three project updates to the City Council at work sessions, to develop a Conceptual Master Plan (the “**Plan**”) that includes a plan for landside development of the Shoreline-Marina area and redevelopment of the harbor basin (as more particularly described in the Plan, a copy of which is attached hereto as Exhibit B, hereafter, the “**Project**”);

WHEREAS, at its meeting of September 26, 2011, the City Council of the City of San Leandro (“**City Council**”) directed staff to negotiate a new exclusive negotiating rights agreement with Developer to support analysis of the feasibility of implementing the CAC recommendations as described in the Plan; and

WHEREAS, Developer anticipates expending significant funds to conduct studies and obtain entitlements that would be necessary for development of the Project.

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

1. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to successfully negotiate an agreement that will describe the terms and conditions governing development of the Project on, and the ground lease of, the Site. The Parties shall diligently and in good faith pursue such negotiations. Furthermore, the Parties shall use their best efforts to obtain any third-party consent, authorization, approval, or exemption required in connection with the transactions contemplated hereby. This Agreement does not impose a binding obligation on City to convey any portion of or interest in the Site to Developer, nor does it obligate City to grant any approvals or authorizations required for the Project; however, as part of the foregoing negotiations, the City agrees to diligently work on the processing of entitlements sought by Developer for the Project. Without limiting the generality of the foregoing, Developer expressly acknowledges that any agreement resulting from the negotiations contemplated hereby shall become effective only if the agreement is approved by the City Council following compliance with all applicable notice and hearing requirements and compliance with all other requirements of law, including without limitation the California Environmental Quality Act (“CEQA”).

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

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

4. Deposit. In recognition of the expenses incurred to date by the Developer, a deposit is not required in connection with this Agreement.

5. Termination.

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

5.2 Termination by City for Cause. City shall have the right to terminate this Agreement upon City’s good faith determination that Developer is not negotiating diligently and

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

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

5.4 Effect of Termination. Upon the expiration of the Term as such may be extended, or upon the earlier termination of this Agreement without the Parties having successfully negotiated an agreement regarding development of the Site, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 9.1 (Studies), Section 9.2 (Access; Indemnity), Section 18 (Expenses), Section 19 (Confidentiality), and Section 22.2 (Indemnification) shall survive such termination. In no event shall either Party have the right to seek an award of damages as a result of the termination of this Agreement.

6. Description of the Project. The Conceptual Master Plan, attached hereto as Exhibit B, describes the following elements which would be developed in phases as detailed below:

Phase 1 –

- 200-225 room conference hotel with a 15,000- 20,000 square feet conference center, outdoor pool and spa;
- An approximately 6,000 square foot quality full-service restaurant;
- An approximately 4,000 square foot full-serve restaurant;
- Between 50,000 and 250,000 square feet of office with ground floor retail along Monarch Bay Drive and a Parking Structure;
- Up to 46 two – three story residential units with a ground floor commercial component along Monarch Bay Drive;

- Up to 16 two – three story townhomes along the 9-hole golf course;
- Up to 36 multi-family rental units on Fairway Drive and Aurora;
- Library/Community Building;

The residential units in phase 1 must be started along with the demolition, grading, site work and infrastructure improvements for the other phase 1 improvements. Grading and building permits will be issued concurrently for the entire first phase.

The library/community building would be constructed in conjunction with the 46 residential units on Monarch Bay Drive and the 16 residential units along the golf course.

The majority of the infrastructure improvements related to the applicable phase of the Project, including roads, lighting, landscaping, pedestrian pathways, would be completed prior to the issuance of a certificate of occupancy for residential units in the phase. The City may require Developer to execute an Improvement Agreement addressing completion of infrastructure related to future phases of the Project.

Phase 2 –

- A Café/boat rental facility (8,000 sf) on the former Boatworks site;
- Up to a Project total of 250,000 square feet of Office and a Parking Structure
- Up to 70 Homes on Fairway Drive
  - Up to 42 Two Story Single Family Detached Homes
  - Up to 28 Townhomes
  - Associated infrastructure

Phase 3-

- A mixed-use Office/Retail Building (40,000 sf)
- The balance of the 250,000 square feet of office
- Associated infrastructure

The Parties acknowledge that development of the Site for the Project will require the grant of discretionary land use entitlements subject to the City’s normal review and approval process, that the Project must comply with CEQA, and that nothing in this Agreement is intended to or shall be interpreted as the grant of any approvals for development of the Project or the Site, or the modification or waiver of any City procedures or requirements. The Parties acknowledge that nothing in this Agreement shall be deemed a commitment by the City to enter into an agreement for conveyance of any interest in the Site or for the development of the Project. In addition, the Parties acknowledge that the final form of any agreement governing the leasing and development of the Site may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

6.1 Harbor Basin Redevelopment. As of the Effective Date, the City has not been able to identify sufficient funding to continue the dredging necessary to operate the 465-berth boat harbor that currently occupies the basin. Deteriorating docks have been vacated due to safety concerns, and the boat harbor suffers from a high vacancy rate. While the City would like

to retain a 465-berth boat harbor, the City understands that in order to allow for a successful development at the Shoreline area, redevelopment of the harbor basin is necessary. The City desires that the boat harbor be maintained as long as feasible and should additional revenue not be found for dredging and maintaining the boat harbor/marina, the redevelopment of the boat harbor into the Aquatic Park alternative described in Exhibit C, or a similar reuse of the basin will be considered with consultation and input from Developer.

7. Compliance with CEQA.

An Environmental Impact Report (“EIR”) must be prepared for the Project. City will select the consultant for preparation of the EIR, and Developer will pay City’s costs for preparation of the EIR, (including City staff time and the cost of the EIR consultant). Developer’s obligation to pay such costs shall be in addition to any other Developer’s obligation to pay or reimburse City expenses pursuant to the Original ENRA (although City confirms that it does not believe that any such unreimbursed expenses are outstanding) or Section 18 of this Agreement.

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

9. Developer’s Studies; Right of Access.

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

Developer agrees to use commercially reasonable efforts to include in all contracts for the preparation of any of Developer’s Studies a provision that will permit City to have the right to use and rely upon each such study and report. Developer’s obligation to provide reports and studies pursuant to this Section 9.1 shall survive the expiration or earlier termination of this Agreement.

9.2 Right of Access. Subject to the terms of existing agreements regulating the use of the City-owned parcels comprising the Site, Developer shall have the right of reasonable access for the purposes of inspection, environmental assessments, soils testing, and similar work. Developer shall be responsible for obtaining any third-party approvals that are necessary to prepare the Developer’s Studies (such as an encroachment permit if required). The City may impose reasonable limitations on access to the Site as set forth in a right of entry or similar

permit, and will require Developer to provide City with proof of insurance in compliance with City's requirements prior to performance of studies on the Site. City's advance written approval shall be required for any invasive testing. Developer agrees that unless City agrees otherwise in writing, Developer shall repair, restore, and return the Site and all improvements located thereon to their condition prior to any such testing at Developer's sole cost and expense. Developer shall at all times keep the Site free and clear of all liens and encumbrances resulting from Developer's activities on the Site.

Developer shall indemnify, defend, and hold the City and its elected and appointed officers, officials, employees, consultants, agents and representatives (collectively, the **"Indemnitees"**) harmless from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including without limitation reasonably attorney's fees and of litigation) (all of the foregoing, collectively **"Claims"**) arising out of Developer's and Developer's agents, employees, consultants, representatives and contractor's entry on the Site or otherwise arising out of the exercise of this right of access except to the extent arising from the gross negligence or willful misconduct of any Indemnitee. Developer's defense and indemnity obligations pursuant to this Section 9.2 shall survive the expiration or earlier termination of this Agreement.

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

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

12. Community Participation.

A. Developer agrees to attend and assist in planning the agenda for additional Shoreline Development Citizens Advisory Committee ("**CAC**") meetings, and agrees to inform CAC members on issues related to the Project. The Developer shall continue to work constructively with the CAC on modifications to the Conceptual Master Plan.

B. In keeping with the City of San Leandro public process, the Developer agrees to attend all public meetings related to the review of entitlements or the development of the Project. City agrees to provide Developer 30-day advance notice of public meetings.

C. The Developer shall be generally responsive to the community.

13. Developer's Pro Formas and Evidence of Financing. During the Term, Developer shall use reasonable efforts to obtain preliminary financing commitments from prospective lenders and financing partners for the Project. Prior to execution of any agreement for the development of the Site (and each phase of the Project), Developer shall provide City with a pro forma for the Project (or applicable phase of the Project) that confirms the financial feasibility of the proposed development, and shall provide evidence satisfactory to City that Developer is pursuing commitments for all financing necessary for the successful completion of the Project (or applicable phase of the Project). City shall not be obligated to seek City Council approval unless and until the documents required by this Section have been provided.

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

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

16. Developer's Consultants and Professionals. If the Parties reach agreement regarding lease of the Site and development of the Project, Developer's architect will be Withee Malcolm Architects, or another architect with comparable skill and experience in commercial, residential, waterfront and public space design, including experience designing L.E.E.D certified buildings. City's approval of a change in architecture firms will be required, with such approval not to be unreasonably withheld or delayed.

17. Disclosure.

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

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



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

18.1 Developer's Payments. Developer shall be responsible for payment of the following costs incurred in connection with the Project:

(a) City Planning, Engineering & Transportation staff services. Developer shall be responsible for payment of City Planning and Engineering & Transportation staff overtime costs and expenses that may be incurred for contract planner review and processing of application(s) for the Project.

Developer will not be responsible for reimbursing the City for City's own legal counsel or for consultants representing the City in negotiations pertaining to any agreements between the Developer and the City.

(b) EIR Consultant. Developer shall be responsible for payment of the Project EIR consultant's fee. City shall select the EIR consultant. Prior to the City's execution of a consultant services agreement with the selected EIR consultant, Developer shall deposit with City, fifty percent (50%) of the consultant's fee. Developer shall pay thirty percent (30%) of the fee upon the consultant's submittal of the administrative draft EIR and the remaining twenty percent (20%) upon delivery of the final report; provided however, if the Consultant's fee schedule is more advantageous than the foregoing, then the Consultant's payment schedule shall apply to Developer.

18.2 Ground Lease Rent Credit. City will reimburse Developer for the following expenses by providing a credit against rent payable by Developer to City pursuant any ground lease for the Site (or portion thereof):

(a) EIR Analysis of Boat Harbor Basin. City will provide a ground lease rent credit for the portion of the EIR consultant costs related to redevelopment of the boat harbor basin in the amount outlined in the EIR consultant's tasks and costs.

(b) Design, Engineering and Permits. City will provide a ground lease rent credit for documented costs incurred by Developer specifically relating to design, engineering and permitting for the redevelopment of the boat harbor basin. Developer will provide quarterly reports to the City on expenses incurred during the previous quarter relating to the design, engineering and permitting for the redevelopment of the boat harbor basin.

18.3 Reimbursement of Harbor Basin Costs if Ground Lease is not Executed. If all of the conditions specified in this Section 18.3 have been satisfied but the City and Developer do not execute a ground lease for any portion of the Site, City will reimburse Developer for the portion of the EIR consultant's fees related to redevelopment of the boat harbor basin in the amount outlined in the EIR consultant's tasks and costs, and for the costs identified in paragraph (b) of Section 18.2. City's obligation to make such reimbursement is contingent upon

satisfaction of all of the following conditions: (i) an EIR has been certified for the Project, (ii) all governmental agencies with jurisdiction over the Site (other than City) (including without limitation, BCDC) have issued permits necessary for development of the Project, (iii) the Project is consistent with the Conceptual Master Plan, (iv) Developer has demonstrated that the Project is financially feasible, and (v) Developer has obtained financing commitments for at least the first phase of the Project, subject only to commercially reasonable conditions

18.4 Reimbursement of Harbor Basin Costs if City does not Approve Boat Harbor Redevelopment. If the City decides to close the boat harbor, but the City does not approve the redevelopment of the boat harbor into the Aquatic Park alternative described in Exhibit C or other reasonable alternative, City will reimburse Developer for the portion of the EIR consultant's fees related to redevelopment of the boat harbor basin in the amount outlined in the EIR consultant's tasks and costs and for the costs identified in paragraph (b) of Section 18.2, provided that all of the conditions specified in this Section 18.4 have been satisfied. City's obligation to make such reimbursement is contingent upon satisfaction of all of the following conditions: (i) an EIR has been certified for the Project, (ii) all governmental agencies with jurisdiction over redevelopment of the boat harbor (other than City) (including without limitation, BCDC) have issued permits necessary for redevelopment of the boat harbor, (iii) Developer's proposal for redevelopment of the boat harbor is consistent with the Conceptual Master Plan, (iv) Developer has demonstrated that redevelopment of the boat harbor is financially feasible, and (v) Developer has obtained financing commitments for redevelopment of the boat harbor, subject only to commercially reasonable conditions.

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

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

be required to disclose to any other party information which is protected by the attorney-client privilege.

20. Execution of Definitive Agreement. If the Parties successfully negotiate an agreement for the development of the Site, City staff shall recommend approval of the agreement to the City Council. The City shall have no legal obligation to grant any approvals or authorizations for the Project prior to City Council approval of the Project and related agreements following compliance with CEQA and all other applicable requirements of law.

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

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

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

(iii) Developer shall meet with labor union and trade organization representatives to negotiate in good faith in an effort to promote labor harmony with respect to the construction and operation of the Project.

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

22. Miscellaneous.

22.1 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of San Leandro  
Office of Business Development  
835 East 14th Street  
San Leandro CA 94577

Attn: Cynthia Battenberg, Business Development Manager

Developer: Cal-Coast Companies LLC  
11726 San Vicente Blvd., Suite 235  
Los Angeles, CA 90049  
Attn: Edward J. Miller, President, CEO

22.2 Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Indemnitees (defined in Section 9.2) from and against all Claims (defined in Section 9.2) arising out of or in connection with the actions of Developer or Developer's agents, employees, officers, representatives, contractors or consultants pursuant to this Agreement; provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee. This Section shall survive the expiration or earlier termination of this Agreement.

22.3 Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

22.4 Entire Agreement, Amendments, Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

22.5 Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted pursuant to Section 21; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

22.6 Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

22.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

22.8 Developer's Representations. Developer represents and warrants to City as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 22.8 not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

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

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

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

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

***SIGNATURES ON FOLLOWING PAGE***

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

**THE CITY OF SAN LEANDRO,**  
a municipal corporation

By: \_\_\_\_\_  
Chris Zapata, City Manager

ATTEST:

By: \_\_\_\_\_  
Marian Handa, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jayne W. Williams, City Attorney

**DEVELOPER:**

CAL-COAST COMPANIES LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Edward J. Miller

Title: Manager and Sole Member

EXHIBIT A – SITE







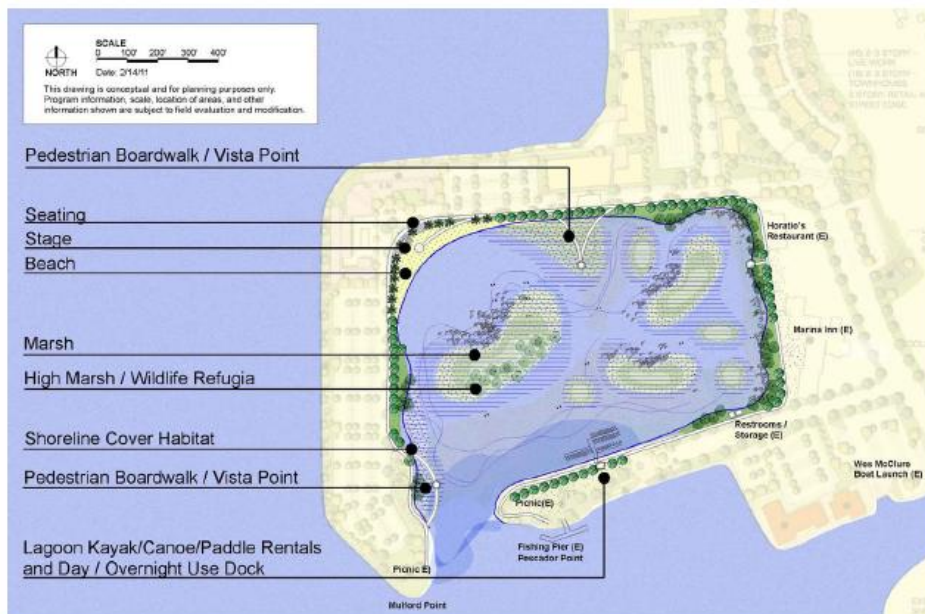


## EXHIBIT C AQUATIC PARK

The Aquatic Park emphasizes non-motorized boating uses, including kayaks and canoes in a natural setting should the harbor basin no longer be able to accommodate motorized boating uses due to the siltation of the basin (as no on-going dredging would occur). In time, all of the existing slips and most pilings would be removed. In their place, the basin would be reclaimed into a series of wildlife islands, marsh areas, and other vegetative features. The western, northern, and eastern rip-rap shoreline of the basin could be backfilled to create a natural shoreline appearance and a vegetation transition from upland to wetland habitats. A water trail would be set up around the islands to provide recreational opportunities for hotel patrons and harbor visitors. Remaining pilings would serve as interpretive markers for the water trail. The perimeter trail would be designed as a pedestrian promenade and a publicly accessible beach and viewing area would be created in the northwestern corner of the harbor. Several pedestrian boardwalks could extend over the water from the shore, providing vistas across the water.

A boating school/ rental facility with a day-use dock could be constructed at the southern edge of the basin, with space for approximately 40 non-motorized small boats and boat storage (this is assumed to be undertaken by the landside developer). Overnight docking would be permitted on a fee basis for those using the Bay Water Trail and wishing to spend the evening at one of the hotels. The existing boat launch, just southeast of the basin, would remain in place.

Although some initial dredging would be necessary to establish the Aquatic Park, the basin would be entirely self-sustaining with no maintenance dredging required on an on-going, long-term basis. In the event that less fill or funding is available to create the proposed wildlife islands, a reduced amount of fill could be used to create smaller islands, with additional fill provided naturally over time through natural sedimentation.



SOURCE: ESA; 2M

San Leandro Harbor Basin Study - 210401  
Figure 2-3  
Aquatic Park Alternative

**EXHIBIT D  
TENTATIVE DEVELOPER WORK SCHEDULE**

**Shoreline Development Tasks and Developer Milestones**

**TASK**

---

ENRA to Council	April 2012
Harbor Basin Alternatives to BCDC Design Review Board	Spring 2012
Refinement of Harbor Alternative w/input by CAC	Summer 2012
Formal Planning Application Submitted by Cal-Coast (phasing plan, site plans, conceptual building elevations, public access plans, etc.)	Summer 2012
RFP for EIR Issued (approximately 30-45 days after formal application submitted)	Fall 2012
EIR Consultant Agreement to Council for approval	January 2013
Public Scoping Meetings (2) for EIR	Winter 2013
Market studies and Project Proforma Submitted by Cal-Coast	Spring 2013
Draft EIR available for 45-day public review period	Summer 2013
City Council Work Session on Draft EIR	Fall 2013
City Council Work Session on Project	Fall 2013
Response to Comments/Final EIR	Fall/Winter 2013
Council Work Session on Development Agreement	Winter 2013
Planning Commission Meetings (may take 2)	Spring 2014
City Council Meeting for approval of entitlements and development Agreement	Summer 2014
Permitting process completed with various agencies	December 2014