

Exhibit 6
Executive Summary of the Disposition and Development Agreement between the
City of Alameda and Alameda Point Partners
for the Site A Property

In addition to the Development Plan and DA discussed in the staff report, staff is recommending approval of a DDA (i.e., price and term of payment for the land and development obligations) between the City and APP for the Site A property (Exhibit 5). Building upon Exhibit C in the ENA (Term Sheet), City staff negotiated the terms of the DDA with APP over the past six months. The following provides an executive summary of the DDA for Site A:

1. **Term of the Agreement.** The DDA is expected to have a 20-year term with possible extensions that can be paid for by APP or as a result of events beyond the control of APP and the City including severe downturns in the economy (“force majeure”). The following provides an overview of the potential extensions of the DDA:
 - a. The extensions are based upon the more aggressive 15-year final completion date contained in the Milestone Schedule (an exhibit to the DDA that sets out the schedule for development of the Property during that Term of the DDA) not the overall 20-year term.
 - b. There is a 10-year cap on the maximum number of years of potential extensions, resulting in an outside date for completion of the Project of 25 years (10 years from the 15-year completion date in the Milestone Schedule). There is a one-year exception to the cap to account for a potential delay in Navy conveyance related to the removal of a storm drain line under Block 11 in the Development Plan.
 - c. The paid options to extend are limited to a maximum of five years of delay and cannot be used to extend the same milestone for more than three consecutive years. The paid options to extend cost \$50,000 per acre before completion of 50% of Phase 1 infrastructure and \$10,000 per acre after completion of 50% of Phase 1 infrastructure. Option payments received before completion of 50% of the Phase 1 infrastructure are nonrefundable. Option payments received after completion of 50% of the Phase 1 Infrastructure are nonrefundable but are credited toward the Developer’s Ferry Terminal Payment obligation (discussed below).
 - d. The Milestone Schedule includes Major Milestone Dates (i.e., Phase Closing Dates, Infrastructure Phase Completion Dates, and Vertical Completion Dates) and Progress Milestones, which are all other milestones within the Milestone Schedule. APP’s non-performance in meeting the Major Milestone Dates is an event of default described in greater detail in

Section 17 below.

2. **Financial Terms.** This section of the DDA consists of the following provisions, many of which were included in the Term Sheet:

- a. Non-refundable deposits paid by APP, including \$200,000 that was paid at time of execution of the ENA and an additional \$100,000 to be paid on the DDA Effective Date;
- b. A total land payment of \$15 million, including \$5 million for the planned sports complex at Alameda Point and \$10 million for a ferry terminal. This land payment is in addition to the APP's obligation to install backbone infrastructure estimated to cost \$88 million, as described in the Infrastructure Package and in Section 5 below.
- c. As a windfall protection, the City is entitled to share in profits after APP has achieved a market rate of return on the land development of Site A (referred to as Contingent Profit Participation). This market rate of return is approximated and measured by APP reaching thresholds: an 18 percent internal rate of return (IRR) and a return of capital ratio of 1.6. There is no guarantee that APP will meet either of these return thresholds and the risk of the performance of the development is borne by APP. If APP achieves higher IRR thresholds, as well as the 1.6 return of capital threshold, the City will receive a gradually increasing percentage of profits, as depicted below:

| IRR Threshold | Profit Participation |
|---------------|----------------------|
| 18% | 10% |
| 20% | 20% |
| 22% | 30% |
| 25% | 50% |

This section of the DDA also defines eligible development costs, gross proceeds, IRR, and the cash flow ratio, among other terms necessary for calculating the potential profit participation payments. This section also describes the City's right to audit APP's financials to determine whether profit participation payments were warranted. APP's obligation to make payments of Contingent Profit Participation are at the conclusion of the development of the infrastructure, however, at completion of each Phase of infrastructure, APP will deposit the Contingent Profit Participation owed to the City in an account controlled by the City and APP and the City can withdraw funds from this account up to 50% of the amount in the account to use for costs related to Alameda Point.

3. **Financing Plan.** This section acknowledges that APP has provided a project financing plan (i.e., cash flow analysis provided in the May 19, 2015 City Council packet) for the entire Site A project. Additionally, prior to the conveyance of each

phase of the property from the City to APP, they will be required to submit an updated Phase financing plan, which must include detailed financing information regarding the relevant phase, including evidence of commitments of both debt and equity sources of funding so that the City can have confidence that APP has sufficient resources to complete the development. The phase financing plan will include: a detailed development budget and cash flow analysis, including all sources and uses of funds; a description of any partnerships for equity funding; and a public financing plan demonstrating that Project is meeting the minimum public agency contributions contained in the Fiscal Impact Analysis (Exhibit 10 to the staff report) and the financial memorandum for the TDM Compliance Strategy provided in the May 19th City Council packet. This section also outlines the review and approval process of the financing plans.

- 4. Disposition of Property and Escrow.** This section outlines the process for transferring each phase of land within Site A from the City to APP, including the conditions that must be met by APP and City before this can occur. The City will not transfer the property to APP prior to APP obtaining the following approvals from the City for that phase: improvement plans for the backbone infrastructure contained in the Infrastructure Package; a tentative map; design review for the parks; design review for the vertical improvements in the first sub-phase; a grading and demolition permit; a public improvement agreement, including performance bonds; “will serve” letters from all of the relevant utility agencies; a phase financing plan, and construction contract for the backbone infrastructure. APP will also be obligated to provide evidence of insurance in accordance with the DDA requirements including Pollution Limited Liability insurance and evidence of availability of funds to commence construction.

The Property is being conveyed to APP in its current condition and the City is making no representations about the condition of the property. The City has provided APP with access to all of the information available on the property condition and APP is taking the property with knowledge of the conditions. The City is releasing APP from any claims that the City might have as a result of the migration of hazardous materials existing on the site currently from the Property to other property owned by the City.

- 5. Infrastructure Construction.** The backbone infrastructure to be constructed by APP consistent with the Master Infrastructure Plan for Alameda Point, the Request for Qualifications from developers for Site A and the ENA is estimated to cost approximately \$88 million. The DDA has an exhibit memorializing the Site A package of backbone infrastructure (Infrastructure Package) and detailing the phasing of the Infrastructure Package consistent with the Term Sheet. APP has agreed to provide a number of key improvements in Phase 1, including the complete extension of RAMP between Main Street and Ferry Point Road at the Seaplane Lagoon, permanent waterfront park improvements, the sewer line between Site A and the sewer pump station at the northern edge of the property, and Main Street intersection improvements.

This section of the DDA also includes the requirements of APP to enter into a Public Improvement Agreement before commencing construction of any infrastructure. The Public Improvement Agreement requires that APP provide completion guarantees for the completion of the infrastructure, including payment and performance bonds or other equivalent security. APP is also obligated to comply with an agreement the City has with the Alameda Point Collaborative (APC) to establish a goal that residents of APC perform 15 percent of all apprentice hours. Additionally, this section of the DDA defines and discusses which approvals must occur prior to conveyance from the City to APP (Supplemental Approvals) and which infrastructure approvals occur after conveyance (Additional Approvals – Horizontal) and the details of the construction contract for backbone infrastructure for each phase.

Lastly, this section also highlights the terms of the ferry terminal payment and preparation of a mutually agreeable Ferry Terminal Plan regarding the construction cost, budget and schedule of a new ferry terminal at the Seaplane Lagoon. While both APP and City are committing in the DDA to coordinating closely to implement the new service as quickly as possible, nothing in the documents make the City financially responsible for securing the new service at the Seaplane Lagoon.

6. **Vertical Construction.** This section of the DDA sets forth APP's obligations for construction of the vertical improvements of the Site A project (i.e., buildings) consistent with the City's approvals (i.e., Development Plan, Supplemental Approvals, design review, and building permits). Prior to construction of any Sub-Phase of the Vertical Improvements, APP is obligated to submit to the City a Sub-Phase update to the financing plan showing the sources of funds for the construction including all financing commitments for the construction of the Sub-Phase. Prior to commencement of vertical construction, APP will be required to provide the City with a construction contracts, and completion assurance either in the form of payment and performance bonds or completion guarantee subject to City approval.
7. **Affordable Housing Requirements.** As described above, 25% of the 800 housing units planned for Site A are required to be permanently restricted to very-low, low, and moderate income households consistent with the Renewed Hope Settlement Agreement, Density Bonus Ordinance and Inclusionary Housing Ordinance. The 128 very-low and low-income housing units are expected to be constructed by the nonprofit developer, Eden Housing on Block 8 to maximize the potential for obtaining financing, while the remaining moderate income units will be integrated with the market rate housing projects. The Affordable Housing Implementation Plan attached to the DDA requires APP to ensure that at least 25% of each phase of the development be restricted to households at moderate, low- and very-low income levels as required by the

Renewed Hope Settlement Agreement.

To ensure completion of the required affordable housing in each phase, APP is (1) preparing the site and building the infrastructure required for the very low and low income housing units at its sole cost; (2) providing \$3 million in subsidy funding towards the very low and low income units; and (3) committing to provide all of the affordable housing units (25% for each phase) that have not already been constructed, including the very-low and low-income units, as inclusionary housing units within its remaining market rate housing projects, if Eden Housing is not able to obtain financing for the very low and low income units before the City has issued the building permit for its 396th market rate unit (i.e., the 502 market rate units in Phase 1 less the 107 very-low and low-income units required for Phase 1 to meet the 25% requirement). APP is committing to meeting the affordable housing obligations by completion of each phase and well before all of the market rate housing units have been built.

8. **Additional Developer Obligations.** This section of the DDA is a catch-all section that highlights other developer obligations related to the development of Site A, including use and occupancy of property; Project Covenants, Conditions & Restrictions (CC&Rs), which require private property owners to maintain private improvements adjacent to and visible from the public right-of-way in a first class condition as well as any private streets, ; payment of prevailing wages consistent with State and local laws; compliance with the mitigation, monitoring and reporting program (MMRP) contained in the EIR; compliance with the TDM Compliance Strategy; payment of taxes; non-discrimination. This section also addressed the options for conveyance of Phase 1 of the Project which includes land that has not been conveyed to the City by the Navy. Section 8.15 allows APP to take conveyance of all of Phase 1 except for Block 11 in certain situations, including if APP elects to remove the storm drain line that currently runs underneath Block 11 or if APP does not elect to remove the storm drain line and the Navy conveyance is delayed.
9. **Phase 0 Activities and Interim Uses.** APP must prepare and submit for City Council approval within 45 days of the effective date of the DDA a Phase 0 Activities Plan, generally consistent with exhibit attached to the DDA. APP must implement the Phase 0 Activities Plan within 60 days of the Council approval. This section requires that at a minimum APP hold one signature event per year and at least one event each month as well as ongoing programs. This section of the DDA also outlines the City's obligations: (1) to deliver each phase of the Site A property to APP free and clear of any claims of tenants; and (2) to grant a license to APP for use of the property for Phase 0 activities.
10. **Leasing of Property.** This section of the DDA outlines the leases (attached to the DDA) to be entered into as part of the DDA:
 - a. Lease Agreements. The DDA includes interim leases for Buildings 117 and

118 (Lease Agreements) until the phase they are in (Phase 3) of the Site A property is transferred from the City to APP consistent with the DDA. The Lease Agreements have an initial term of 10 years with two 10-year renewal options. The DDA requires that APP invest \$2.5 million in Building 117, an 100,000-square-foot commercial building, before the completion of Phase 1 vertical improvements, and lease 75% of Building 117 before the completion of Phase 1 occupancy. If the DDA is terminated before conveyance of the Phase 3 property and the Lease Agreements have commenced, APP will be able to exercise its renewal options as follows; the first option for each building is dependent on APP's investment of a minimum of \$2.5 million in building improvements, and the second option is dependent on APP's investment of an additional \$2.5 million in each building and payment of the Development Impact Fee for the premises (i.e., approximately \$1 million per acre).

- b. Trust Lease. The DDA includes a long-term lease of Building 113 and two building pads (i.e., a ground leases) within the tidelands areas by APP for 66 years (Trust Lease), as no fee title transfer of property can occur in the tidelands areas per State law. The land payments discussed above for the ferry terminal and initial phase of the sports complex (both improvements within the tidelands areas of Alameda Point) as well as APP's significant investment in infrastructure that provides access to the Tidelands property are considered pre-paid rent for the Trust Lease.

11. City Obligations. This section of the DDA outlines the City's obligations related to Site A, including processing permits and approvals, facilitating conveyance of land from the Navy, considering in good faith the formation of one or more community facilities districts to provide funds for construction and maintenance of infrastructure; issuance of estoppel certificates of completion; subdivision of parcels for each phase; and City representations regarding authority, no legal actions, and hazardous materials.

12. Assignment and Transfer. This section of the DDA limits APP's rights to transfer its interest in the DDA and requires the City approval of any such assignment or transfer prior to the completion of construction. Certain transfers are allowed including for financing purposes; the foreclosure of security financing interests; the sale and rental of residential and commercial space; a transfer to a developer affiliate (i.e., affiliates of Thompson Dorfman, SRM Ernst, or Madison Marquette) or affiliated purchaser (a purchaser controlled by affiliates of Thompson Dorfman, SRM Ernst, or Madison Marquette); ; an assignment to a qualified affordable housing developer pursuant to the Affordable Housing Implementation Plan; and transfer of a sub-phase to a qualified vertical developer after APP has provided completion assurances in the form of payment and performance bonds for the applicable Infrastructure Package.

13. **Security Financing and Rights of Holders.** Mortgages, deeds of trust, and other real property security instruments are permitted to be placed on the property for purposes of financing the development as authorized in this section of the DDA. Mortgage holders have certain rights to cure APP defaults and assume APP's obligations in the event of a default. In addition, if APP defaults on any of the security financing interests, this section includes provisions that address the foreclosure of the affected portion of the property and subsequent ownership.
14. **Hazardous Materials.** This section outlines APP's obligations regarding existing and new releases of hazardous materials; requirements to notify the City of any discovery of hazardous materials and/or claim related to hazardous materials; and cross-references developer's hazardous materials indemnification, as contained in the following section.
15. **Indemnification.** This section requires APP's to indemnify the City for APP's or contractor's performance or non-performance under the DDA, and any new release of hazardous materials.
16. **Insurance Requirements.** This section of the DDA sets out the insurance requirements that are imposed on APP once property is conveyed to APP, including comprehensive general liability, vehicle liability, worker's compensation, property insurance, construction contractor's, and pollution limited liability insurance.
17. **Default and Remedies.** This section of the DDA governs APP's and City's rights to terminate the DDA and APP's and City's remedies for breach or failure under the DDA. With regard to any City event of default under the DDA which continues after expiration of the cure periods: (1) prior to Phase 1 closing, APP shall be entitled to terminate the agreement or seek specific performance; and (2) after Phase 1 closing, APP shall be entitled to seek specific performance and/or exercise any other remedy against City permitted by law or under the DDA, provided, however, in no event shall APP be entitled to seek or receive consequential damages. In the event of APP's default under the DDA, APP has the potential to cure the default within specified time periods and if not cured, then: (1) prior to Phase 1 closing, the City shall be entitled to terminate the agreement, or obtain liquidated damages in the form of the Deposits, any extension payments, \$2.5 million of the sports complex payment and any funds expended from the \$10 million ferry terminal payment; (2) between Phase 1 closing and completion of the vertical improvements, the City shall be entitled to terminate the agreement, or obtain liquidated damages in the form of the Deposits, any extension payments, the \$5 million in sports complex payments, profit participation owed, and any funds expended from the \$10 million ferry terminal payment; and (3) after completion of the final phase of development, the City shall be entitled to prosecute an action for damages, seek specific performance, and exercise any other remedy against APP permitted by law and the DDA. The City also has the right in the event of default by APP under the DDA after closing on any portion of the property and before

completion of the final phase of the project, to re-enter and take possession of any portion of the property conveyed to APP, not subject to a certificate of completion or a current building permit for vertical development.

18. **General Provisions.** This section of the DDA includes numerous miscellaneous provisions, such as notices and communications, non-liability of officials, employees and agents, time of the essence, applicable law, severability, legal actions, covenants to run with land, authority of developer, approvals by the City, amendments, authority of APP, counterparts, operating memoranda, among others. The City Manager has the discretion to approve Operating Memoranda that implement the provisions of the DDA or that provide clarifications to terms of the DDA or revise progress milestone dates provided that they do no change material terms of the DDA or alter any major milestone dates.

19. **Definitions and Exhibits.** This section provides explanations of all of the “defined terms” in the DDA and lists the exhibits that are part of the DDA. As discussed in the staff report, some of key exhibits include: the Development Plan, the Mitigation, Monitoring, and Reporting Program and environmental checklist pursuant to CEQA, a phasing plan, milestone schedule, infrastructure package, TDM Compliance Strategy, lease agreements for use of Buildings 117 and 118, a trust lease for use of Building 113 and land within the tidelands area, an affordable housing implementation plan, a promissory note for payment of the ferry terminal payment, and public improvement agreement, among others.